



Housing, Land and Property Sub Cluster (HLP), Somalia

Strategy | 2020-2021

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This strategy will be revised once annually

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1. Country context: Somalia

The collapse of Somalia's central government in 1991 marked the advent of feudal struggles and violence. The ensuing civil war spanned two decades and saw the country become "the longest-running instance of complete state collapse in post-colonial history"¹, eventually displacing 1.5 million Somalis internally, forcing nearly a million to seek refuge in neighbouring countries, ravaging the basic fabric of society, and leaving the core frameworks for political governance totally devastated. Preceded by several transitional, interim and post-transition administrations, a federal government is currently in place with a clear national development agenda, expanding state authority and playing a more active role in shaping national development efforts, including development of coherent national-level strategies and policies. However, the legacy of protracted state collapse and political vacuum is still visible across Somalia. As the country grapples with recovery and the daunting task of nation-building, challenges persist across virtually all spectrums of society with unbounded humanitarian needs. Amid these challenges, humanitarian efforts are continually being either undermined or exacerbated by compounding factors. Somalia remains one of the world's longest continuous humanitarian assistance operations², as well as one of the world's most vulnerable countries to climate change.³ Recurring climate shocks such as tropical cyclone, drought, flooding and extreme weather associated with El Niño continue to cause mass displacements across the country.

Threats by the Kenya government in 2015 to close Dadaab⁴ and rising political tensions in neighbouring countries hosting Somali refugees, i.e. Yemen, Ethiopia, Libya, etc. prompted the return of more than 91,000 Somali refugees⁵ in communities largely unprepared to absorb the influx, majority of whom joined existing IDP settlements or established new ones. The resulting stress overstretched local capacities and intensified competition over meagre resources. An estimated 2.2 million people will require shelter, infrastructure and non-food item assistance in 2020⁶, with nearly half of the Somali population living with one or more issues linked to shelter inadequacy. IDP sites, mostly unplanned and congested, are built predominantly on private land without long-term tenure security, thus increasing the risk of eviction.⁷ The shelter needs of displaced communities remain largely unmet due to lack of security of tenure, severe underfunding.⁸

The violation of HLP rights remains widespread and the protection thereof largely inadequate, particularly forced evictions. This functional inadequacy is being underpinned by weak governance structures, limited technical capacity and under-resourced state institutions, as well as the lack of adequate legal and policy frameworks. Broadly speaking, however, limitation in HLP capacity in Somalia cuts across both government and humanitarian stakeholders. Typical challenges and protection risks associated with inadequate protection of HLP rights include, but are not limited to, secondary displacements, total destruction of livelihood strategies and HLP assets, disruption to established life routines and social networks, competition over resources resulting in tensions between host communities and displaced populations, and forced evictions stemming from widespread tenure insecurity in urban, as well as land conflicts which represent a key risk in most return areas.⁹

¹ Somalia Situation and Trend Analysis, 14 September 2004, Pg.1

² Brookings Project on Internal Displacement, Somalia, 2015

³ University of Notre Dame Global Adaptation Index (<http://index.gain.org>)

⁴ The refugee camp hosting the largest number of Somali refugees in the region (321,666)

⁵ UNHCR: Refugee returns to Somalia at 31 December 2019

(<https://data2.unhcr.org/en/documents/download/73564>)

⁶ *Somalia: Shelter Cluster Factsheet, Jan 2020* (<https://reliefweb.int/report/somalia/somalia-shelter-cluster-factsheet-jan-2020>)

⁷ 2020 Humanitarian Needs Overview (HNO) for Somalia

⁸ Shelter cluster strategy Somalia for 2020-21 available at

https://reliefweb.int/sites/reliefweb.int/files/resources/final_shelter_cluster_strategy_somalia_february_2020.pdf

⁹ Menkhaus, Ken, Dadaab Returnee Conflict Assessment Draft Summary report, Danish Demining Group, p.23

2. Legal framework

Housing, Land and Property rights are defined and recognised in, and guaranteed by both international and national legal frameworks. Acknowledgement of HLP rights, in particular the right to housing and right to property, dates as far back as 1948 in the Universal Declaration of Human Rights – Articles 25(1) and 17, respectively. Ever since, the set of rights collectively referred to as HLP rights, have been expressed and widely recognized in a number of international human rights covenants, conventions, treaties and protocols, declarations and recommendations. In addition to international and regional frameworks, national laws play a vital role in the promotion and protection of HLP rights. They are the most relevant, especially those that incorporate elements of international law, and are also the most accessible in a given country context, i.e. Somalia.

2.1. International

HLP rights guaranteed under international law apply to all. For IDPs, the international normative legal framework encapsulates and revolves around five foundational rights: i) right to voluntary return to places of origin; ii) right to restitution or compensation for abandoned, lost, damaged or destroyed properties; iii) the right to adequate housing and security of tenure; iv) right to protection against forced evictions; and v) right not to be arbitrarily deprived of one's property. While HLP rights are expressed directly or indirectly in multiple legal instruments, the main international legal frameworks include:

- Universal Declaration of Human Rights, Article 25(1), Article 17.
- International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 11(1), General comments 4 and 7
- International Covenant on Civil and Political Rights (ICCPR): Article 17
- Convention on the Rights of the Child, Article 27(3)
- 1951 Convention relating to the Status of Refugees, Article 21, Article 13.
- Convention on the Ending of all Forms of Discrimination Against Women: Article 14(2)(h), Articles 15(2) and 16(1)(h).
- 1954 Convention relating to the Status of Stateless Persons, Article 21, Articles 8 and 13.
- Fourth Geneva
- Convention European Convention on Human Rights
- International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e)(iii), Article 5(d)(v).
- Guiding Principles on Internal Displacement, Principle 18, Principle 21.
- Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), Principle 8

2.2. National

Somalia has a system of legal pluralism with respect to land governance consisting of three systems of laws: the pre-war statutory law, Islamic or Sharia laws, and the customary law. The set of laws regulating the administration and management of land in Somalia can be broadly categorised in to three groups: pre-1969 era laws, those enacted between 1969 and 1991, and post-1991 era laws¹⁰. It remains unclear which group(s) of laws have been repealed, amended, and/or are still in force. However, the ones most relevant for the administration and management of land and land resources include:

- Constitution of the Federal Republic of Somalia, 2012: Article 43
- Constitution of Somaliland, 2001
- Transitional Federal Charter: Chapter XI, Articles 66 and 68
- 1975 Land Law

¹⁰ Housing, Land and Property in Somalia: Persons of concern in Somaliland and South Central, NRC & LAW, p9

- Agricultural Land Law, 1975
- Agricultural Land Ownership Law, 1999
- Puntland Land Law, 2005
- Somaliland Constitution, 2001
- Somaliland Urban Land Management Law, 2001
- Somaliland Land Tenure Act, 2009
- National Eviction Guidelines, 2019
- National Interim Housing Protocol, 2019
- National IDP Policy, 2019

Land Governance Institutions

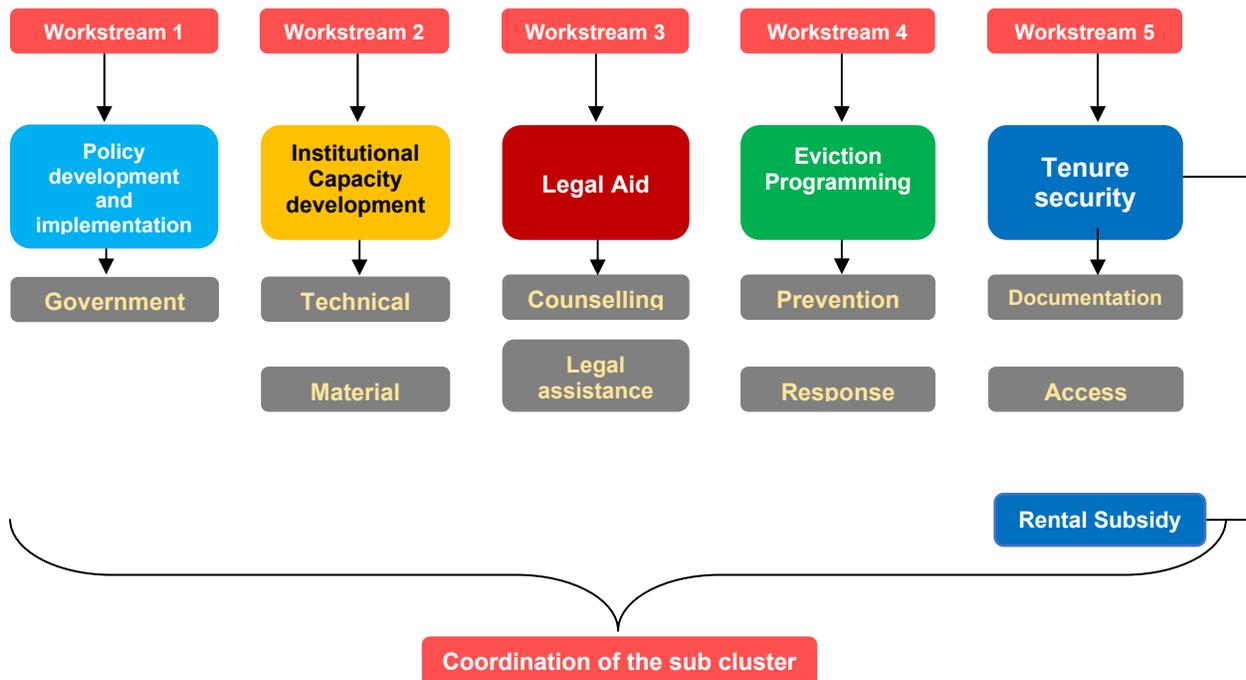
- Puntland Ministry of Local Government
- Hargeisa Land Department
- Jubaland Land Authority
- Baidoa Public Notary
- Local municipalities in other regions

3. Judicial limitations

Public governance is still inadequately institutionalised across the country and turnover rate in critical government functions remains considerably high. A functioning judiciary is an integral component of any democracy. According to the World Bank, a functioning judiciary constitutes one of the top ten most significant obstacles to private sector development.¹¹ Like the private sector, protection of HLP rights depends to a degree on a functioning judicial system. While district courts are in place in some parts of Somalia, lack of enforceability authority remains problematic. The protection of HLP rights is still possible through the customary system of justice administration due to its prevalence and social legitimacy, but variations and weakness in the legal system will still pose significant challenges to applying legal frameworks and fully implementing of this strategy.

4. Strategic approaches

Recognising the limitations of domestic legal frameworks and challenges ensuring their application, the HLP strategy will engage in five strategic workstreams geared at addressing the various barriers to HLP rights in parallel, as follow:



¹¹ World Bank, Ecuador: Constraints to Private Sector Development, Washington, DC, The World Bank, Trade, Finance and Private Sector Development Division, LAC Country Department IV, 1993. Available at https://link.springer.com/chapter/10.1007/978-94-010-0009-3_9 (accessed 10 April 2020)

4.1. Workstream 1: Policy development and implementation

Policy reforms remain central to Somalia's recovery and nation building processes. The government implemented a number of economic policy reforms between 2012 and 2017.¹² Recently, the government also adopted a number of key policy documents, including the National Evictions Guidelines¹³, the Interim Protocol on Land Distribution for Housing to Eligible Refugee-Returnees and Internally Displaced Persons¹⁴, and the National Policy on Refugee-Returnees and Internally Displaced Persons (IDPs).¹⁵ These policy development initiatives, including those particularly relevant for the promotion and protection of HLP rights, will continue as the government seeks to advance its development agenda. The HLP Sub Cluster will proactively engage the government on policy development by continuously making prepositions intended to improve land governance. Engagement in this context will consist of advocacy for the formulation of relevant HLP policies, contributing expertise to government policy drives, and taking steps to facilitate the implementation of feasible components of existing policy.

Meaningful contribution to all HLP policy development processes provided, and policy implementation facilitated

4.2. Workstream 2: Institutional capacity development

Capacity challenges among state institutions with competence in land range from unclear responsibilities and overlapping functions to experienced staff and lack of resources. This workstream will take on two forms: i) development of technical capacity on HLP management and administration, which includes the digitalisation of land administration systems, ii) capacity development for national humanitarian and civil society organizations, and iii) the provision of material support necessary to render state institutions functional to take leadership role in the promotion and protection of HLP rights. By addressing this capacity gap, the Sub Cluster seeks to strengthen local capacity and contribute to the sustainability of HLP work.

Increased level of HLP capacity achieved among 10 government and humanitarian agencies; and 950 duty bearers trained

4.3. Workstream 3: Legal aid

Notwithstanding the lack of appropriate legal frameworks, there are a number of established locally accepted procedures, processes and options that seek to guarantee the protection, enjoyment, and exercise of HLP rights. On one hand, access to such critical information is largely limited, and on the other, navigating complex legal and administrative procedures becomes problematic in displacement. Limited access to justice constitutes a serious impediment to the pursuit of durable solutions for displaced communities. In this context of this HLP strategy, access to justice entails specialized counselling services, legal assistance with dispute resolution being a component subset, and fostering social cohesion in local communities between displaced populations and host communities. Under the pillar 'dispute resolution', a specific priority remains working with central government, regional administrations, local communities and other international partners to strengthen the informal justice system across the country.

Access to legal aid services expanded, targeting 225,300 individuals

¹² African Development Bank Group: Country Brief 2017-2020 (Available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Somalia-Country_Brief_2017-2020.pdf)

¹³ <https://www.refworld.org/pdfid/5d8333ae4.pdf>

¹⁴ <https://www.refworld.org/docid/5d8331024.html>

¹⁵ <https://www.refworld.org/pdfid/5d8332c64.pdf>

4.4. Workstream 4: Eviction programming

Eviction, forced or otherwise, does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of individuals and groups.¹⁶ In Somalia, the phenomenon is considered one of the most pressing protection challenges limiting the ability of displaced communities to achieve durable solutions. Tackling evictions in a comprehensive way remains an imperative to addressing the multiple cumulative challenges associated with displacement in Somalia. The HLP Sub Cluster's strategy for addressing eviction is anchored on a three-prong approach involving monitoring and reporting to inform strategic advocacy and humanitarian planning and response, targeted government-led initiatives aimed at preventing forced evictions or facilitating dignified relocation, and institutionalizing eviction prevention and response within local municipalities across the country. The overarching goal is to strengthen the technical and operational capacities of local municipalities and ensure that they take responsibility and leadership as part of the sustainability built into this strategy.

224,855 individuals prevented from eviction and supported to cope with post-eviction stress

4.5. Workstream 5: Tenure security

Tenure insecurity is ubiquitous in Somalia and remains a critical concern, particularly among displaced communities.¹⁷ Albeit the core elements of adequate tenure security are fragmented and only partially effective in most parts of the country – ownership verification, land survey, irrefutable documentation of ownership, verifiable records of land transactions, impartial recourse for adjudicating land disputes – locally accepted land documents are still being issued by officially designated state agencies. In fact, acquiring these documents guarantees the bearers a considerable degree of tenure security. In part, evictions are occurring because tenure arrangements are either not in place or are not properly negotiated. This workstream is specifically dedicated toward facilitating the issuance of legally appropriate tenure security documents to persons at highest risk of evictions.

4,450 households achieved enhanced tenure security to facilitate durable solutions

For the purpose of this strategy, tenure security documents encompass rental agreements, lease contracts, temporary occupancy certificates, communal land agreements, title deeds, and any other qualifying documents that are issued by relevant government agencies. In addition to documentation, interventions under this workstream will include rental subsidy schemes that are designed to accelerate recovery and consolidate durable solutions for displaced communities. The objective is to lift beneficiaries to a position where they can continue paying their rental fees.

Note:

The specific modalities for the implementation of activities under each workstream will depend on the prevailing context and/or field realities. Service delivery approaches during emergency will differ significantly from regular recovery and durable solutions contexts. When such situations arise, i.e. conflict, man-made or natural disaster, applicable adjustments will be reflected in separate customized SoPs or operational plans without necessarily revising the entire strategy.

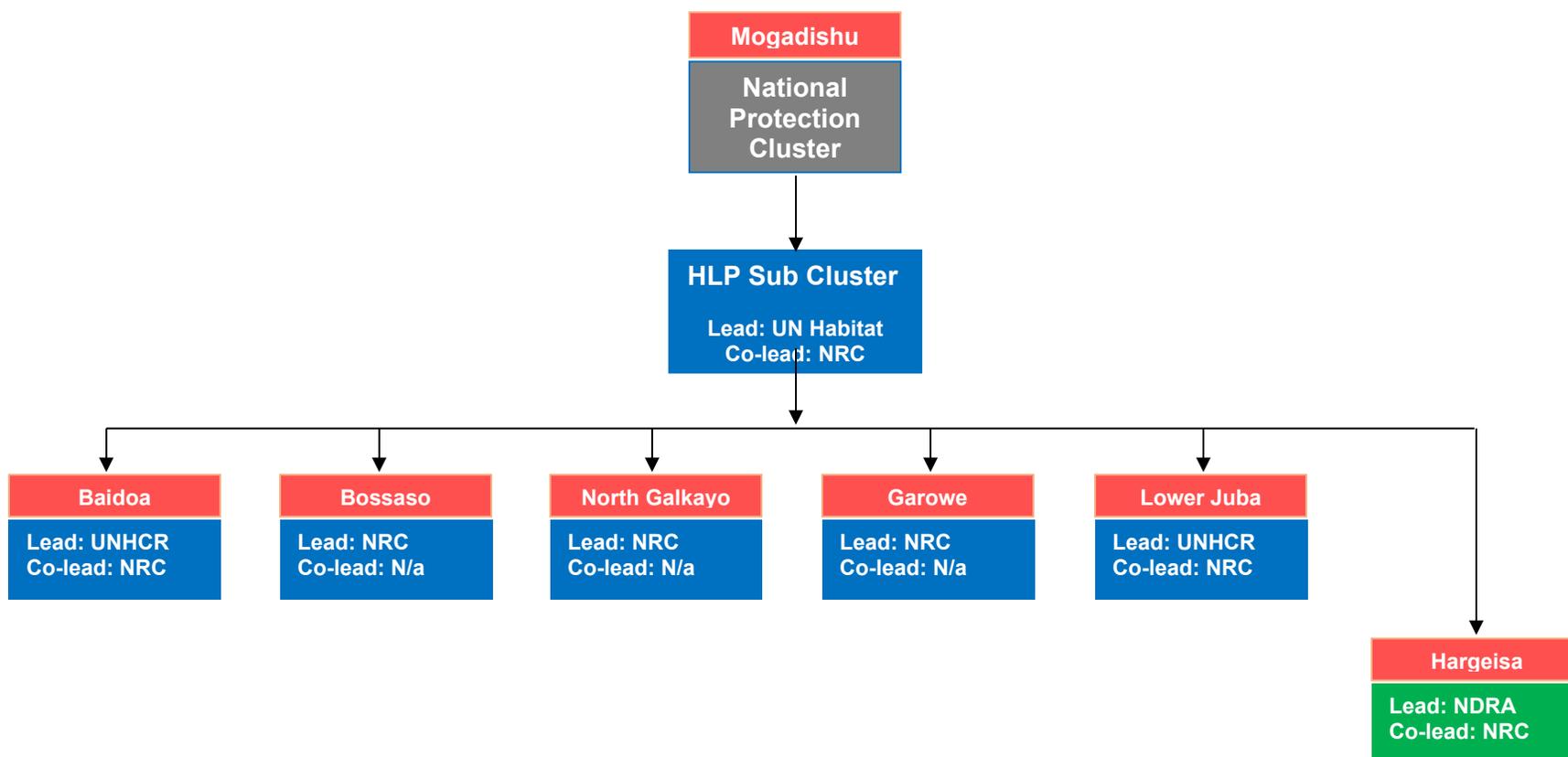
¹⁶ E/CN.4/Sub.2/1993/8, para. 21

¹⁷ Internal Displacement Profiling in Mogadishu, 2016

5. Membership Composition

The HLP Sub Cluster is chaired by UN Habitat and co-chaired by NRC at the national level. At the time of writing, NRC is chairing the sub cluster independently in the absence of dedicated co-chair capacity. Membership of the sub cluster is composed of several international and national organisations and UN agencies with an interest in HLP, most of whom do not currently directly implement HLP activities. There are seven HLP working groups at the sub national level, some of which are co-chaired by UNHCR, as represented in the operational structure below. Somaliland presents a slightly different context wherein the Protection Working Group under which the HLP Sub Cluster falls is being chaired by the Somaliland National Displacement and Refugee Agency (NDRA).

Operational Structure



6. Action Plan

Specific initiatives	Outcome	Indicative timeframe
Update of the sub cluster's membership list	Updated mailing list: Organisations actively participating in and/or contributing to HLP objectives are maintained on the mailing list.	Q2
Revision of monthly meeting schedule	A realistic meeting timetable that does not conflict with major Protection Cluster's meetings is in place	Q2
Organisation and conduct of Monthly meetings	HLP sub cluster's monthly meetings regularized and minutes are circulated	Monthly
Quarterly HLP briefings	Humanitarian and government partners are kept informed of the HLP Sub cluster's achievements and plan	Quarterly
National HLP forum	HLP challenges are articulated and key advocacy issues are raised	Q3
HLP capacity development training for national NGOs	Sustainability: gradual increase in HLP capacity among national NGOs as contribution to sustainability	Q3
HLP capacity development training for national for government agencies	Sustainability: gradual increase in HLP capacity among key government agencies as contribution to sustainability	Q4
HLP capacity development training for national UN agencies	Mainstreaming: HLP considerations are adequately mainstreamed in humanitarian response plans	Q4
Revision of the sub cluster's strategy	Content of the HLP sub cluster's strategy remain relevant and reflect current realities	Q4
HLP sub cluster's annual factsheet/summary 'The year in review'	Enhanced visibility achieved	Q4