



“WHO ARE YOU?”

Linkages between Legal Identity and Housing,
Land, and Property Rights in Somalia

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AUTHORS

Juliette Syn and Laura Cunial

PEER REVIEW

Shezane Kirubi and Evelyn Aero

FIELD WORK CONDUCTED

Mohamed Abdiweli
Abbas Aden Ahmed
Amir Mohamud Hassan
Abdimahad Sheikh Ibrahim
Alisaleban Jama
Abdirahman Abdi Mohamed
Mohamed Abdi Hashi
Mohamed Yarrow
Abdikheir Maalim Shale
Boqore Ali Omar
Hassan Elmi Mohamud
Khadar Qorane
Sadca Salah and
ICLA paralegals working across
Somalia

PHOTOGRAPHS

Abdulkadir Mohamed

DESIGN AND LAYOUT

Benjamin Omamo

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ACRONYMS

| | |
|------------------|--|
| APAI-CRVS | Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics |
| BRA | Banadir Regional Authority |
| BRCiS | Building Resilient Communities in Somalia |
| CCCM | Camp Coordination and Camp Management |
| CID | Criminal Investigation Documents |
| CRVS | Civil Registration and Vital Statistics |
| DACs | Displacement Affected Communities |
| FGD | Focus Group Discussion |
| FGS | Federal Government of Somalia |
| FMS | Federal Member States |
| HLP | Housing, Land, and Property |
| ICLA | Information, Counselling and Legal Assistance |
| ID | Identity Document |
| IDP | Internally Displaced Person |
| IOM | International Organization for Migration |
| INGO | International Non-Governmental Organisation |
| KII | Key Informant Interview |
| KYC | Know Your Customer |
| LID | Legal Identity |
| MoIFAR | Ministry of Interior, Federal Affairs and Reconciliation |
| MoLSA | Ministry of Labour and Social Affairs |
| NAP | National Action Plan to End Statelessness in Somalia |
| NDP | National Development Plan |
| NDRA | Somaliland National Displacement and Refugee Agency |
| NDSS | National Durable Solutions Strategy |
| NGO | Non-Governmental Organisation |
| NPRRI | National Policy on Refugee-Returnees and IDPs |
| NRC | Norwegian Refugee Council |
| PRMN | Protection and Return Monitoring Network |
| SCALED-UP | Somalia Capacity Advancement, Livelihoods and Entrepreneurship, through Digital Uplift Project or “Digital Uplift Project” |
| SDG | Sustainable Development Goals |
| UNDP | United Nations Development Programme |
| UNHCR | United Nations High Commissioner for Refugees |
| UNICEF | United Nations Children’s Fund |
| USR | Unified Social Registry |
| WB | World Bank |
| WFP | World Food Programme |

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PART I

Introduction

A. Background

With an estimated 3.8 million displaced Somalis, including 800,000 Somali refugees outside the country and the remainder as internally displaced persons (IDPs) within, the country represents one of the world's largest forcibly displaced populations.¹



A teenage mother holds her distribution card during NFI distribution in Guriel town

Persons with disabilities make up an estimated 20 per cent of the IDP population in Somalia.² According to the UNHCR-led Protection and Return Monitoring Network, some 933,000 individuals (mostly women, children and elderly) have been displaced internally within Somalia in 2022.³ The drought in Somalia worsened in July, with nearly half of the country's population needing humanitarian and protection assistance.⁴ UNHCR currently estimates 2,007,600 IDPs in South Central, 571,400 in Somaliland and 388,500 in Puntland.⁵ As of December 2021, the majority of IDPs have self-settled in over 3,400 recorded IDP sites in urban and peri-urban areas across the country.⁶ Conditions in these sites are precarious, and basic needs are often unmet.

Access to legal identity (LID) and civil documentation – including birth, marriage, divorce and death registration – has been impaired, leading to countless unregistered, and therefore unofficial and unrecognized marriages; undocumented children; and unregistered divorces and deaths. The lack of civil documentation and registration has been identified as a major protection concern, directly affecting the enjoyment of an array of related human rights and increasing exposure to protection threats. Lack of national and/or state identity cards has become more important as Somalis are displaced for an increasing number of years, particularly because many have expressed the desire to remain and locally integrate with

1 UNHCR (2022).

2 Disability Inclusion Study, Kismayo, 2021.

3 <https://data.unhcr.org/en/dataviz/1>.

4 <https://data.unhcr.org/en/documents/details/95029>.

5 <https://data.unhcr.org/en/situations/horn/location/192>.

6 CCCM Cluster Somalia Strategy, January 2022.

their hosting community, rather than return to areas that are still struggling with insecurity, drought and famine.



Group of men constructing a shelter structure

Somalia does not have an comprehensive, national system of identity management (such as a population register, a civil registration and vital statistics (CRVS) system or national ID system), and a patchwork of largely state-specific functional systems has led to a proliferation of different kinds of documents in use to prove identity.⁷ According to the World Bank (WB), over 77 per cent of the Somali population, or close to 12 million people are estimated to lack an official proof of identity. At 3 per cent, Somalia has the lowest under-5 birth registration rate in Sub-Saharan Africa.⁸ Although data on ID coverage is scarce, recent surveys indicate that women are more likely than men to lack identity documentation.⁹ Individuals affected by displacement are also often undocumented or under-documented as described below in the study. There are ongoing discussions and efforts regarding the establishment of a national identity management system. However, a World Bank report on the issue points out that neither the federal government nor its member states trust the other to manage such a system.¹⁰ While Somali legal experts believe that the issue of national identification is under the federal

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⁷ World Bank (2016).

⁸ World Bank (2016)

⁹ World Bank (2019).

¹⁰ World Bank (2016).

government's jurisdiction, other state constitutions (such as Puntland and Somaliland) hold that identity systems are under the authority of the state.¹¹

This research looks at the types of LID documentation available in the states and explores the extent to which the lack of such documents, specifically national and/or state ID cards, affect access to housing, land property (HLP) rights by IDPs and displacement affected communities (DAC), to help contribute to discussions about the need for and development of Somali identification management systems. To that end, the report first provides legal analysis of relevant federal and state laws, then includes a detailed accounting of experiences from IDPs themselves about how lack of LID impacts their lives including access to HLP, and finally makes recommendations to inform the humanitarian response.



Displaced mother with her baby in an IDP camp in Kismayo.

Methodology and Limitations:

Information for this report was gathered through a combination of desk study of existing literature and qualitative fieldwork, which was conducted between July and August 2022 in Banadir (Mogadishu), Bay (Baidoa), Jubaland (Kismayo), Puntland (Bossaso and Garowe) and Somaliland (Hargeisa). The fieldwork data includes 41 focus group discussions (FGD), 27 case studies, and 45 key informant interviews (KII) with national and local officials and leaders, and national and international humanitarian actors. The research also builds on the NRC Information Counselling and Legal Assistance (ICLA) programme's experience and previous research on these issues, especially with housing, land and property.

A few limitations of this research should also be noted. Where this research references information reported, it is important to understand that what is described are the perceptions of the persons who were interviewed, and that there can of course be variations among different people. There may also have been some confusion among interviewees as to what qualified as a "legal identity document," as other forms of identification may be available in their areas. Finally, all names and places in this report have been changed to protect the privacy and security of persons who were interviewed for this study.

Legal identity is defined as the recognition of a person's existence before the law, facilitating the realization of specific rights and corresponding duties.

B. Key concepts and terminology

1. The concept of legal identity

Legal identity "may be defined as the recognition of a person's existence before the law, facilitating the realization of specific rights and corresponding duties. Legal identity can encompass such characteristics as name, age, place of birth, address, sex, gender, marital status and nationality, and depending on the national context, is sometimes linked to a personal identification number or/and identity card."¹² Legal identity is typically conferred through birth registration after a person is born, but may also be conferred by a legally recognized identification authority. This system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death.¹³

¹² United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), Asia-Pacific Population Journal, Vol. 29, No. 1 (Nov. 2014), pp. 76-77.

¹³ UN Legal Identity Agenda, <https://unstats.un.org/legal-identity-agenda/#~:text=UN%20Operational%20Definition%20of%20Legal,following%20the%20occurrence%20of%20birth>



Displaced mother that has recently faced forced evictions relocating.

Legal identity documentation refers to an official document that proves a person's legal identity and includes civil status documents and nationality documents.

Legal identity is essential to enjoying rights and enabling access to basic services and opportunities, like access to justice, freedom of movement and access to education, health, housing, land and property or livelihoods. Lack of civil registration and other legal identity documents has also been identified as a major protection concern, particularly for women and children. The inability to prove identity when stopped by police creates risks of arrest and detention, and unregistered children and women are unable to prove their relation to family members, particularly those who go missing or die.

The lack of legal identity is often both a cause and effect of displacement and statelessness.¹⁴ While the concept of legal identity is not clearly defined in international law, it is to be understood as a set of elements and characteristics (e.g. name, sex, place and date of birth) that defines an individual and governs the relationships, rights and obligations under public and private law.¹⁵ Some refer to it as the right to have rights, or the recognition of a person's existence before the law. Others make reference to the process that starts with birth registration and continues through interaction with state institutions in registering vital events, obtaining documents such as ID cards and passports, etc.¹⁶ Despite the lack of an agreed definition, legal identity and other associated terms like identity documents, civil documents, and civil registration are frequently referred to in humanitarian and development policy and commitments, including in the 2030 Agenda Sustainable Development Goal (SDG) to provide legal identity for all.¹⁷

For the purpose of this study, legal identity documentation refers to an official document that proves a person's legal identity and includes civil status documents and nationality documents. These documents are often a product of administrative processes that state authorities require from individuals to give validity or recognition to various life events (e.g. a child was born.) Without that recognition – which is evidenced by the event being recorded in official registries and by a document issued to the individual – access to rights and services may be restricted as described in the report.

14 UNHCR About Statelessness, <https://www.unhcr.org/ibelong/about-statelessness/>.

15 The UN Legal Identity Expert Group in 2019 adopted the following definition of legal identity: "Legal identity is defined as the basic characteristics of an individual's identity, e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally-recognized identification authority. This system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death". See also UN Legal Identity Agenda, <https://unstats.un.org/legal-identity-agenda/#:~:text=UN%20Operational%20Definition%20of%20Legal,following%20the%20occurrence%20of%20birth>.

16 NRC (2021c).

17 Sustainable Development Goal 16.9.

The rapid advance of digital technology has created a surge in attention to the concept of "digital identity" – including in humanitarian responses.¹⁸ For this report, NRC is focusing on legal identity documentation for communities affected by displacement in Somalia, given the current status of the country and the planned/ongoing civil registration initiatives at federal and state level. Digital components (e.g. use of biometric information) of these initiatives are described in the report.

Box 1: Legal identity challenges, including for displaced individuals in Africa

According to the World Bank, an estimated 1.1 billion people in the world today cannot officially prove their identity. The latest data provides greater insight on the breakdown of this figure, with 78 per cent of those undocumented living in Sub-Saharan Africa and Asia.¹⁹ According to UNICEF, in 2019 the proportion of children under-five registered globally was 75 per cent. Civil registration systems remain largely incomplete in most countries on the African continent, and as a result, the majority of countries in sub-Saharan Africa are behind the rest of the world, with Ethiopia (3 per cent), Zambia (11 per cent) and Chad (12 per cent) reporting the lowest levels of registered births globally.²⁰ According to the World Bank, Somalia has the lowest under-5 birth registration rate in Sub-Saharan Africa at just 3 per cent.²¹

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Individuals affected by displacement often lack personal documentation, which can be a barrier to obtaining important services. For example, legal identity documents are often required to access education, healthcare and other services – whether public or not. Documentation requirements are often in terms of civil documentation and/or residency documents, and may include the submission of ID cards, birth certificates, proof of legal residence and UNHCR registration cards for refugees. In some cases, a marriage certificate is also needed to obtain reproductive and maternal health services. Vulnerable groups, including women and girls, often face disproportionate challenges in obtaining an identity document (ID).²² The situation of undocumented persons, stateless persons and those at risk of statelessness are generally characterized by limited access to services, often because of the lack of documentation.²³

18 <https://www.unhcr.org/blogs/how-digital-identity-can-enable-the-global-compact-on-refugees/>

19 <https://blogs.worldbank.org/digital-development/counting-uncounted-11-billion-people-without-ids>

20 <https://www.unicef.org/rosa/press-releases/despite-significant-increase-birth-registration-quarter-worlds-children-remain>.

21 World Bank (2016).

22 <https://blogs.worldbank.org/digital-development/counting-uncounted-11-billion-people-without-ids>

23 UNHCR (2021a).

2. Other key terminology

- **Birth registration:** "Birth registration is the continuous, permanent, and universal recording within the civil registry of the occurrence and characteristics of birth, in accordance with the national legal requirements. It establishes the existence of a person under law and lays the foundation for safeguarding civil, political, economic, social and cultural rights. As such, it is a fundamental means of protecting the human rights of the individual."²⁴



Female refugee-returnee from Daadab now resettled in Kismayo holding her title deed.

- **Civil documentation:** "A physical token or credential that serves as a form of proof of civil status, such [as] certificates of birth, adoption, marriage, divorce or death. A person can have multiple forms of civil documentation."²⁵
- **Civil registration:** "The continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population, as provided through decree or regulation in accordance with the legal requirements in each country. This process establishes and provides legal documentation for such events. The civil registration records are also the best source of vital statistics."²⁶

²⁴ A/HRC/27/22, Birth certificate is: "[A]n original document, usually issued by a government authority, stating when and where a person was born and identifying one or both of his or her parents." Inter-American Development Bank (IDB), Civil Registration and Identification Glossary (2010), p. 10.

²⁵ Open Society Justice Initiative and Namati (2018).

²⁶ UN Dept. of Economic and Social Affairs (2014), defines civil registrar as: "The official authorized by law with the responsibility for carrying out the civil registration of vital events in a well-defined area

- **Civil registration and vital statistics (CRVS)** system registers all births and deaths, issues birth and death certificates, and compiles and disseminates vital statistics, including information about cause of death. It may also record marriages and divorces.
- **Death registration:** A death certificate is required to formally/officially document the death of a person. A death certificate is often required before legal inheritance proceedings can be instituted.
- **Legal identity documentation:** "Physical documents, digital certificates, identity numbers, or similar credentials that serve as proof of a person's legal identity. This includes civil status documents (e.g., birth, adoption, marriage, divorce, or death certificate), nationality documents (e.g., nationality certificate, national ID card, passport), and forms of identification based on migration status (e.g., refugee card, foreigner identity card)."²⁷
- **Marriage registration** is the official documentation that two people are married. Divorces, annulments of marriage and judicial separations of marriage and complementary notations in the marriage registration record should be made upon presentation of the judicial pronouncement of such an event by the informant.²⁸
- **Proof of legal identity** is defined as a credential, such as a birth certificate, identity card or digital identity credential that is recognized as proof of legal identity under national law and in accordance with emerging international norms and principles.²⁹
- **Vital events:** "The occurrence of a live birth, death, fetal death, marriage, divorce, adoption, legitimation, recognition of parenthood, annulment of marriage or legal separation."^{30,31}

3. Housing, Land, and Property Rights

Housing, land and property rights are about having a home free from the fear of forced eviction and a place that offers shelter, safety and the ability to secure a livelihood. HLP rights are referenced and defined in several international human rights instruments,³² as well as in national law in Somalia, for instance, in the Land Law of 1975 and 2012 Provisional Constitution. Organizations providing protection and assistance to persons affected by conflict should respect the human rights, including HLP rights, of affected persons at all

(an entire country, or a county, district, municipality, parish, etc.) and for recording and reporting information on those vital events for legal and statistical purposes."

27 Open Society Justice Initiative/Namati (2018).

28 UN Dept. of Economic and Social Affairs (2014).

29 UN Legal Identity Agenda, <https://unstats.un.org/legal-identity-agenda/#~:text=UN%20Operational%20Definition%20of%20Legal,following%20the%20occurrence%20of%20birth>

30 UN Dept. of Economic and Social Affairs (2014).

31 For the purpose of this report, the relevant key vital events are birth, death, marriage and divorce.

32 For example, Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), (Somalia's accession in 1990), recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing". The General Comments of the ICESCR are also binding upon Somalia, including General Comment 4 on "The Right to Adequate Housing (Art. 11 (1) of the Covenant)" and General Comment 7 on "The right to adequate housing (Art.11.1): forced evictions". The Guiding Principles on Internal Displacement also specifically address HLP issues, for example, the right to an adequate standard of living (Principle 18), protection from pillage and arbitrary deprivation of property (Principle 21), and responsibilities relating to the recovery of property (Principle 29).

times, and advocate for their promotion and protection to the fullest extent. The concept of HLP includes the full spectrum of rights to housing, land and property held according to statutory or customary law or informally, both public and private housing, land and/or property assets.³³

HLP rights include:

- The right to adequate housing
- The right of access to natural resources, such as land and water
- The right to security of tenure and protection against forced eviction
- The right to non-discrimination in accessing HLP rights which often entails special protection for the most vulnerable and marginalised persons



Displaced mother with her children

Land tenure is the relationship among people, as groups or individuals, with respect to land. The rules of tenure define how property rights are allocated within societies, and define how access to rights to use, control, and transfer land, are granted. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions. As described in the report, there are many forms of tenure arrangements in Somalia, ranging from full ownership and formal rental agreements to emergency housing and informal occupation of land. Land tenure is a *relationship*, which can (and often does) change over time.

³³ More information on the scope of HLP can be sourced from the HLP Area of Responsibility of the Global Protection Cluster, <http://www.globalprotectioncluster.org/en/areas-of-responsibility/housing-land-and-property/hlp-area-of-responsibility.html> and from Norwegian Refugee Council (2011) Housing, Land and Property, Training Manual <https://www.nrc.no/what-we-do/speaking-up-for-rights/training-manual-on-housing-land-and-property/>.

PART II Legal Analysis: HLP and LID Laws and Policies

This section provides a short overview of the key legal framework at the federal level (section A), planned and on going developments in the sector, including the establishment of a Unified Social Registry (USR) and a national ID card system (section B), and the key legal framework at the member state level (section C). The relevant international and regional framework is included in Annex 2.

Box 2: Background: Legal Identification Systems

Goal 16.9 of the Sustainable Development Goals (SDGs) established the target that all member states should provide "legal identity for all" by 2030.³⁴ In 2017, the World Bank led a process to develop the "Principles on Identification for Sustainable Development," to support the development of identification systems that are inclusive, trusted, accountable, and used to enhance people's lives.³⁵ More information on the SDG and other important initiatives on legal identity and birth registration are included in Annex 2.

Legal identification systems can be categorized as 'foundational' or 'functional'. Foundational systems are typically meant to manage identity information that provides holders proof of their legal identity as national residents, such as ID cards.³⁶ Information in the foundational system is subsequently used in functional systems, such as registers for public health insurance, voters and driver licenses.³⁷ The foundational approach simply provides a national ID number on the basis of physical or biometric data, but is not linked to the holder's legal status.³⁸



Portrait of displaced female in Mogadishu.

The legal analysis focuses primarily on legal identity and access to documentation, and secondarily on HLP issues when linkages with

³⁴ UN Statistical Commission (2022); Manby (2020).

³⁵ World Bank (2017).

³⁶ Manby (2020); World Bank (2016).

³⁷ Manby (2020); World Bank (2016).

³⁸ Manby (2020).

LID can be identified.³⁹ It should be noted that Somalia's legislation, including laws relevant to legal identity and HLP, is old and scarce – a reflection of the country's prolonged history of internal conflict and an explanation for the prominence of customary law (*xeer*) and traditions. This is very much the case for the right to legal identity, for which the main legislation (i.e. the civil status law and family law) dates back to the 1970s. Somalia lacks a robust legislative and regulatory framework, especially regarding the implementation of an ID management system. In early 2021, the FGS adopted the National Civil Registration & Vital Statistics Policy as a step toward creating a national civil registration and vital statistics system. However, laws underpinning the establishment of the national ID card system, such as data privacy and protection laws, are still in draft form. Other policies adopted by the FGS in the last decade have also been included in the analysis below when relevant.

Several legal questions remain unanswered and unaddressed in the decentralisation and federalisation process, both in terms of the norms as well as the role of the federal and state authorities – this includes important questions related to nationality, legal identity and HLP. Moreover, Somalia exists in a state of legal pluralism where secular law, *Xeer* (the customary rules and traditions used by Somalia's clan-based society) and Islamic law (Sharia) operate together, which further complicates the situation on the ground. With regards to the secular laws, the legal framework can be broadly categorised into three groups: pre-1969 era laws; those enacted between 1969 and 1991; and post-1991 era laws. It remains unclear which group(s) of laws have been repealed, amended, and/or are still in force.



Ongoing registration of female IDP by NRC staff.

39 For more analysis on the HLP framework, please refer to the most recent NRC Somalia reports on HLP such as "I want my land. You have to go: Understanding the eviction phenomenon in Baidoa," and "Consolidating Gains: Displaced women's Housing Land and Property Rights in Africa."

A. Federal Laws and Policies

2012 Provisional Constitution of Federal Republic of Somalia

The Provisional Constitution of the Federal Republic of Somalia was adopted on 1 August 2012, marking the establishment of the new Federal Government.⁴⁰ The Constitution establishes Islam as the state religion, requires all laws to be compliant with Sharia⁴¹ and lays the foundation upon which displaced people's human rights are protected.⁴² The Constitution sets up a federal system based on two elected levels of government – the Federal Government level and the Federal Member State level, comprised of the local governments and the Federal Member State governments, with the aim of establishing efficient political institutions and introducing governance that is more responsive and accountable to its people. A permanent constitution was to be adopted by public referendum before the end of the first term of the Somali Federal Parliament in 2016, but this process has been delayed.

With regards to **LID**, the Constitution does not directly establish a right to birth registration, but it does recognise the right to nationality, to a name⁴³ and to a passport.⁴⁴ Moreover, it sets out that "marriage is the basis of the family, which is the foundation of society."⁴⁵ Article 54 of the 2012 Provisional Constitution of Somalia provides that citizenship and immigration are among the matters reserved to the federal government. However, several of the constitutions of the federal member states provide for citizenship at the state level (e.g. Puntland Constitution and Jubaland Constitution).

In terms of **HLP**, article 4 establishes the right to land, which is recognized as Somalia's primary resource and source of livelihood and should be held, used and managed in an equitable, efficient, productive and sustainable manner. Article 26 recognises every person's right "to own, use, enjoy, sell, and transfer property." In practice however, women's land rights are governed by *Xeer* and Sharia, which predicate the protection that they enjoy on their association with male relatives.⁴⁶ The inviolability of a home is sets out in article 19 and the Government's right to eminent domain for the public interest is in article 26. The Provisional Constitution states that the federal

The Constitution does not directly establish a right to birth registration, but it does recognise the right to nationality, to a name and to a passport.

40 Federal Republic of Somalia (2012). Provisional Constitution. Retrieved from <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>. The Constitution is comprised of 15 chapters and 143 articles. Chapters 5 and 12 flesh out the principle of federalism, Chapters 6 to 9 embody the separation of powers and Chapter 10 introduces the Independent Commissions. Chapter 2 encompasses the Bill of Rights, while the procedure for amending the Constitution is prescribed in Chapter 15 under the Title 1.

41 Provisional Constitution, art. 4.

42 NRC (2021b)

43 *Id.*, art. 29.

44 *Id.*, art. 21

45 *Id.*, art. 28.

46 NRC (2021b).

government must develop a national land policy that should, among other things, ensure equity in land allocation and use of resources; the guarantee of land ownership and registration; sustainable land use; and prompt and satisfactory resolution of land disputes. Such a policy has not yet been adopted.



Young girl fetching water in an IDP camp in Kismayo.

Box 3: Legal Identity and HLP in the 1975 Family Law and 1973 Civil Code

The 1975 Family Law (Law 23) is seldom enforced in legal practice in Somalia.⁴⁷ It sets the marriage age for both parties at 18 years, or 16 for girls with the consent of a guardian.⁴⁸ The law states that marriages are to be performed before a judge or other person authorized by the Ministry of Justice and Religious Affairs, and are to be registered at the nearest District Court within 15 days of its performance (and 40 days in cases of residents in rural areas).⁴⁹ The responsibility of registering the marriage lies with the person who performs it. The law also recognizes the need for divorce registration. There are no specific details regarding the process for registration, the use of standard forms and time periods for reporting marriages, divorce and birth.⁵⁰

The law establishes the conditions for polygamous marriages (Chapter IV), for dower (*Mahar*) (Chapter VII), maintenance (Chapter X), divorce (Part N, Chapter I), and dissolution of marriage (Part N, Chapter II); it also covers maintenance of children and guardianship as well as inheritance.

The 1973 Civil Code (Law 37) has provisions pertaining to inheritance, personal contracts, and water and grazing rights, and sharply curtails both the sharia and Somali customary law. The Code gives women the right to own property independently, and abolishes traditional clan and lineage rights over land, water resources, and grazing. However, the Code does not address directly issues related to legal identity and is rarely enforced in Somalia.

47 According to UNFPA, the Ministry of Justice has been working on proposals for new family laws since 2018. UNFPA, Somalia: Gender Justice and the Law. December 2019. <https://www.undp.org/sites/g/files/zskgke326/files/migration/arabstates/Somalia.Summary.19.Eng.pdf>

48 1975 Family Law No. 23, arts. 16-17.

49 *Id.*, art. 5.

50 UNFPA, Civil Registration and Vital Statistics Somalia Country Profile, UNFPA, p. 6. https://somalia.unfpa.org/sites/default/files/pub-pdf/crvs_report.pdf

1. Legal Identity in key FGS policies

The National Civil Registration & Vital Statistics Policy (CRVS Policy)⁵¹ was adopted in early 2021 with the aim of establishing a public registration system to issue identity documents and certificates for vital events, maintaining records and compiling/disseminating demographic and health statistics to inform policy. The CRVS Policy builds on the Somali Registration and Identification Policy, adopted in 2018, which established the plan to use the unique ID number as the cornerstone for the development of the identification system and issuance of Identity Cards that would be used by individuals as proof of identity.⁵² The CRVS Policy covers five events: birth, death, marriage, divorce and *Kafalah*⁵³ with the aim of creating records for each event. It creates a holistic approach to legal identity from birth to death, with legal identity conferred through birth registration and the issuance of a certificate and retired by the issuance of a death certificate by the civil registration authority upon registration of a death.⁵⁴ Implementation of the policy will be guided by principles of complementarity, national ownership, transparency and accountability. Special attention will be given to IDPs, refugees and vulnerable individuals, to ensure equity and inclusivity of the Policy. Birth registration will be free for all children under the age of 5 years; late registration after that age will incur a fine.

The Policy recommends a decentralized system administered by local governments in order to ensure its sustainability, and the establishment of coordination mechanisms between relevant ministries. Implementation of the Policy will be led by the Ministry of Interior, Federal Affairs and Reconciliation (MoIFAR); however the Policy calls for the establishment of a National Steering Committee for CRVS and spells out responsibilities of other ministries and agencies. These include:

- Ministry of Health: notification of births and deaths through health institutions and community health staff; medical certification of causes of death according to international standards, and compilation of health-related statistics from CRVS data;
- Ministry of Justice: oversight of court procedures for registration and certification of marriages and divorce;
- Ministry of Religious Affairs and Endowments: community-based practices for registration and certification of marriages and divorce;

The CRVS Policy covers five events: birth, death, marriage, divorce, and Kafalah

51 Federal Government of Somalia. National Civil Registration & Vital Statistics Policy, 2021. Retrieved from <https://moifar.gov.so/wp-content/uploads/2021/10/CRVS-Policy-.pdf>

52 UNFPA (2022).

53 In Islamic family law, "kafala" refers to a formal agreement to provide temporary support for an orphaned child until adulthood, and is best understood as a form of legal guardianship rather than adoption.

54 Federal Government of Somalia. National Civil Registration & Vital Statistics Policy, p.7.

- National Bureau of Statistics: production of annual vital statistics reports along with relevant data quality assurance; and,
- Local governments of Federal Member States and Banadir Regional Administration: direct roles in provision of registration services to the population.

The Policy also assigns roles in relation to identity management, social protection and access to services to the National Registration and Identification Agency, the Immigration Department, the Ministry of Education and the Ministry of Women and Family Affairs. The CRVS Policy also sets out guidance, parameters and priorities for its implementation including vis-a-vis the use of technology, required legal reforms, public information campaigns and the development of a monitoring and evaluation plan.⁵⁵ The CRVS system should have a national central database to store all vital event records and produce high quality vital statistics.

The CRVS Policy established the CRVS Technical Working Group (CRVS TWG) based in MoIFAR, which will guide the implementation of a national CRVS improvement plan in Somalia. This will include representatives from all stakeholder ministries listed above, as well as representatives from the Ministry of Interior for each State and the Banadir regional Administration. The CRVS TWG is responsible to oversee the design and roll out of the system, propose regulatory framework, as a preliminary step for implementation, develop notification forms for births, deaths, marriages and divorces and ensured coordination.⁵⁶

In 2019, the Federal Government of Somalia also adopted a new National Policy on Refugee-Returnees and IDPs (NPRRI).⁵⁷ The main objective of the NPRRI is to ensure that all refugee-returnees and IDPs enjoy full equality and obtain the same rights as those given to all citizens by the Somali Provisional Constitution. Principle 8 states that the Federal Government of Somalia is responsible for the issuance and replacement of "all documents necessary for refugee-returnees and IDPs – both women and men⁵⁸ - for the enjoyment and exercise of their legal rights" (e.g. passports, ID cards, and birth and marriage certificates) without imposing unreasonable conditions such as requesting to return to the place of origin or prohibitive costs.⁵⁹ The NPRRI recommends that refugee-returnees and IDPs a) are included in birth registration and other

⁵⁵ *Id.*, p.10-12.

⁵⁶ Federal Government of Somalia. National Civil Registration & Vital Statistics Policy, p.15 -16.

⁵⁷ Federal Government of Somalia, National Policy on Refugee-Returnees and Internally Displaced Persons, 2019. Retrieved from <https://www.refworld.org/pdfid/5d8332c64.pdf>

⁵⁸ *Id.*, Principle 8.3.

⁵⁹ *Id.*, Principle 8.1.

documentation efforts without identifying them as IDPs; b) can access locations where documents are issued and are provided with financial assistance, where necessary; and c) displaced women and children have their documentation issued in their own names (3.3 Durable solutions: conditions and support measures).

The Somalia National Development Plan 2020 – 2024 (NDP-9)⁶⁰ adopted in 2019, establishes three national priorities: inclusive and accountable politics; improved security and rule of law; and, improved economic development. The NDP-9 aims to improve social protection through greater access to national identification documents⁶¹ through a Civil Registration and Vital Statistics system, and recognises that "school enrolment, health clinic access, social protection schemes, land and housing tenure and tracking of human development indicators are all dependent on formal identification documents."

The National Social Protection Policy for Somalia⁶² adopted in 2019 outlines priority actions for the FGS and its development partners for the five years beginning in 2019, followed by a second phase from 2023 to 2040. It recognises that registration and identification is central to ensuring access to social protection programmes for poor and vulnerable groups in Somalia. It states that registration and enrolment procedures for a transitional safety net programme will be developed, involving non-governmental partners in design and implementation while government capacities are emerging, and that data will be protected in line with international standards. It also states that the FGS will prioritise the establishment of a national identification system.⁶³

The Somalia National Durable Solutions Strategy 2020 – 2024 (NDSS)⁶⁴ is the operational roadmap setting out a collective vision to guide the implementation of durable solutions programming under the leadership of the Ministry of Planning, Investment and Economic Development (MOPIED). The aim is to pave the way for the progressive realisation of an enabling environment in which displacement affected communities including IDPs, refugees, asylum seekers, refugee returnees and vulnerable host communities can gradually access durable solutions in an equitable and non-discriminatory manner. With regards to legal identity documentation, the NDSS



Portrait of displaced female in Mogadishu.

60 Federal Government of Somalia, National Development Plan 2020 – 2024 (NDP-9), 2019. Retrieved from <https://mop.gov.so/national-development-plan/>

61 NDP-9, p.33.

62 Federal Government of Somalia, National Social Protection Policy for Somalia, 2019. Retrieved from <https://baxnaano.so/somalia-launches-national-social-protection-policy/>

63 *Id.*, p.30.

64 Federal Government of Somalia, National Durable Solutions Strategy 2020 – 2024 (NDSS), 2019. Retrieve from https://mop.gov.so/wp-content/uploads/2022/07/The-National-Durable-Solutions-Strategy-2020-2024_English.pdf

recognises the current challenges Somali face due to the lack of a population register or national ID system, and the limited and poorly functioning civil registry, and sets clear plans for the providing DACs with identity documents, such as by:

- Scaling up the WB funded Digital ID project to ensure that the most vulnerable populations including IDPs and refugee returnees are included;
- Strengthening inter-ministerial cooperation and linkages with the newly established National Identification Authority;
- Building government owned data systems on displacement; and,
- Mobilising donor support in a coherent manner in order to maximise resources and avoid duplication of identity systems.⁶⁵



Portrait of female IDP

Box 4: Somalia Nationality Law and the National Action Plan to End Statelessness in Somalia

Nationality in Somalia is nominally regulated by the 1962 Citizenship Law,⁶⁶ which establishes that citizenship can be provided to anyone whose father is Somali, or who is ethnically Somali and who renounces claim to any other nationality.⁶⁷ "Somali" is defined in the law as "any person who by origin, language or tradition belongs to the Somali Nation."⁶⁸ The 1962 does not permit dual citizenship; however, Somalia's Provisional Constitution of 2012 provides that dual citizenship is permitted. Further, some of the Federal Member States have also enacted their own laws on citizenship in their respective Constitutions.

The 1962 Law discriminates by gender, as Somali women cannot pass on citizenship to their children or to their noncitizen spouse. If a Somali man marries a non-Somali woman, the wife will automatically become a Somali citizen regardless of her preference.⁶⁹ In 2016 a Draft Citizenship Law was prepared by the Ministry of the Interior, with assistance from the international community and presented to the Council of Ministers, together with a summary of the public feedback.⁷⁰ The draft reforms the existing law to be in line with international norms and the 2012 Provisional Constitution, for instance by removing gender discrimination but retaining the role of Somali ethnicity and allowing dual citizenship (in line

65 NDSS, p. 52.

66 Somali Citizenship Law No. 28 (1962).

67 *Id.*, art. 2.

68 *Id.*, art. 3.

69 *Id.*, art. 13.

70 UNHCR (2021) and KII 3.

with the 2012 Provisional Constitution). The draft was not formally approved by the Council of Ministers, and no further progress has been made towards adoption of a new nationality law.⁷¹

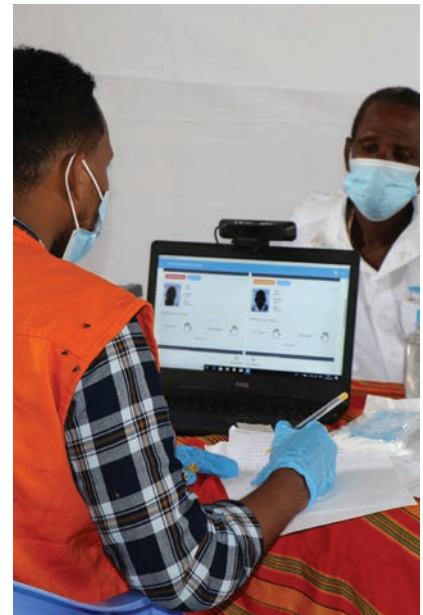
The risk of statelessness is also exacerbated by limited knowledge and understanding of the statelessness issues among various shareholders in Somalia, weak administrative procedures and lack of effective identification systems to ensure that a legal right to nationality can be claimed in practice (including the lack of a universal birth registration system).⁷²

To respond to these challenges, in 2021 the FGS launched the National Action Plan to End Statelessness in Somalia (2021 – 2024) (NAP), which priorities six areas of action:

- Ensure that no child is born stateless
- Remove gender discrimination from nationality laws
- Prevent denial, loss or deprivation of nationality on discriminatory grounds
- Ensure birth registration for the prevention of statelessness
- Accede to the UN Statelessness Conventions
- Improve qualitative and quantitative data on stateless populations

The NAP recognises that the FGS efforts to establish a digital national identity system will contribute to establishing safeguards to prevent statelessness among various population groups residing in Somalia including IDPs, refugees, asylum seekers, and migrants.⁷³ MolFAR will be in charge of regular monitoring and review of the NAP.

Accession to Statelessness Conventions (both the 1954 Convention Relating to the Status of Stateless Persons and to the 1961 Convention Relating to the Reduction of Statelessness) was one of the pledges made by the FGS during the High-Level Segment on Statelessness in October 2019.⁷⁴ As of October 2022, accession to the UN Statelessness Convention is yet to be achieved.⁷⁵



NRC staff registering one displaced male.

71 KII 3 and Universal Period Review, 38th Session, 3rd Cycle, May 2021, Somalia submission made by Somali Women Development Centre (SWDC), Somaliland Human Rights Centre (SHRC), Institute on Statelessness and Inclusion (ISI), and Global Campaign for Equal Nationality Rights (GCENR), p.3. https://www.upr-info.org/sites/default/files/documents/2021-03/somalia_2_global_campaign_for_.pdf

72 KII 3.

73 NAP, p.2.

74 NAP, Priority 5: Accede to the UN Statelessness Conventions, p. 12.

75 KII 3.



Portrait of older woman

2. HLP rights in FGS policies

With regards to HLP rights, the NPRRI re-enforces the prohibition against forced eviction set out in the Constitution (principle 2); the protection during displacement (principle 3), the right to voluntarily return and freedom to choose solutions (principle 4) and the right to an adequate standard of living (principle 6) including “basic shelter and housing.” Importantly, the NPRRI promotes the government’s responsibility for facilitating durable solutions for refugee-returnees and IDPs and emphasises the need to prevent forced evictions.

On HLP issues, in 2019 the Federal Government adopted the Interim Protocol on Land Distribution for Housing to Eligible Refugee-Returnees and IDPs, aiming to promote tenure security, address the housing needs of refugee-returnees and IDPs, and create clear pathways to durable solutions for these vulnerable populations.⁷⁶ The protocol reaffirms the obligations set forth by Article 43 of the 2012 Provisional Constitution. The National Eviction Guidelines (also adopted on 2019 by the Council of Ministries) sets out principles, conditions, safeguards and process for eviction procedures – however these are not binding.⁷⁷ The National Durable Solutions Strategy under outcome 1⁷⁸ recognizes the need increase tenure security through a number of pathways, including by operationalizing the Eviction Guidelines and Interim Protocol on Distribution of Housing, piloting incremental approaches to tenure security and drafting a national housing policy. With regards to land governance and management, the Strategy prioritizes the development of a national land policy, prepares an inventory of land that can be used for “dignified settlements and relocations,” and develops fast track protocol for land allocation. Finally the Somalia National Development Plan sets operational priorities related to HLP issues in several of its nine pillars with the aim of reducing poverty.

3. Housing, Land, and Property and Legal Identity in Sharia law

Sharia law is foundational to family law, which recognises the importance of marriage as the cornerstone of the family in Somali society, but does not provide details about procedures for civil registration, including marriage, divorce, birth and death.

76 Federal Government of Somalia, “Interim Protocol on Land Distribution for Housing to Eligible Refugee-Returnees and Internally Displaced Persons.” Retrieved from <https://www.refworld.org/docid/5d8331024.html>; NRC (2021b).

77 Federal Government of Somalia. National Eviction Guidelines, 2019. Retrieved from <https://www.refworld.org/docid/5d8333ae4.html>

78 Outcome 1: To increase the resilience of displacement affected communities by ensuring equitable access to public services, housing with security of tenure, and social safety nets through a rights and needs based approach.

HLP rights are an integral aspect of Islamic or Sharia law, which deals with land allocation and property dispute resolution. Key Islamic principles such as *mewat* (dead or unused land) and *waaf* (charitable land) have been identified as potential avenues through which Sharia law can help IDPs secure permanent land.⁷⁹ Sharia law explicitly recognises women's rights to property acquired through purchase, inheritance, *mahr* (property transferred to the wife from the husband as security for marriage), and other transactions. With regards to inheritance, women have the right to inherit HLP either through kinship (natal inheritance) or marriage, with the general rule that women inherit half the share that men within the same inheritance group receive.

Box 5: Customary law (Xeer)

Xeer is the complex body of rules and norms developed between traditional elders to mediate conflicts and maintain peaceful relationships amongst Somalia's clans – it usually applies within clans as well as between different clans.⁸⁰ This is due to its collective nature whereby the actions of the individual reflect on the group, and the group on behalf of the individual generally provides compensation. Law 67 of 1970 banned "tribalism" and with it "key elements of *xeer*,"⁸¹ but because of the conflict and the absence of a judiciary and state security agencies, Somalis continue to rely on customary law today.⁸² The three primary processes of *xeer*, namely negotiation, mediation and arbitration, are used in dispute resolution, including those related to HLP. With regards to legal identity, the use of the clan leader and elders as proof of legal identity is the norm, and formal written documentation is not required because of the ties with a clan or sub-clan.

HLP rights are an integral aspect of Islamic or Sharia law, which deals with land allocation and property dispute resolution.

79 NRC (2021b).

80 Norton (2008).

81 Le Sage (2005).

82 NRC (2021b).

B. Planned and Ongoing development in the sector



Displaced mother that has returned from Daadab to Kismayo.

Box 6: The Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics

Currently there are major efforts to improve birth registration, and civil registration more generally, sponsored by UN agencies working with the Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS) of the African Union.⁸³ The APAI CRVS is a regional programme established in 2012 following the political commitments and policy directives of the ministers in charge of civil registration to reform and improve CRVS systems on the continent. The programme vision is "Everyone visible in Africa," implying the recording of events identified in the scope of the registration activities as they occur in all countries, in line with the principle of "leaving no one behind." The programme is guided by the policy directives of the Conference of African Ministers⁸⁴ and managed by a secretariat comprised of the Core Group.⁸⁵ In June 2016, the Third Conference of African Ministers declared 2017–2026 as the "decade for repositioning of CRVS in Africa's continental, regional and national development agenda."⁸⁶

In the last two decades, there has been more international recognition of the need to increase and improve access to civil registration and its link to access to services, including for displaced individuals. This has led to increased effort to upgrade identification systems in several countries with the inclusion of displaced affected population, though the degree of level of effort and achieved results varied across African countries.⁸⁷

83 Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS), Second Conference of African Ministers Responsible for Civil Registration Durban, South Africa, 2012. https://archive.uneca.org/sites/default/files/uploaded-documents/Statistics/CRVS/apai_crvs_en.pdf and Africa Programme for Accelerated Improvement of Civil Registration and Vital Statistics Costed strategic plan 2017-2021, at <https://repository.uneca.org/bitstream/handle/10855/24012/b11869331.pdf?sequence=1&isAllowed=y>

84 The Conference of African Ministers, institutionalized as a standing forum of the African Union Commission, convenes every two years.

85 The Core Group is composed of the pan-African organizations (African Union Commission, African Development Bank and the Economic Commission for Africa), the secretariat of the African Symposium on Statistical Development, the United Nations Children's Fund, the United Nations Population Fund, the World Health Organization, the Office of the United Nations High Commissioner for Refugees, Plan International, the INDEPTH Network, Partnership in Statistics for Development in the 21st Century and Bloomberg Philanthropies Data for Health Initiative.

86 <https://au.int/fr/node/33104>

87 KII 20, 22.

The section below provides a brief overview of significant developments in Somalia, including the Unified Social Registry and the establishment of a national ID card system. These initiatives will still require the drafting and enforcement of supporting legislation, such as a data protection law.

During the first decade of the programme, approximately half the countries in Africa completed comprehensive assessments of their civil registration and vital statistics systems and a number of them are in the process of developing strategic and costed action plans. As of 2017 Somalia had completed the rapid assessment and was developing a plan.⁸⁸

The Covid-19 pandemic has limited access to civil documentation across many countries in Africa. The pandemic brought into sharp focus the importance of having timely and reliable vital events data, and the critical role that civil registration and vital statistics systems play in ensuring that everyone is counted for inclusive access to vaccinations, health care, social protection and other government services. 2022 marks the 10th year of the establishment of the APAI-CRVS and there is a need to continue to focus on improved CRVS in Africa, with increased country ownership and leadership of such systems.⁸⁹

1. The Unified Social Registry

Somalia did not have a government-led social protection programme until 2019, when the government launched the Baxnaano programme, a National Safety Net Programme to provide cash transfers for vulnerable Somalis, with support from the World Bank.⁹⁰ Launched in early 2020, the three-year programme is expected to enhance resilience by investing in the ability of families and communities to cope with shocks and crises. It is financed through a grant from the International Development Association, and expects to provide 200,000 poor and vulnerable households (about 1.2 million individuals) across Somalia with nutrition-linked cash transfer.⁹¹ The Ministry of Labour and Social Affairs (MoLSA) has signed service contracts with the World Food Programme (WFP) and UNICEF to deliver cash through a mobile platform; this is a temporary solution

The Baxnaano programme was launched in early 2020 and is expected to provide 200,000 poor and vulnerable families with nutrition-linked cash transfers.

88 Africa Programme for Accelerated Improvement of Civil Registration and Vital Statistics Costed strategic plan 2017-2021, p. 59. <https://repository.uneca.org/bitstream/handle/10855/24012/b11869331.pdf?sequence=1&isAllowed=y>

89 <https://www.zawya.com/en/press-release/africa-press-releases/harnessing-coordination-country-leadership-and-ownership-to-strengthen-integrated-civil-registration-and-vital-h75gcpaj>

90 Somalia Shock Responsive Safety Net for Human Capital Project (SNHCP)—known as the Baxnaano <https://baxnaano.so>

91 World Bank (2020a).

The USR is designed to become the national data repository of households' socio-economic information.

adopted in recognition of the (lengthy) process of finalizing the federal system and some relevant regulations and country systems (e.g., national ID, data privacy and protection),⁹² and the need for the government to fully take over the roll out of such programme.⁹³ As of October 2021, the Programme had provided over 188,000 households across Somalia with mobile money.⁹⁴ Baxnaano beneficiaries are issued programme cards with the MoLSA logo. The card includes biometrics and is used as a beneficiary identification card; it is expected to be linked with the national ID system once established.⁹⁵ WFP is relying on its SCOPE system to identify and register the beneficiaries and ensure information management, including biometric information for all beneficiaries.⁹⁶

The WB is providing technical and financial assistance to MoLSA to set up a Unified Social Registry (USR) which will initially be used for the Baxnaano programme, and eventually developed into a platform that supports registration and the determination of potential eligibility for all social programmes in Somalia. The USR is designed to become the national data repository of households' socio-economic information. The focus is currently on the federal level with the plan of eventually supporting the various states. A strong system for identification and registration and information management system is very important for the USR. According to the Bank, the SCOPE system beneficiaries' information will not be transferred into the USR; MoLSA will be responsible for the new registration of beneficiaries prioritizing those already registered for the Baxnaano programme.⁹⁷ A targeted communication system will be put into place and the government will work with local communities to ensure outreach throughout the country.⁹⁸ According to the WB, the plan is to register 400,000 heads of households by 2024.

Somalia's USR is designed to have a direct link with the government's efforts to establish a foundational national ID system, – the link will be the use of the unique identification number in both systems.⁹⁹ The USR will not collect biometric information,¹⁰⁰ but will have protocols for data sharing and exchange. According to the Bank, the USR should be fully operation in 2024,¹⁰¹ though other stakeholders interviewed for this research expressed concern about the limited capacity of the government to manage it.¹⁰²

92 KII 20, 28.

93 <https://baxnaano.so/programme-documents/> and <https://baxnaano.so/status/>

94 <https://baxnaano.so/>

95 World Bank (2022).

96 KII 1, 2.

97 KII 1, 2, 28.

98 KII 28.

99 World Bank (2022).

100 KII 28.

101 KII 28.

102 KII 3, 19, 22.

2. The SCALE-UP or "Digital Uplift Project"

Box 7: The World Bank ID4D Initiative

In 2014, the World Bank launched the ID4D Initiative¹⁰³ to leverage expertise from different sectors and form a coherent response to this fundamental challenge. The ID4D is a global Bank initiative that builds on the Bank's leading to (1) convene international organizations and donors to work on legal identity issues and develop some common principles for identification processes, (2) prioritize finance and technical assistance for the development of robust, accessible and non-discriminatory national identification systems, and (3) incorporate identification-strengthening components into social protection programmes and other assistance targeted at migrants and refugees.¹⁰⁴ The use of trusted, efficient and inclusive civil registration systems are part of the World Bank's strategies to fight poverty and promote empowerment and positive change in several areas like gender equality and health.¹⁰⁵



Female in her shop in Kismayo

As part of its global ID4D Initiative, in 2016 the World Bank, the International Organization for Migration (IOM), Terra Incognita (TI) and the United Nations Development Programme (UNDP) carried out a diagnostic assessment in response to the FGS request for support with the development of an identity ecosystem in the country.¹⁰⁶

Since the assessment, the World Bank has been supporting the implementation of Somalia's digital ID system by providing technical assistance and financial support for the design and establishment of an ID-enabling legal and institutional framework and system (Somalia Capacity Advancement, Livelihoods and Entrepreneurship, through Digital Uplift Project (SCALED-UP) project or "Digital Uplift Project").¹⁰⁷ The project will issue unique identity numbers to individuals based on their biometric data and other basic information. Any adult resident of the country will be eligible to register and be issued a digital identity document, whether or not the person is a citizen or has any existing documentation. This biometric database will then be the foundation for other identity documents, including driver licences, passports and voter registration cards, and will also link with

103 <https://id4d.worldbank.org>

104 World Bank (2016); World Bank (2016b).

105 <https://www.worldbank.org/en/news/immersive-story/2019/08/14/inclusive-and-trusted-digital-id-can-unlock-opportunities-for-the-worlds-most-vulnerable>

106 World Bank (2016).

107 World Bank (2019).



Portrait of displaced male

the USR. According to the Bank, the unique identifier will also bring benefits to the financial sector, enabling financial institutions to fulfil their "know your customer" (KYC) obligations and ensure that financial transactions can be more accurately tracked.¹⁰⁸ The technical components of the ID system are to be delivered and installed by the National Database and Registration Authority (NADRA) of Pakistan and financed through a grant from the Government of Pakistan.¹⁰⁹ From the FGS, the project is implemented under the Ministry of Interior, Federal Affairs, and Reconciliation (MoIFAR) acting through the Office of the President.

The Somalia National Plan to End Statelessness recognises that the FGS efforts to establish a digital national identity system will contribute to preventing statelessness among various population groups residing in Somalia, including IDPs, refugees, asylum seekers, and migrants.¹¹⁰

C. Federal Member States Legal Framework on Legal Identity and HLP¹¹¹

1. Overview of Federal Member States Legal Framework on LID and HLP

There is limited recognition of the right to legal identity in the federal Provisional Constitution and those of the Federal Member States (FMSs)¹¹² However, with regards to HLP, FMSs have adopted provisions similar to those in the Provisional Federal Constitution, and some have gone further in drafting their own legislation on land administration. A case in point is the Provisional Constitution of Jubbaland, adopted in 2015 which recognizes the right to property ownership¹¹³ and provides for the establishment of a Land Use and Dispute Resolution Commission.¹¹⁴ Article 17 enshrines children's right to life, name, citizenship, upbringing, care and education, however it does not recognize the right to birth registration as the cornerstone for the establishment for legal identity directly.

¹⁰⁸ World Bank (2019).

¹⁰⁹ World Bank (2019).

¹¹⁰ NAP, p.2.

¹¹¹ Despite the fact that the 2012 Provisional Constitution of Somalia provides that citizenship is a matter reserved for the federal government, several of the constitutions of the federal member states provide for citizenship at the state level.

¹¹² The five FMS are: Puntland, South West, Jubaland, Hirshabelle, and Gulmudug. Somaliland is a self-declared independent state.

¹¹³ Provisional Constitution of Jubaland, art. 23.

¹¹⁴ *Id.*, art. 82.

The Puntland Constitution adopted in 2009 enshrines children's right to life, name, citizenship, upbringing, care and education in Article 31; however it too does not recognize the right to legal identity nor birth registration directly. It establishes that family is the "foundation of society" and that it "consists of a man and a woman who are adults and "legally" married."¹¹⁵ It provides that "Every person shall have the right to own, administer and benefit from property in accordance with the law,"¹¹⁶ and sets out key principles for the enjoyment of the right to land and property in recognition of the "security of homes."¹¹⁷ The Puntland Law 7 of 2003¹¹⁸ recognises the role of the Local Government in the "registration of the people in the district and safe keeping of the records of birth, death, marriage, divorce etc."¹¹⁹ The Puntland Urban Land Management Law of 2020 establishes clear guidelines on the governance, and management of urban land.¹²⁰

South West State (SWS) has not adopted its own Constitution and despite having taken steps to increase access the justice and strengthen the rule of law, it has not promulgated any laws that directly or indirectly establish the right to legal identity and access to civil registration. In January 2022, the SWS enacted the Urban Land Management Law, which will promote and protect HLP rights including those of IDPs and refugee-returnees, though a lack of institutional capacity and structure remains a challenge to implementation.

2. LID and HLP in the Somaliland Legal Framework

Somaliland is a self-proclaimed, and de facto autonomous, non-sovereign republic within Somalia which declared independence from Somalia in 1991. The Somaliland Constitution, adopted in 2000, attributes citizenship to the descendants of persons residing in Somaliland on 26 June 1960, the date of independence from Britain.¹²¹ The 2002 Citizenship Law specifies that descent must be traced through the male line and provides further details.¹²² The independence of Somaliland is not recognised by the government of Somalia, the United Nations or the African Union. Nonetheless, citizenship in Somaliland is administered in practice without reference to the Provisional Constitution of Somalia or the 1962 Citizenship Law, and in accordance with the Somaliland Constitution and Citizenship Law.¹²³

The 2000 Somaliland Constitution attributes citizenship to the descendants of persons residing in Somaliland and the 2002 Citizenship Law specifies that descent must be traced through the male line.

115 Puntland Constitution, art. 30.

116 *Id.*, art. 17.

117 *Id.*, art. 21.

118 Law No. 7 of 2003 on the Laws of the District Council of the Puntland States of Somalia.

119 *Id.*, art. 9.

120 <https://unhabitat.org/news/17-aug-2020/new-urban-land-management-law-to-guide-land-issues-in-puntland-somalia>

121 Somaliland Constitution, art. 4.

122 Somaliland Citizenship Law No 22 of 2002, art. 2.

123 UNHCR (2021).

Somaliland uses different documents as proof of identity, all ultimately depending on verification of clan membership by an *akil* (clan chief), the heads of the smallest units of the Somali clan system. Article 3 of the Citizenship Law states that "The confirmation of proof of Somaliland citizenship may be obtained by an individual who produces: a) A declaration relating to the individual made at a court by the Ministry of Internal Affairs registered *Akil* of the individual's community, and b) The form designed for the purpose by the Citizenship Office and signed by the individual." The applicant will receive a certificate of citizenship, which can be used to apply for a passport.¹²⁴

With regards to housing, land and property rights, the Urban Land Management Law¹²⁵ and its amendments is the leading legislation on the governance and management of urban land. Under the law, if the land is owned by the Republic of Somaliland, the government has the right and responsibility to manage, transfer and lease the land for public purposes,¹²⁶ which could in theory serve as legal authorization to allow IDPs to live on such land.



Landscape view of 18-May IDP settlement in Somaliland.

124 KII 4, 10.

125 Urban Land Management Law (Law No 17 of 2001).

126 UN Habitat (2006).

PART III

Realities of Housing, Land and Property and Legal Identity in Somalia

A. Proving Identity and Access to Legal Identity Documents

1. Formal LID Documents and challenges to access by Displacement Affected Communities

As discussed in Part II, Somalia does not yet have a comprehensive, national system of identity management (such as a population register, a CRVS system or national ID system), so a patchwork of functional systems has led to a proliferation of different kinds of documents used to prove identity.¹²⁷ In 2018, it was believed that Somalia had the highest percentage of the population lacking any kind of official, central government document, in the world.¹²⁸ This is very much the case for IDPs who do not have an ID card or other proof of identity.¹²⁹ According to the UNHCR's 2022 Post Monitoring Return report, 90 per cent of the surveyed households said that some or all members lacked official ID.¹³⁰

While there was mention of a national passport in all regions (and reference to a "national ID for passport," a form that came with the passport from the federal migration department¹³¹), the identity documents referred to by people in this study were specific to their particular state and/or municipality. As will be discussed below, while different states had different documents, the challenges of access were largely similar for IDPs in all areas.

**According to the
UNHCR's 2022 Post
Monitoring Return
report, 90 per cent
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127 World Bank (2016).
128 UNHCR (2021).
129 KII 2, 3, 4, 5, 8.
130 UNHCR (2022).
131 JL FGDs



Displaced female IDP evicted from her shelter

a. Formal Legal Identity Documents

Respondents in all areas were generally aware of at least some types of official LID documents that existed, though only a few people were aware of which agency or office would issue a particular document, as nearly each one came from a different office. The most common ones mentioned were birth certificates, ID cards, and security clearances/criminal investigation documents (CID) that were given by the police after doing a background check to affirm that the applicant was not a criminal. Typically, this security check was described as a preliminary step, and once the applicant is cleared, they can then proceed to the relevant office for the other documents they are seeking.

In Mogadishu, respondents were aware of ID cards from regional and district offices, and business licenses and registrations coming from district commission offices.¹³² Baidoa respondents discussed ID cards and birth certificates issued by municipal offices, (security) clearance certificates from the National Intelligence Security Agency (NISA), and driver licenses from the Ministry of Land and Air Transportation.¹³³ Residents in Somaliland were required to have national ID cards from their municipalities and also mentioned: voting cards from the election commission, driver licenses from the

¹³² MG FGDs 2-3, 5-7.

¹³³ BD FGDs 4, 6-9.

Ministry of Transport, birth certificates from hospitals, security clearances from the police, marriage certificates and passports.¹³⁴

In Jubaland, ID cards and birth certificates were also issued by municipal offices, while security clearance certificates came from NISA, and driver licenses from the Ministry of Transportation. Marriage and death certificates that could be obtained from the Sharia court were mentioned, along with passports from the Migration Center, port entry ID cards, and civil servant ID cards.¹³⁵ One key informant was not sure whether there were any specific laws on identity, as Jubaland only started developing laws in 2016 and is primarily an oral culture.¹³⁶ Jubaland has also contracted a private company to issue ID cards, though they are not tied to any particular service provision, and it is unclear whether or where records are kept.

Similarly, respondents in Puntland stated that municipal offices issued citizenship ID cards and birth certificates, while the Ministry of Interior issued passports and the Commercial Ministry issued driver licenses. Other documents mentioned were security clearances, commercial licenses, and civil servant IDs.¹³⁷

Somaliland is known to have the most comprehensive ID coverage.¹³⁸ Somaliland ID cards are issued only to Somalilanders who are eligible to apply at the age of 15. Applications can be submitted at the municipalities or Ministry of Interior offices which reportedly process the application in a few days. The fee ranges between USD 25 to USD 30. Applicants need to be able to prove their identity through a clan elder (physically present and or by phone), which can require additional costs.¹³⁹

However, the situation is more complicated for IDPs and refugees. Displaced Somali whose clan is not from Somaliland are not able to obtain an ID card. At this time, displaced Somalis from South Central Somalia are not registered as refugees or IDPs by the Somaliland National Displacement and Refugee Agency (NDRA),¹⁴⁰ but do still receive humanitarian assistance.¹⁴¹ IDPs who are from Somaliland can get an ID card through the process described above, but it was reported that many are unaware of the process and importance of having an ID, and therefore remain undocumented.¹⁴²

Respondents in all areas were generally aware of at least some types of official LID documents that existed, though only a few people were aware of which agency or office would issue a particular document, as nearly each one came from a different office.

134 SL FGD 1.

135 JL FGDs; JL KII 1-2.

136 KII 16.

137 PL FGD 1-6, PL KII 2.

138 WB (2019)

139 KII 4, 10.

140 KII 4, 15

141 KII 15.

142 KII 4, 10.

At
3%
Somalia has the lowest under-5 birth registration rate in Sub-Saharan Africa.

Box 8: Limited civil registration

The vast majority of stakeholders and IDPs interviewed for the research explained that civil registration is also very limited in Somalia. According to the World Bank, at 3 per cent Somalia has the lowest under-5 birth registration rate in Sub-Saharan Africa. At just 7 per cent, Somaliland has registered more children than any other region of Somalia.¹⁴³

There are no official statistics on marriage or divorce registration in Somalia. Most marriages take place in Sharia courts, and while certificates have been issued at the request of various Sharia courts in Mogadishu and other cities, consistent documentation of marriages remains patchy.¹⁴⁴ It is believed that divorce is relatively common, but it is unclear whether and how divorce is registered.¹⁴⁵ The Mogadishu municipality of the Banadir Region produces some records of birth, death, and marriage but otherwise there is no functioning system to record vital events. A few other municipal mayors have introduced registration systems in the past, but the systems were localised and did not function well.¹⁴⁶ Official death registration statistics are not available in the country.

It was reported that civil registration is not available in IDP camps, and IDPs can only obtain a medical notification from medical facilities if the birth or death takes place in a hospital. For home births and deaths (which are common), there is no documentation.

b. Challenges of accessing LID Documentation: history, costs and complicated processes

Many Somalis have been living without legal documentation for decades; as explained by IDPs interviewed for this study, there was no need for documents, particularly for those coming from rural areas where people had long lived with their clans: *"We knew everyone and everyone knew us."*¹⁴⁷ In addition, the state was either absent or very weak in large parts of the country: *"We did not need identity documents because there was no government there to ask*

143 World Bank (2016).

144 KII 5.

145 LandInfo (2018).

146 World Bank (2016).

147 MG FGD 5.

people to show their identities."¹⁴⁸ For many IDPs, this period of displacement is the first time they are being asked about identity documents to prove who they are, and the value of trying to obtain such papers is not immediately clear, particularly when considered against other most immediate needs like food and shelter.

However, IDPs who affirmed knowing about the importance of LID were in general agreement that anyone who could pay could get the document(s) they needed, though realistically, most could not do so.¹⁴⁹ ID cards are not available in the IDPs camps, which are often located far from urban areas or at the outskirts of cities, so transportation costs to/from the service provider adds to the expense.¹⁵⁰ The majority of IDPs did not know what the exact costs were, or at times gave conflicting numbers. For instance, in one group in Baidoa, some people said that a birth certificate cost \$15 USD while another one said it was \$25 USD,¹⁵¹ and members of the host community (in another discussion) said that the cost *"is not permanent, so I can't state the exact cost."*¹⁵² Similarly, in Somaliland, one group of IDPs said IDs cost \$30 USD¹⁵³ while another said \$50 USD.¹⁵⁴ Regardless of the exact amount, documentation is unaffordable for the vast majority of IDPs.¹⁵⁵



Displaced female IDP woman relocating after she has faced forced evictions.

148 BD FGD 5.

149 MG FGD 1.

150 KII 5.

151 BD FGD 9.

152 BD FGD 12.

153 SL FGD 1.

154 SL FGD 2.

155 KII 3.

Box 9: "I know the cost is too much."¹⁵⁶

Included here are some of the costs for documents identified and reported by IDPs by region.

Banadir Regional Administration (Mogadishu):

- Passport: \$150 USD¹⁵⁷
- Security clearance letter: \$25 USD¹⁵⁸

Bay (Baidoa):

- Birth certificate: \$15-30 USD¹⁵⁹
- Security clearance: \$40-50 USD¹⁶⁰

Puntland:

- Birth certificate - \$30 USD;¹⁶¹
- Driver license - \$80 USD¹⁶²
- Passport - \$180 USD¹⁶³
- Security clearance: \$10 USD¹⁶⁴

Somaliland:

- ID card: \$30-50 USD¹⁶⁵
- Birth certificate: \$30 USD¹⁶⁶
- Driver license: \$100 USD¹⁶⁷
- Marriage certificate: \$20 USD¹⁶⁸

Jubaland (Kismayo):

- Passport: \$210 USD¹⁶⁹

The second most reported barrier to accessing documentation was procedural. IDPs reported confusion around who issues a particular document and that the official processes are not clearly published anywhere.¹⁷⁰ As a result most IDPs did not know about the necessary procedures.¹⁷¹ The general belief is that they are very long and complicated, and even those who know the process might not believe that it is legitimate or worth pursuing, as things can go wrong in a number of steps along the way. As expressed by one IDP

¹⁵⁶ MG FGD 5.

¹⁵⁷ MG FGD 4.

¹⁵⁸ MG FGD 12.

¹⁵⁹ BD FGD 9, 12; KII 3.

¹⁶⁰ BD FGD 12. In contrast, the Ministry of Justice gave the cost of \$25.

¹⁶¹ PL FGD 2.

¹⁶² PL FGD 2.

¹⁶³ PL FGD 4.

¹⁶⁴ PL KII 2.

¹⁶⁵ KII 4, 10; SL FGD 2, 3.

¹⁶⁶ SL FGD 2.

¹⁶⁷ SL FGD 2.

¹⁶⁸ SL FGD 3.

¹⁶⁹ KII 16.

¹⁷⁰ MG KII 2, JL KI 3.

¹⁷¹ MG FGD 1.

in Mogadishu: *"The process is you go to get an affidavit then fill out a form and pay too much, only to be turned away from certain places because you do not have certain documents."*¹⁷²

Making their own calculations, many IDPs simply do not think that the cost and effort is worth it, given their other more urgent needs. As one IDP said, *"I would not know the costs of these documents because I have no need for them at the moment, I am thinking about where my next meal is going to come from."*¹⁷³ Based on responses during this study, LID documentation was not needed to gain access to or live in settlements or informal rental arrangements, and IDPs were more concerned about providing food for their families. Such opinions may help explain findings from UNHCR's 2022 Post Monitoring Return report, where 90 per cent of the surveyed households reported being undocumented, with 84 per cent of that group saying that the lack of ID had not resulted in any issues since their return.¹⁷⁴ The challenges that were reported are discussed in more detail in Part III(D) below.

c. Challenges for women

The Gender Inequality Index for Somalia is 0.776, making it the fourth highest level of inequality recorded globally.¹⁷⁵ Somalia also remains one of the few countries in the world that has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women. Throughout the country, traditional gender roles and clan-based culture still limit women's employment opportunities, in particular excluding them from work in the formal sectors, and women typically bear an unequal brunt of the hardships occasioned by poverty and the conflict.¹⁷⁶

Several women told the study team that while they were aware of the documents, they knew nothing about the details, because "the men are familiar with these things."¹⁷⁷ Additionally, several women noted that *xeer* law typically discriminated against women, and that women faced more challenges than men to access documents because you needed a clan leader or chief – who were always men and not always happy to support women.¹⁷⁸ This is in line with findings from the World Bank, which estimates the current gender gap in ID access in Somalia is over 10 per cent, while in Somaliland the gender gap in ID access is 9 percent.¹⁷⁹

"I would not know the costs of these documents because I have no need for them at the moment, I am thinking about where my next meal is going to come from."

172 MG FGD 11.

173 MG FGD 2.

174 UNHCR (2022).

175 UNDP. 2012. Somalia Human Development Report: Empowering Youth for Peace and Development. p. xviii.

176 KII 3, 4, 5, 10.

177 MG FGD 4.

178 SL FGD 5.

179 World Bank (2019).

"In our culture, women cannot be responsible for the house and land."

In addition to the challenges described above, women can face additional threats within their own marital home – all of which are exacerbated by displacement. Malia's story below demonstrates the power of having a document in her name that allowed her to prove ownership of her home.

Case Study: ***"A home in her name"*** – Malia's Story¹⁸⁰

Malia is from Mogadishu. She grew up there, got married, and lived happily with her husband and children in a house they rented. After violent fighting broke out, her family finally decided they had to leave, and in 2015, they fled to Galkacyo. She and her husband worked as domestic help to provide for their five children, but he got sick and Malia became the sole breadwinner of the family. In 2016, the family moved to Garowe, where they lived in a small tent in an IDP camp. However, the camp leader told her that their agreement with the landowner had ended. Malia felt like she was struggling by herself as her husband was not working and had stopped caring for the family. She kept searching for a more secure solution, but never finding one, she and her family moved from camp to camp, leaving when landowners decided they wanted their land back.

Malia was finally able to find a house for herself when the local government allocated IDPs some land and humanitarian agencies provided assistance with shelter. The house was registered in her name, and she was happy that her children could go to school. Unfortunately, her husband was angry that the home was in Malia's name, and he tried to take it from her by force, saying *"In our culture, women cannot be responsible for the house and land."* The committee in their customary system of dispute resolution suggested that she transfer her home to the name of her husband, but she refused.

Malia was able to meet with NRC to explain what happened and asked for help. They accompanied her to the court, which listened to both her and her husband. They decided in her favour. Now she is happy; she lives peacefully with her children and says that knowing that her home is in her name means she doesn't have to fear eviction or her husband any longer.

2. Other methods to prove identity

a. Alternative documents: *"It depends on who and where."*¹⁸¹

In a context where it is well known that official identity documents are often not available or affordable, it is unsurprising that respondents listed a multitude of other documents and records that could be used for identification, including documents issued from business or humanitarian actors (such as the WFP SCOPE card), student IDs, mobile phone registration, bank cards, security clearance certificates, and camp registration forms. Some key informants interviewed for this research mentioned that in certain areas the SCOPE cards have become a "proxy ID card,"¹⁸² (although IDPs themselves often said the SCOPE cards were only accepted by humanitarian actors). One key informant in Mogadishu explained that everyone has to have a mobile phone and that the holder's name must be registered with the communications company. The company is required to verify where you are from, and who is responsible for you; if the applicant does not have proper identification, then they must bring someone with them who does and can serve as a guarantor.¹⁸³ However, whether or not these documents could be used as general identity documents is very unclear and varies from place to place, and likely depends on the individuals involved.



NRC staff assisting displaced families relocate to land that they purchased in Baidoa.

181 MG FGD 5.
182 KII 1, 2, 3, 5.
183 KII 11.



Portrait of displaced female.

Box 10: The World Food Programme: SCOPE

SCOPE is the WFP's beneficiary and transfer management platform, a web-based application used for beneficiary registrations, intervention setups, distribution planning, transfers and distribution reporting. SCOPE is the central repository for WFP beneficiary data and information management.¹⁸⁴ It is a cloud-based solution used for biometric registration of beneficiaries, intervention setup, distribution planning, entitlement transfers and distribution reporting. According to WFP, data is kept secure in accordance with UN information security standards, and access limited by appropriate controls. In terms of the registration process, the first step requires the identification of household (HH) members and the registration of the biometrics of the HH head and two alternates using telephone numbers, photos and fingerprints.¹⁸⁵ Once the process is completed a SCOPE card is issued to the family. WFP has been using SCOPE in Somalia since 2015. It was reported that the WFP's SCOPE system contains information on over 4 million individuals (biometric registration of 2 million individuals, and additional 2 million individuals registered by collecting their biographic data only).¹⁸⁶

Mogadishu: All participants in focus groups in Deynile and Kahda District said that while they had a variety of identification forms – phone registrations, SCOPE cards, university IDs, business employee IDs – each document could only be used for that specific purpose (e.g., school IDs were only accepted by schools).¹⁸⁷ Among one group in Garasbaley, there were differing views as to whether this could happen among the discussion participants themselves: one person said the government/service provider might sometimes accept these alternative forms, another said it never worked, while still another said that if there were no issues with the document, then it would be fine.¹⁸⁸ Perhaps another group in Deynile may have provided the most accurate answer to the question by responding, "*it depends on who and where.*"¹⁸⁹

184 KII 2; WFP (2017).

185 KII 2; WFP (2017).

186 KII 1, 2.

187 MG FGD 1, 3.

188 MG FGD 2.

189 MG FGD 5.

Baidoa: In Bardale, it was reported that phone registrations, WFP SCOPE cards and camp registration forms from the municipality also sufficed as proof of identity with other actors.¹⁹⁰ By contrast, an IDP in Howlwadaag said that the WFP SCOPE card would not be accepted by anyone other than humanitarian actors.¹⁹¹ In Wadajir, it was reported that while SCOPE cards were only accepted by humanitarian actors, several of the other alternatives could be used for other purposes.¹⁹² In Horseed, IDPs said insurance cards, student IDs, security clearance certificates, and SIM card registrations were accepted by all actors as proof of identity,¹⁹³ while another group said that non-government issued documents would not.¹⁹⁴

Other regions: In Jubaland, it was noted that only Jubaland IDs and humanitarian staff identification cards would be accepted.¹⁹⁵ In Puntland, it was reported on several sites that SCOPE cards might be accepted as proof of identity, but in others it was said that only the Puntland ID would be acceptable. Respondents in Somaliland mentioned phone registration, voting cards and employee IDs, but were split on whether they could be used in place of an official legal ID; three FGD groups said only a national ID could be used, but another three FGD groups said, "Some accept and some do not accept."¹⁹⁶

Given the very functional nature of such documents, the level to which one document could be used as identification in other contexts significantly varies, and likely depends on the practices of a particular location and identity of the persons involved, as in Aasha's story below.



NRC staff registering displaced individuals

190 BD FGD 2, 6

191 BD FGD 4

192 BD FGD 11.

193 BD FGD 9.

194 BD FGD 1.

195 JL FGD 1-5.

196 SL FGD 1-6.



Portrait of displaced female.

Case Study: *"To feel free"* – Aasha's Story

Aasha is 55 years old. She is a widow, as her husband had been killed by a non-state actor when he tried to protect their farm and home. She fled to get away from the area due to insecurity as well as drought and ongoing conflicts. She had no identity documents at that time, as in her place of origin, everyone knew each other and there had been no need for any other kind of identification. Her eldest son and his family were living in Baidoa, and so she went to join them. He is the chairman of the IDP camp that they are living in, and when she arrived in Baidoa, he registered her with the municipal government as an IDP and showed her a space in the camp, close to his house. She has been here for three years now and lives in a small tent room she constructed with sticks.

Her son helped her obtain a security clearance letter, and she has a SCOPE card that she uses to prove her identity to receive humanitarian assistance, but she has no official identity documents. She hopes that she will be able to get them someday, because she believes it will allow her to access more services and feel free. She wants to stay in Baidoa, because she does not think that she can live in her original home due to the insecurity and drought there.

b. Clan lineage, witnesses and guarantors to prove identity

Box 11: Somali clans

In Somalia, the majority of the population belongs to traditional Somali clan structures and the four main clan branches are the Hawiye, Darod, Isaaq, and Dir. The other minority communities are disadvantaged in political, economic, and social justice aspects.¹⁹⁷ The subordinate status of the minority communities is encoded in the current Somali political settlement known as the "4.5 system," where groups other than the main four collectively receive one-half of the parliamentary seats and other public offices allotted to each of the four major clan branches.¹⁹⁸

In contrast to the ambivalence regarding the use of alternative, non-governmental forms of identification, respondents in all regions agreed that the most common method to prove your identity was to have a clan elder, relative, or other respected member of the community serve as a witness to vouch for your identity.¹⁹⁹ The 2016 World Bank ID4D report notes, "ancestry, lineage or clan identity – i.e., 'Who I am and where I have come from' – is a cornerstone of Somali identity."²⁰⁰ As explained by Somalia analyst Joakim Gundel, "As long as the Somalis are dependent on their kinship lineage for security and protection, responsibilities, duties ... the clan will remain collectively responsible for actions of its individual members."²⁰¹

In Mogadishu, it was readily stated that IDPs needed an identity document to access housing, but that *"it is hardly ever used because we have no documents on us."*²⁰² Similarly, reports from Baidoa, Jubaland, Puntland and Somaliland affirmed that if someone was seeking to live in an IDP shelter and had no formal documents, they would be able to explain their clan lineage – where they came from, who their family was, who their clan was, etc. In many instances, this would not be difficult; newly arriving IDPs go to camps of their clan, often joining their family, neighbors and friends. One IDP who went to a camp in Baidoa said she chose the place because her relatives had gone before her and told her to join;²⁰³ another said he followed because some his neighbors from his place of origin had gone previously and told him about how well he had been received.²⁰⁴ A group in Puntland had similar experiences; they said that when they came, they had no legal documents because it had never been important there, but that when they arrived, *"if you could get a known elderly person as a witness [to who you are], you don't have to prove your identity by showing documents to secure a place."*²⁰⁵

Slightly stronger than just having a witness is the common practice for having a guarantor – a clan elder or other respected member of the community – to vouch for the person, effectively agreeing to be responsible if the person turns out to cause problems later.²⁰⁶ Respondents in Mogadishu and Somaliland explained that it was a widespread Somali practice to called *"damiin,"* where the guarantor agrees to be responsible if anything happens.²⁰⁷ For example, if a person who has no formal documentation wants to take out a loan, they could use another person as collateral.²⁰⁸



Portrait of displaced male with his title deed
for his plot of land in Baidoa.

199 All FGDs.
200 World Bank (2016).
201 ACCORD (2009).
202 MG FGD 2, 9.
203 BD FGD 3.
204 BD FGD 4.
205 PL FGD 6.
206 MG FGD 2.
207 MG FGD 9, KII 31.
208 MG FGD 9.

c. Challenges of using alternative methods

It should also be noted that while the use of the alternate methods of proving identity described above is widespread and necessary, respondents in all areas also noted that there were some dangers in relying on these practices. For example, when asked about the challenges in proving identity without government documents, some said that sometimes it was hard to find a witness to vouch for them.²⁰⁹ Others said that people can make documents at home, so sometimes there is a fear that alternative documents might be fake or otherwise not be credible.²¹⁰

Another concern raised was that the chosen witness(es) *"could be mistaken and lead to a disastrous outcome,"*²¹¹ though it is unclear whether this fear is from the perspective of the person trying to prove his identity (e.g., the witness says something about you), or from the perspective of the questioner (e.g., the witness turns out to be incorrect about the person he is vouching for). Regardless, both sides present the risks of relying on another person's testimony. Finally, IDPs said that when they used non-government issued IDs, there was always a fear that the police or other security actors would not believe them and a risk that you would be viewed as a criminal or terrorist.²¹²

B. HLP Governance

a. Use of Sharia, customary (xeer) and statutory laws

The various systems and rules that are used to manage and control access to land are a complex mosaic of "Xeer," statutory laws, and Sharia laws. In Baidoa and Mogadishu, respondents mostly agreed that only the state government has the authority certify land ownership, and that customary authorities handled primarily dispute resolution. That said, there was an interesting mix of opinions regarding the interplay of these systems and their role regarding land management, with some feeling that Sharia law was more fair and that *xeer* was more accessible.²¹³ One IDP explained: *"We are in an Islamic country, and although the regional administration has some laws, they do not trump the Sharia and xeer because at the end of the day, everyone will go to the religious scholars and their traditional elders to solve issues regarding land and housing."*²¹⁴

209 BD FGD 2, 5.

210 MG FGDs.

211 MG FGD 2.

212 All FGDs.

213 BD FGD 1-4; MG FGD 4, 8.

214 MG FGD 11.

IDPs in the other regions seemed less likely to think statutory law was very influential. In Puntland, it was said that most people use Sharia and customary laws, because they cannot understand the statutory system.²¹⁵ IDPs in Jubaland also said that most people did not understand statutory law, so it was not applied there.²¹⁶ There were differing opinions in Somaliland, with most saying *xeer* was the strongest,²¹⁷ but a few saying that either Sharia²¹⁸ or statutory law²¹⁹ was used the most often. Regardless, there was acknowledgement that the state was the only actor that could officially provide land titles.

In reality, statutory, customary and Sharia law all share some practices and principles. For example, one group in Baidoa described the use of the public notary to document an agreement as part of customary law,²²⁰ though it is also part of the state legal system. Similarly, another said that Sharia allows people to rent houses and land from each other so that everyone has a place to live, and that a witness is needed for the agreement in case there are future disputes.²²¹ Another IDP said that under Sharia principles, land transactions should be carried out with four religious and famous men in the community as witnesses, and that *xeer* says that these witnesses can also solve disputes regarding access to land.²²² However, there were some examples of customs regarding property rights that still consider communal needs over individual ownership claims. For instance, one custom given was that if someone leaves his house and/or land for 15 years, it should be given to other people who need it.²²³

C. Legal Identity Documentation and access to HLP for Displacement Affected Communities

For most host community members, the main ways of accessing land and property today are through inheritance, purchase, and formal rental arrangements.²²⁴ This is not the case for the country's 2.9 million IDPs, the majority of whom have self-settled in over 3,400 IDP sites across the country.²²⁵ In some instances, host communi-

The various systems and rules that are used to manage and control access to land are a complex mosaic of "Xeer," statutory laws, and Sharia laws.

215 PL FGD 2-4.

216 JB FGD 4-5.

217 SL 1-2, 4, KII 4, 10.

218 SL FGD 5.

219 SL FGD 3.

220 BD FGD 9.

221 BD FGD 5.

222 BD FGD 3.

223 BD FGD 8.

224 IIED (2019).

225 KII 5 and https://data.unhcr.org/en/situations/cccm_somalia

ties let the IDPs use the land for free, while in others some rental fee is charged. To facilitate more durable solutions, local governments have tried to allocate land for IDPs, and there have been a few efforts to give IDPs ownership of that land with either temporary or permanent title deeds.²²⁶ There have also been cases where IDPs have mobilized to purchase land themselves. This section discusses the role of LID in these methods of accessing land.

85%
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informal settlements
on private land, and
about 74 per cent of
them are in urban
areas.**

1. Settlements/Camps on private or government land

According to the Detailed Site Assessment (DSA) of the CCCM Cluster, 85 per cent of the sites are informal settlements on private land, and about 74 per cent of them are in urban areas.²²⁷ For private land, in all areas it was reported that the most common arrangement involved IDPs reaching agreements with local landowners for large pieces of land, where multiple families would construct their shelters. These agreements can be verbal or in writing, though when the agreement is verbal only, the risk of eviction increases. The use of land could either be free or for some agreed upon payment. The arrangement can be made with the landowner directly or with a "gatekeeper" who can collect rental payments and can exploit IDPs by taking a cut of any aid that is provided. According to CCCM, the gatekeeper system is complex, and gatekeepers range from community leaders, to businessmen, to militias, to landlords/owners – some are from the IDP communities while others are not. These mechanisms have limited accountability and little adherence to minimum standards.²²⁸ Displaced families in these cramped camps live in precarious situations, unsanitary conditions and without sufficient access to basic services, with most sites being managed by informal settlement managers.²²⁹

This arrangement is widespread across Mogadishu. A 2019 report by the International Institute for Environment and Development notes that Mogadishu had the largest share of the country's displaced persons at 33.4 per cent.²³⁰ In 2020, Human Rights Watch estimated about 500,000 IDPs spread in some 700 settlements across Mogadishu.²³¹ Respondents that were interviewed in camps in Mogadishu said that they had chosen to go to there because they believed there were greater opportunities for jobs, health services and education for their children, and humanitarian assistance. No

226 KII 8.

227 CCCM, Detailed Site Assessment (DSA); [https://cccm-cluster-somalia.github.io/OPSMA/](https://cccm-cluster-somalia.github.io/OPSMA/ter-somalia-strategy-january-2022)

228 CCCM Cluster Somalia Strategy, January 2022, <https://reliefweb.int/report/somalia/cccm-cluster-somalia-strategy-january-2022>

229 KII 8, 19, 20 and NRC (2021b).

230 IIED (2019).

231 <https://www.amnesty.org/en/latest/news/2020/07/somalia-internally-displaced-people-surviving-by-the-grace-of-god-amidst-covid19/>

one had legal identification documents, and they explained that when they had arrived, they had spoken with clan elders and the camp leaders to ask whether there was space for themselves and their families. One NGO worker affirmed that camps are normally open and that there is little need to prove one's identity now, but the issues of clans and kinship ties are very important,²³² so it is likely that IDPs will go to areas and camps of their own clan, increasing likelihood of acceptance without much trouble.

Baidoa has also seen a massive influx of IDPs. In 2019, Baidoa had an estimated 360,000 IDPs in 435 sites;²³³ by 2022 it had 596,931 IDPs in 498 sites.²³⁴ As with the IDPs in Mogadishu, those interviewed in Baidoa said that local officials, host community members and camp leaders helped them find space where they could construct their shelters, and no legal identification documents had been needed. IDPs in Baidoa also tend to settle along their clan identities and ties with host communities,²³⁵ and many said that they had selected their sites because they either had friends or relatives who were already there and helped vouch for their identity. One woman said that she arrived in Baidoa in May of this year because some neighbors from her home area were already living there, and they told her to come join them.²³⁶ Another explained that the process for new arrivals was to first present themselves to the camp leaders, who would then take them to the police station to receive their security clearance. Once this was done, they were shown a space in the camp.²³⁷ Similar stories in other study areas were heard, reflecting the reality that it is well-known that most Somalis – particularly IDPs from rural areas – would not have legal identity documents.

However, it cannot be assumed that this system will always work. Entry into towns and camps without possessing identity documents as described above is simple mostly because of the strong ties of family and clan; humanitarian workers in Mogadishu and Jubaland said that someone who has no ties may not be accepted into the community²³⁸ or might be arrested.²³⁹ Those who are forced to flee to areas where they do not know anyone may have a much harder time finding a place to stay, as in Omar's case below.



Displaced female constructing her shelter.

232 KII 11.

233 NRC (2021b).

234 <https://reliefweb.int/report/somalia/somalia-verified-idp-sites-baidoa-july-2022>

235 NRC (2021b).

236 BD CS 1.

237 BD FGD 6.

238 KII 14.

239 KII 16.

"[I would] grab it with both hands; it feels like a basic need, especially for someone who has no relatives where they seek asylum."

Case Study: **"For someone who has no relatives where they seek asylum"** – Omar's story²⁴⁰

Omar had a house and farm in his home town, but insecurity and recurrent droughts forced he and nine of his children to leave. They went to Baidoa, hoping to find refuge and a better standard of living for his family. He had no relatives in Baidoa, and recounts the pain he went through for days, while he tried to prove his identity to the camp leader in order to find space for his family. He was finally able to secure some space, and he now pays ten dollars a month for a four square meter room where he, his wife and seven children live. He is a Quranic teacher, which does not always bring enough money to care for his family, as he is the sole breadwinner. He prays that he will one day be able to return home so he no longer has to pay rent for the severely overcrowded conditions in which he and his family live.

Remembering the experience, he says he wishes he had identity documents, and given the opportunity, he would *"grab it with both hands; it feels like a basic need, especially for someone who has no relatives where they seek asylum."*

Despite being able to enter these camps, the IDPs live in fear that they will be forced to leave, and land disputes between the IDPs, returnees and host communities remain a big challenge. The phenomena of forced evictions has been well documented; since 2017, Baidoa district saw the third highest level of documented forced evictions in Somalia, following two districts in Mogadishu.²⁴¹ In some cases, investments in infrastructure for IDPs increased the value of the land, leading the owners to sell the land for a profit; a 2019 report from the Durable Solutions Initiative notes that between 2017 and March 2019, 56 per cent of reported evictions were due to landlords further developing the land, nearly all of which was occupied by IDPs.²⁴² Fears of eviction extend throughout the country; in the words of one woman in Somaliland said, *"Eviction is the worst nightmare of the IDPs."*²⁴³

240 BD CS 6.

241 NRC (2021b).

242 Durable Solutions Initiative (2019).

243 SL FGD 5.

Box 12: State-supported efforts to issue formal tenure documents

Similar to the case of LID documents, IDPs and DACs face challenges in accessing HLP tenure documents because of cost, process and knowledge. For example, the cost of a tenure security document in Puntland is reportedly \$100 USD.²⁴⁴ Tenure security documents encompass rental contracts, lease agreements, temporary occupancy certificates, communal land agreements, title deeds, and any other qualifying documents that are issued by relevant government agencies. Such documents prove that the IDP tenants have the legal right to be on the land they are occupying.

The use of verbal agreements between landowners (or their representatives) and tenants in the IDP settlements has been noted as one cause of the high number of evictions in Somalia,²⁴⁵ as they are more likely to occur in situations where tenure arrangements are not properly negotiated and/or documented.

NRC has worked with local authorities to support efforts to formalize rental agreements between the owners and IDPs and issue legal tenure security documents in an attempt to provide more certainty for all parties involved. In Baidoa and Mogadishu, NRC has also strengthened its engagement with public notaries to authenticate land tenure documents. In total, since 2017 over 394,000 individuals (an estimated 58% are female) across Somalia have been supported to secure land tenure security. Of this total, under the leadership of local authorities, NRC has also supported the issuance of land titles for 14,738 displaced families for land granted by the government or that they have been able to purchase themselves.

Since 2017, over
394,000
individuals (an
estimated 58% are
female) across
Somalia have been
supported to secure
land tenure security.

2. Government Allocation of Public Land

There have been efforts by governments to find land that can be allocated for and given to IDPs, usually by granting them title to the land they have been occupying. In terms of property registration, the land allocations have had mixed results, with some limited success reported in Puntland and Somaliland, but more difficult in Mogadishu where land governance is weaker and there is more pressure on land

244 PL FGD 2.

245 NRC (2021b).

due to high urbanization trends. Corruption has been reported in this sector and the cost of registration is high and unsustainable.²⁴⁶ In general, local authorities are allocating land far from the cities and these processes are criticized as not well planned or managed, requiring the involvement of international organizations.²⁴⁷

The property registration process is also linked to supporting local government financial management capacity and revenue generation through property taxation. For instance, according to UN HABITAT, revenue collection from property tax in Hargeisa has increased from \$260,000 USD in 2008 to \$760,000 USD in 2014.²⁴⁸

It is not clear what level of identity documentation is required to benefit from these processes. In many cases, it seems that the use of clan elders is key in identifying individuals and families, and the municipalities are responsible for providing the required documentation for both the individuals and the property. In some areas, the recipients of the land must have ID cards. One humanitarian worker in Somaliland explained that to facilitate this, his NGO would help take the names of the families receiving the land and try to do group registration for both the title deeds and the ID cards.²⁴⁹

3. Renting

In many cases, it seems that the use of clan elders is key in identifying individuals and families.

It was reported that some IDPs rent sub-standard accommodation with insecure tenure, putting them at high risk of eviction. In all areas, informal renting arrangements do not require legal identification documents and tend to be verbal agreements between the parties. Respondents interviewed for the research spoke about the "traditional way" of renting (i.e. informal lease) as the most common one, with rent paid on a monthly basis in cash or in kind.²⁵⁰

Formal rental contracts need to be notarized and so would technically require some kind of ID; for example, in Baidoa, it was mentioned that you should have an ID to rent because you would want a contract.²⁵¹ However, as described in Box 14 below, in practice, notaries may be able to speak with witnesses instead to verify identity. Similarly, IDPs in Mogadishu said you should have identification, but most would have lost them, or never had them in the first place. The rental market in Somalia remains largely unregulated, and the lack of regulations

246 KII 20.

247 KII 8, 20, 22.

248 UN HABITAT, Project Local Government Finance System and Property Taxation in Fragile Cities in Somalia, <https://unhabitat.org/somalia-projects>

249 KII 14.

250 KII 3, 5, 8, 9.

251 BD FGD 5

results in limited rights for tenants, including IDPs who cannot enter into a written lease agreement.²⁵²

Box 13: NRC's Rental Subsidy Program in Mogadishu

Housing costs in Mogadishu have been steadily increasing, and IDPs and the urban poor are often unable to meet the high costs of rent. NRC has implemented two rental subsidies projects: the pilot in 2017 and the second phase in 2019-2021. The objective is to provide an integrated assistance package that empowers beneficiaries to assume their tenancy responsibilities at the end of the project, thus creating the environment to engage in meaningful recovery and durable solutions initiatives. The approach borrows elements from the "graduation approach" to combine elements of livelihood development, rent, security of tenure, legal assistance and counselling, and limited cash support intended for subsistence. Local authorities led the processing of the rental agreements and security clearances for IDPs, and oversaw the individual beneficiary agreements for the term of the rental contracts to prevent risks of contractual agreements resulting in forced evictions. By the end of the pilot project at the end of 2017, 89 per cent of the households were able to pay their rent without further support, and only three of the total households faced an eviction threat. For the second phase of rental subsidy project, 96% of beneficiaries were able to pay for their rent without further support at the end of 2021.²⁵³

252 KII 3, 5, 8, 9.

253 NRC (2020); NRC (2020b). NRC (2022) A review of the Danwadaag Rental Subsidy project.

Public notaries recognise that IDPs do not have identity documents and will use witnesses who can vouch for the applicant instead.

4. Purchase

Box 14: Public Notaries

In the absence of legal identity documents, people can go to a public notary to obtain a written statement attesting to rights over or transactions regarding HLP assets, including land registration. The services are not free, and NRC notes that they pay \$60 for the notarization of land tenure documents in Baidoa and Mogadishu. To notarize a document, the requesting party or parties should each have official identification documents. However, as one notary explained, *"After 30 years of civil war, most people won't have documents. We will ask, but they won't have."* The traditional way to prove identity would be for the requesting party to bring witnesses to vouch for them; these witnesses must have LID documents themselves. Then we will ask, *"Do you know this person? How many years have you known him?"* Once the person's history and identity has been verified by the witnesses, the transaction can proceed. The notarized document can then be used as a way to prove that the holder has the ability to do what it says.²⁵⁴

As noted above, the vast majority of displaced families are not in a position to buy land or property. Buying HLP assets was reported as an option only for the "elite Somali" – often with support from members of the diaspora who are investing in real estate in Somalia.²⁵⁵ In Mogadishu and Somaliland, if a person wishes to purchase property and register their ownership, they must have identity documents that can be verified. In other areas, while identification should be necessary, in practice alternative methods are accepted. In Somaliland it was reported as virtually impossible for Somali IDPs whose clan was not from Somaliland to buy land.²⁵⁶ In Baidoa, respondents said that letters from the public notary and their municipal (camp) registration forms could be used.

In Puntland, it was reported that it is possible to purchase property and obtain a title deed without any official identification in some locations like Galkayo and Bossaso; a letter from the public notary will suffice.²⁵⁷ This method has also been used in Baidoa, where NRC has supported IDPs who have decided to pool their resources and purchase their own land. In this process, IDP leaders provide

254 KII 13.

255 KII 3, 8, 19, 20, 21, 22.

256 KII 4, 10.

257 KII 17, PL CS 3.

their contracts of sale to NRC, and the public notary will conduct due diligence regarding the land. When the process is complete, the IDPs will receive their notarized land ownership document. As referenced in Box 14 above, public notaries recognize that IDPs do not have identity documents and will use witnesses who can vouch for the applicant instead. However, other locales like Garowe do still require an ID card or passport to provide the necessary details for their digitalized system.

During the data collection, it was reported that land and property transactions carried out with the support of the notary are not automatically registered in the land registry (cadaster) and that only the "business elite" register the purchase in the land registries. This means that the cadaster in Somalia is not up to date, adding to further confusion and uncertainty about land rights. Moreover, municipalities do not have an overview of the status of the private land under their control. According to stakeholders interviewed for the research, the FGS is aware that there are many transactions that are not documented or improperly documented.²⁵⁸

D. Legal Identity Documentation and other rights and services

While IDPs generally reported being able to access IDP settlements without LID, as described above, they live in constant fear of being evicted and forced to move at any moment. In many ways, the lack of LID keeps them in camps, limiting their ability to move out and up into housing situations that are more stable and that provide greater tenure security.

For example, several said that they were limited in where they could travel because they could not pass through a security checkpoint without proof of ID, which also limited their ability to move beyond certain limits of the camps where they lived. That obstacle then limited the job opportunities that they might be able to look for, though many jobs themselves remained off-limits if they had no identity documents. Official ID cards are required to enter government buildings and airports, even to look for work as something like a cleaner.²⁵⁹ One of the most important reasons given was the need for official IDs to open bank accounts²⁶⁰ and receive remittances, which created more difficult conditions for them. These combined constraints mean that even if IDPs can secure a more stable life, they

258 KII 8.

259 BD FGD 1.

260 MG FGD 3, 6; PL FGD 1, 3; BD FGD 9, 10; KII 15; JL FGD 1-5.



Displaced mother showing her beneficiary registration card.

are often unable to gain enough economic strength to lift themselves out of the camps and endless poverty.

1. Freedom of Movement

In UNHCR's 2022 Post Monitoring Return report, 16 per cent of surveyed households reported that lack of official identification had caused them some problems, and of this group, 28 per cent said their troubles were related to security checkpoints.²⁶¹ This was a constant complaint from IDPs interviewed in all areas for this study, and they noted that an important benefit of possessing legal identity documents is that it serves as proof that the holder is not a criminal and helps ensure that the (s)he will not be perceived with suspicion and arrested. In Puntland, IDPs in one camp reported that there had been mass arrests of their youth during security curfews and operations. The leaders of the IDP camps are trying to get them released on bail, but the police are demanding that the leaders provide proof of their identity and that they are not working against the government.²⁶² Travel between the member states was also reported as challenging for those undocumented, whether displaced or not.²⁶³

Case Study: *"To travel freely as a normal citizen."* – Ailine's Story²⁶⁴

Ailine lives in an IDP camp in Galkacyo. She is a mother of five children (two boys and three girls) and arrived in Galkacyo in 2006 after the conflict between Federal government forces and non-state actors erupted in Baidoa. When she arrived, she joined one of the existing IDP settlements. North Galkacyo is under the Puntland administration, which hosts more than 50,000 IDPs from Southern Somalia. The city administration began issuing Puntland state IDs in 2009, but IDPs were excluded from the process.

One day, Ailine tried to travel to Garowe to visit her sick aunt, but the police at the checkpoint stopped her and others from Southern Somalia on the bus from continuing on their travels because they did not have IDs or other documents that showed that they were from Galkacyo. The police held them for four hours, then told them they would have to come back with legal identity documents if they wanted to proceed to Garowe.

261 UNHCR (2022).

262 PL CS 3.

263 KII 1, 3.

264 PL CS 3.

"I felt like I was being treated like a foreigner. We cannot get an ID and no one will bail us out. The amount being paid is too much, and we cannot afford it. They police do not know us, they lock up our boys when there is a curfew, we cannot get a loan from the bank because we do not have an ID. I live in a house that I own, and I have a land certificate that the government gave me. People living in this camp do not pay rent, and we do not face forced evictions, but we still have challenges when we want to travel due to the lack of Puntland IDs and accessing bank services. Here we do not have cash and we are forced to use mobile money, and we are even not able to increase the mobile money limit due to lack of an ID. Telecommunication companies here only accept Puntland IDs and Somali Passports, and you cannot have a passport if you don't have an ID. "Accessing banking services is challenging truly" We are hearing that all people living in Puntland will have national identity cards in the coming months, including IDPs, which is very important to us. This will give us access to travel freely as a normal citizen, access mobile money services, and live as a normal person with full dignity and rights."

2. Access to other services and documents

Having an ID card is necessary to access important services, like education and health services, opening a bank account, and the related abilities to obtain loans and receive remittances. Many stakeholders interviewed for the report spoke about the important role played by Somali immigrants living in North America and Europe, who send small monthly contributions to their families in Somalia. Remittances helped many Somalis survive the 2011 drought and continue to help many families pay for food, water, education, rent and basic health services today.²⁶⁵ The 2016 ID4D report stated that at that time, remittances were estimated at between US\$1.2–2 billion or 23–38 per cent of the country's GDP.²⁶⁶ According to the World Bank, remittances made up 24.9 per cent of GDP in 2020.²⁶⁷

There have been growing concerns by international banks about operating in Somalia due to US regulations, particularly Know-Your-Customer (KYC) rules, whereby the bank is supposed to know and verify the identity of the receiver. Due to fears of being accused by US regulators of violating these rules, some international banks have

²⁶⁵ KII 8, 20, 22.

²⁶⁶ World Bank (2016).

²⁶⁷ <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=SO>

ID documents are important because they “support an individual’s right to recognition before the law...”

chosen to withdraw accounts. For example, the ID4D report notes that the US bank that handled up to 80 per cent of remittances to Somalia closed the accounts that provided money transfer services from the US to avoid the risk of fines and being associated with illicit finance.²⁶⁸

Having an ID card is also necessary to access many other documents, such as a passport or driver license. The ability to legally drive, whether for private or personal reasons, can have a significant impact on a person’s ability to find work, go to school, or handle administrative matters – especially when combined with the limitations on freedom of movement discussed above. Even if IDPs are able to successfully rebuild homes, such limitations can prevent them from further improving their lives, as in Yusuf’s story below.

Case Study: “To have their existence legally recognised” – Yusuf’s Story²⁶⁹

Yusuf is 63 years old. Twelve years ago, he and his eight children left their home because of famine and conflict; they now live in Kahda district in Mogadishu. Life in Mogadishu was hard at that time; he did not know anyone, and many IDPs were flooding into the capital. He was assisted by humanitarian agencies that placed them in a camp. Today, Yusuf has turned his life around. He now lives on land that he bought from a private company with cash assistance from humanitarian agencies, and they have their own house. His children go to school, and he helps his wife with her business.

However, no one in Yusuf’s family has any legal identity documents. His children cannot get birth certificates. Yusuf used to be a driver, but he cannot get a driver license. His wife’s business brings income, but it is not fully legal. Yusuf says that he has a title deed, but has no ID to prove that the deed is legally his. According to Yusuf, the ID documents are important because they “support an individual’s right to recognition before the law and acknowledges their formal relationship with the state – to have their existence and identity legally recognized.”

Determining who is and is not an IDP remains an ongoing challenge. However, there is some indication that moving out of the IDP camps/

settlements into one's own home and property is perceived as changing one's status from an IDP to a member of the host community.²⁷⁰ As one key informant explained, *"For the Somalis, if the person comes and has the means to buy a plot, that is local integration; they are not an IDP."*²⁷¹ People interviewed for this report stressed that without legal identity documents (e.g., a state or national ID), they would never be able to buy their own land and property, and so could not achieve this goal. Other reports also note that in Mogadishu, an official ID confirms that the holder is a resident, not an IDP.²⁷² Many IDPs who were interviewed expressed the desire for legal identity documents, and while there are many reasons, one that always comes up is the desire to have the rights and benefits "like any other citizen."

Case Study: **"Like any other citizen."** – Sahra's Story²⁷³

Sahra had owned a farm and raised cattle in her home land. Four months ago, she made the difficult decision to leave because years of drought killed her livestock and made it impossible for her to care for her family. She and eight other members of her family left and came to Mogadishu, hoping to find better living conditions and jobs that could put food on their tables. The elders and host community did not demand any proof of identity and gave them some land where they could live, without any charge or rent. She feels lucky; she currently works as a cleaner, and the community and humanitarian agencies have been good to her. She says her biggest concern now is having clean drinking water and for her children to go to school.

However, Sahra has no legal identity documents from the government, which limits her access to some government services. She says that she would pay for the documents if she could, but she has no money to do so. The lack of documents limits her job opportunities and ability to travel. She would like her family to settle permanently in Mogadishu and integrate with the host communities, and wishes she could have identity cards so she and her family could get jobs and access to government services like any other citizen.

The current decentralised model of various functional documents is not working well, and there is a need for a centralised system for issuing ID cards.

270 KII 16.

271 KII 16.

272 IIED (2019).

273 MG CS 5.



Ongoing registration by NRC staff

"The process of getting government issued identity cards should be less rigorous, because at this rate we cannot go through every hoop when we don't even use it to access services."

E. Improving Access to LID Documents

Several key informants for this study acknowledged that the current decentralized model of various functional documents is not working well, and feel there is a need for some kind of centralized system for issuing ID cards. It is believed that this will be a necessary step to improve access to LID documents, which would provide clarity about procedures, application steps and costs, and would be regulated by a clear legal framework with technical and financial support from the international community.²⁷⁴

Whatever the system, all IDPs and several host community members in all study areas, said that the best way to increase access to LID documents would be to make them free of charge,²⁷⁵ or substantially reduce the cost (as there was some acknowledgement that the government needed to earn some revenue from the issuance of these documents);²⁷⁶ some groups suggested that \$5-10 might be a reasonable amount.²⁷⁷ Several government officials also stated that fees should be removed, or at least reduced, and information campaigns should be done to inform IDPs of the importance of obtaining documents.²⁷⁸ IDPs also said that the processes should be simplified and be made less bureaucratic; one man in Mogadishu said, *"the process of getting government issued identity cards should be less rigorous, because at this rate we cannot go through every hoop when we don't even use it to access services."*²⁷⁹ One group of women in Baidoa suggested in addition to lowering costs, clan leaders should carry out awareness activities to all members of their clan; local and national leaders should also raise awareness of the importance of having LID and camp leaders should go door to door to raise awareness.²⁸⁰

Somaliland provides lessons on strategies that highlight the importance of access to the process as well. In 2014, the president and parliament of Somaliland said that people had to have national IDs to access government services. They announced a general distribution of 40 days, where if people went to the Ministry of Interior with their clan chief, registration for the IDs would be free.²⁸¹ To some extent, the strategy worked – several IDPs interviewed for this study affirmed that they did have national ID documents that they received during that time.²⁸² However, a humanitarian worker in Somaliland

274 KII 2, 4, 5, 20, 22.

275 All FGDs.

276 MG FGD 1-12; BD FGD 1; PL FGD 2.

277 BD FGD 1.

278 BD KII 2, 3; JL KII 2.

279 MG FGD 11.

280 BD FGD 4.

281 KII 15.

282 SL FGD 1, 4.

explained that a lot of people in remote villages had not understood what was happening, so did not register. After the period of free registration was over and a fee of USD 40- 50 was added, few went to register for the document.²⁸³ Comments from one group of IDPs in Somaliland suggest that the location where ID cards are available is also important, explaining that they did not have any documents because there were no government offices to facilitate registration for the cards in the areas where they had been living.²⁸⁴

F. Potential Risks and Challenges around LID Documentation

Legal identity has the potential to contribute to efforts to protect human rights and facilitate access to a multitude of benefits. However, there are several areas regarding the actual and planned process of giving every citizen proof of their legal identity that must be considered with caution when developing and implementing identity system in Somalia.

Contested claims over citizenship and/or belonging may make it more difficult for some minority groups to access LID. For example, if having a clan elder vouch for you with the government is the method used to prove identity, minority members – especially those who are displaced from their home areas – may face greater difficulty in the application process, as observed in the case of Nubian access to national ID cards in Kibera, Kenya.²⁸⁵ Similarly, as was reported during this study, women may have a more difficult time accessing ID cards because they need a clan elder – who is always male, and not always willing to support the women;²⁸⁶ this is in line with other global NRC data which finds that women face more obstacles and have less documentation than men.²⁸⁷ In the case of Somalia, gender discrimination in the 1962 Citizenship Law will need to be addressed to ensure that Somali women can obtain identification for themselves, their children, and other family members. A related concern is that if a state makes basic services conditional on the possession of certain documents, without allowing for alternative methods of identity verification (such as the use of witnesses and the recitation of clan lineage described in this study), this may actually worsen the ability of more vulnerable groups to access these services.

Other risks relate to exclusion and discrimination. Inclusion of individuals affected by displacement in the establishment of the Somalia

Portrait of displaced male



283 KII 15.
284 SL FGD 5.
285 Open Society Foundation (2015).
286 SL FGD 5.
287 NRC (2022).

national ID card system will be key for the success of this initiative. Advances in digital technology and the introduction of ID systems by governments around the world, and Africa in particular, are resulting in new approaches to providing IDs to individuals including IDPs, refugees, refugee returnee and stateless persons, to protect their rights.²⁸⁸ Examples of African Government policies and establishment/improvement of ID card system are included in Annex 3. The Principles on Identification for Sustainable Development: Toward the Digital Age, convened and endorsed by the WB, call for inclusive systems (universal and non-discriminatory) and for the reduction of costs and IT disparities.²⁸⁹

However, the trend towards digital systems also raises other concerns regarding data protection. One example given is the case of Tanzania, which rolled out a new biometric card without any data protection laws in place; if owners of mobile phones could not prove enrollment in the state's national identity system, their SIM cards were switched off.²⁹⁰ Rwanda enrolled over nine million people in their national identity system, and then sold the data to the private sector with no data protection in place.²⁹¹ More practical barriers for Somalia have also been highlighted by the ID4D report, which points out the lack of critical infrastructure to facilitate a digital identity management system, and also notes that security and access remains an enormous challenge, particularly in areas under the control of non-state actors.²⁹²



Community consultations in Baidoa.

288 KII 2, 8, 20, 22.
289 World Bank (2017).
290 Manby (2020).
291 Manby (2020).
292 World Bank (2016).

PART IV Conclusion and Recommendations

A. Conclusion

While LID is a prerequisite for access to many things, including the ability to legally claim ownership of property, it does not by itself confer ownership rights. Based on the interviews during this study, this is clear for many IDPs. However, it is possible that others believe that in receiving legal identity documents, they will also gain greater tenure security or ownership rights to land that they are living on, even if that land does not belong to them. Box 15 below includes some of the answers of IDPs when asked whether the possession of LID documents would help address the HLP problems.

Box 15: Question: Do you think having government issued ID documents will help improve the situation [regarding HLP problems]?

"No, even if you have identity documents we have no means to afford any [land]"²⁹³

"Yes, I think having government identification documents will help improve our current situation because it guarantees ownership of property and legal recognition."²⁹⁴

That IDPs having legal identity documents will allow them to live fuller lives (traveling freely, not being arbitrarily arrested, etc.) is not in question. However, mere possession of an identity document does not necessarily lead to an improved outcome by itself. For example, other research notes that while an identity document is often required to access many formal sector job opportunities (something that many IDPs mentioned during this research), actually getting those jobs may also require educational credentials, which many poor and vulnerable people do not have.²⁹⁵

293 MG FGD 5.

294 JL FGD 1.

295 Ladner et. al., (2014).

Similarly, in the context of LID documents and accessing HLP, care should be taken to ensure that IDPs do not assume that possession of an identity document will come with land ownership rights. An identity document may enable a person to formally purchase and register their ownership, but this assumes that the person will have the financial resources to buy the property. To gain better tenure security and protection against potential disputes regarding ownership, the new owner will also need to go through the process of registering ownership, and the state must have the institutional capacity to maintain the registry. The last point is worth considering, given the fact that key informants note that many people often will not go through the full registration process,²⁹⁶ the original land registry records from the 1960s to 1991 are held by a Somali diaspora in Sweden,²⁹⁷ and that other research notes that a later cadastre for Mogadishu was moved to Djibouti.²⁹⁸

The ability to simply hold up a card when asked “who are you?” is often taken for granted, except by those who have never had such a document.

This is not to say that LID documentation is not important to HLP rights – on the contrary, this study strongly argues that it is. The ability to simply hold up a card when asked “who are you?” is often taken for granted, except by those who have never had such a document. The value of being able to move around without being arbitrarily detained cannot be overstated, and such freedom may facilitate the ability to find better employment. Being able to open a bank account where someone can receive remittances and store money safely can help build resiliency and the economic capacity to buy their own property. All Somalis, whether displaced or not, have a right to legal identity documents that are available to Somali citizens. However, the possession of legal identity documents will not by itself enhance HLP rights of vulnerable people and must be combined with other measures, such as ensuring that the issuance of documentation does not become a discriminatory tool that can be used against minority clans or other outsiders in a particular area (e.g., displaced members of minority clans are denied identity documents in other states,²⁹⁹) and developing the country’s institutional capacity to manage identity systems and property rights. A comprehensive approach is needed – one which looks not just at the issuance of legal identity documents, but also the supporting components that would allow more equitable access to livelihoods and assets and improve opportunities for all Somalis to build better lives.

296 KII 8.

297 KII 22.

298 Rift Valley Institute (2021).

299 UNHCR (2021).

B. Recommendations:

The following recommendations are made for consideration:

On legal identity documentation, the Government of Somalia, the World Bank and other stakeholders involved in this process should:

- Not require beneficiaries to produce documentation in order to access humanitarian assistance, HLP rights and public services such as education, health, employment, and humanitarian assistance while the national ID card system and the civil registration system are being established.
- Develop an analytical framework to identify barriers to accessing legal identity and civil registration related to forced displacement, and monitor usage of such tools and their impact on displaced individuals. (I)NGOs, civil society and DACs should be meaningfully engaged in the development of the framework to promote positive outcomes.
- Implement inclusive policies and practices to avoid creating barriers to obtaining legal identity documents that deprive DACs of access to basic rights, services, and livelihood opportunities – e.g., using interim identification methods, “time limited amnesties³⁰⁰,” to ensure all adult Somali can obtain the required identity documentation.
- Consult displaced persons in the design and implementation of the Digital Uplift Project, the USR and other civil documentation projects to facilitate efficient, effective, and accountable interventions that are based on a contextualized analysis and address actual identification-related needs.
- Integrate legal identity components into projects addressing socio-economic needs like the USR, and link implementation with ongoing and future civil registration processes.
- Ensure the Digital Uplift Project and other projects related to legal identity and civil registration respect the Principles on Identification for Sustainable Development and other relevant standards in forced displacement settings. These Principles are critical for promoting universal access to legal identity, as well as advancing economic and social development and ensuring no one is left behind in Somalia.
- Increase coordination on ongoing and planned LID initiatives and ensure better alignment/sequencing of registration systems.



Displaced female in her shop.

300 The issuance of an amnesty period during which individuals can obtain identity documents and/or civil documents without paying fees or fines for late registration.

World Bank and donors:

- Commit financial and technical support to the Government in this endeavor. The limited capacity of the Government at federal and state member levels and the fact that the country has never had an identity management system in place will require a gradual, comprehensive and long-term approach and plan.

Humanitarian and developmental actors:

- Ensure that the provision of humanitarian and development assistance is not conditioned upon beneficiaries having ID cards or any other legal identity documentation.
- Continue to document and research issues related to legal identity, including for refugees, returnees and for specific geographic areas (e.g. refugees, asylum seekers and migrants in Somaliland).
- Support Government efforts to establish a national ID card system by:
 - Ensuring that IDPs, (I)NGOs and civil society actors are consulted and involved in the design of the ID system, and that DACs are not excluded from registration processes.
 - Raising awareness of the importance of obtaining official ID cards.
 - Coordinating with camp management actors to explain requirements, steps and costs to obtain official ID cards.
 - Preparing for potential legal counselling and assistance activities to facilitate access to identity documents - e.g., legal accompaniment for vulnerable displaced persons, such as widows and families from small clans.

On housing, land and property, the Government of Somalia, the World Bank and other stakeholders involved in this process should:

The Government of Somalia:

- Protect the right to security of tenure for all Somalis, including DACs, by increasing land allocation schemes, access to social housing and by recognising different forms of tenure to prevent forced evictions.
- Continue to work to establish a functional land administration system in Somalia that is inclusive and non-discriminatory.
- Consider establishing a system whereby Somalis can apply for ID cards and land title documents at the same time.

Humanitarian and development actors should:

- Support efforts to provide both tenure documents and identification cards (or other officially recognized identity documents), potentially at the same time.
- Consider scaling up HLP programming with a focus on practical and effective means for persons to secure their HLP rights, with specific assistance to DACs. Invest in legal services, awareness-raising and capacity-building among communities regarding their HLP rights.
- Continue to explore pathways to increase tenure security for DACs residing in informal settlements and those who are informally renting. Government land allocation schemes should include registration of individuals into the CRVS and/or national ID card system, in addition to the registration of the property in the land registry.
- Engage further with the Government to support the establishment of an effective land administration system that is inclusive and non-discriminatory.

Donors:

- Continue to fund legal assistance programmes that increase the protection environment with a focus on HLP and legal identity documentation and in preparation of DACs' access to durable solutions.
- Provide technical and financial assistance to the Government of Somalia at both federal and state levels for the establishment of a land administration system.



Women lined up in a queue waiting for registration.

PART V Annexes:

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