KEY ISSUES AND CHALLENGES FOR TRANSFORMATION

LAND CONFLICT IN SOMALIA
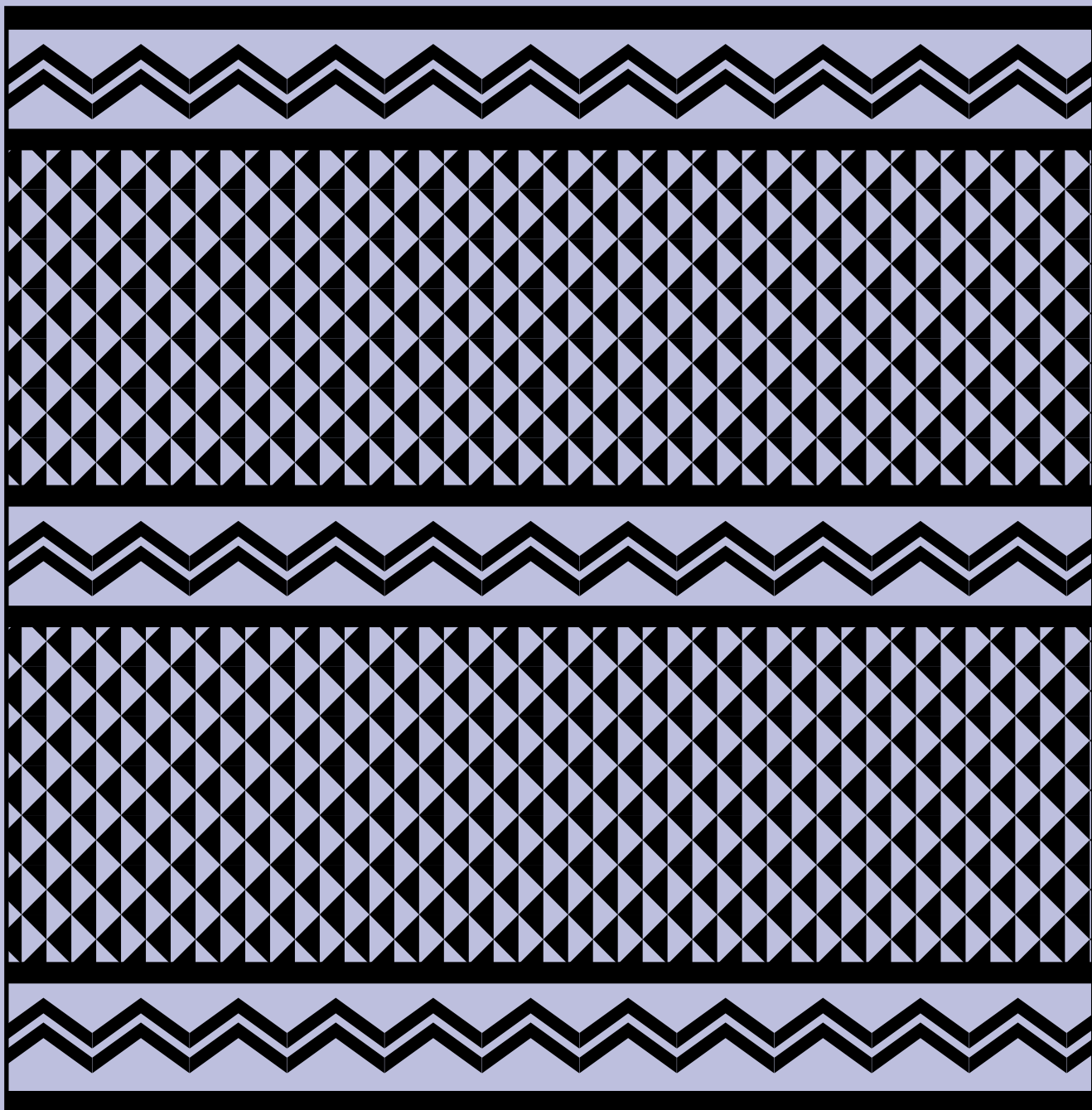
DELIVERING PEACE & STABILITY IN SOMALIA
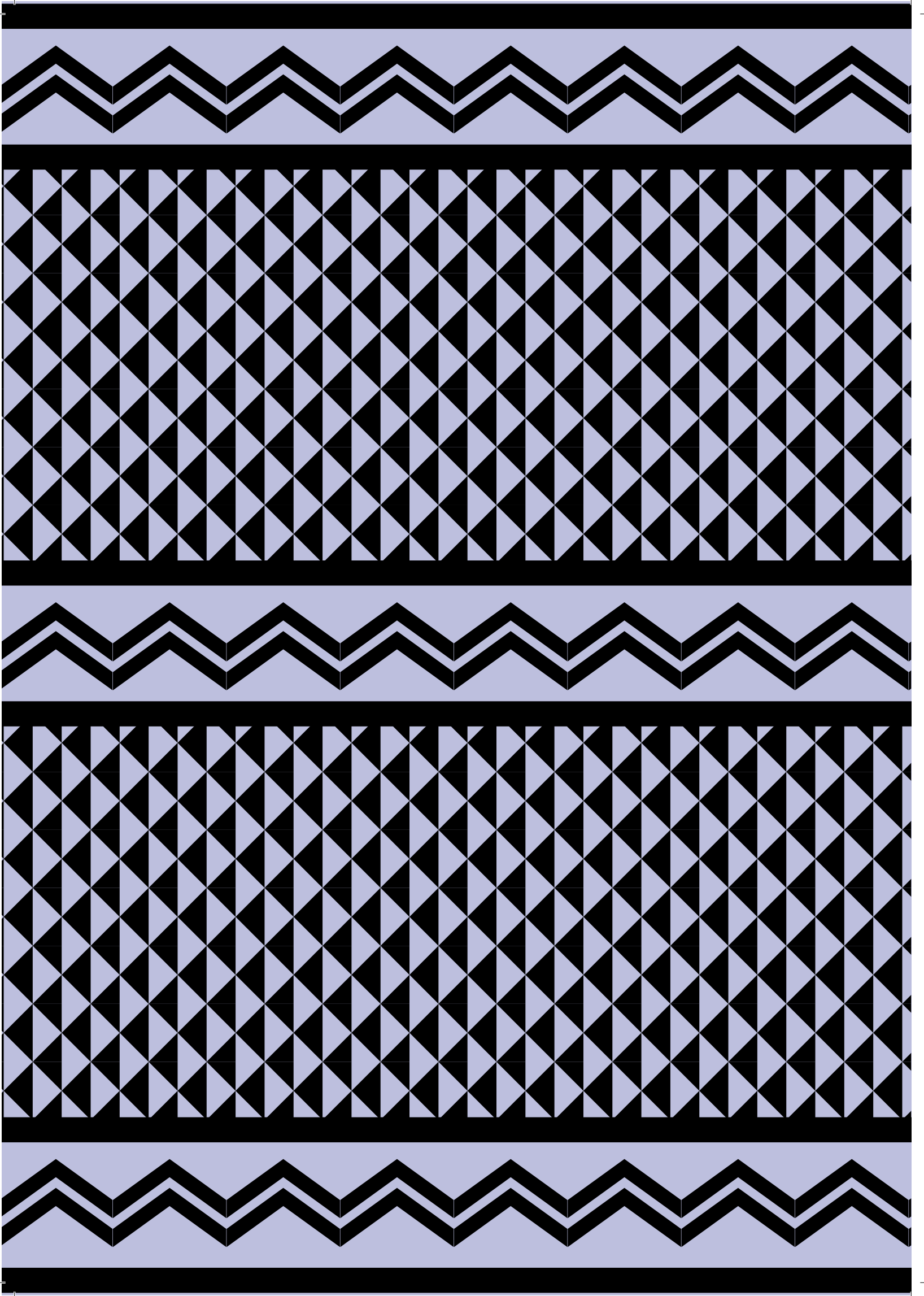
'THE BEST BED THAT A MAN CAN SLEEP ON IS PEACE'

SOMALI PROVERB

This report by the Rift Valley Institute (RVI) was commissioned by Somalia Stability Fund (SSF) with the aim of conducting a comprehensive literature review on land conflict in Somalia. The report was motivated by two factors: first is the desire to ascertain greater information and analysis that could help inform future programming and policy decision making; secondly, it is driven by the knowledge that the constitutional requirement for a land act has to date gone unfulfilled, thus rendering a substantive legislative gap that makes land conflict, among many other reasons, salient. This analysis seeks to bridge the gap between the vast relevant academia and the seeming lack of programmatic solutions.

Given the large quantity of material available, and the relatively small size of the project, it was impossible to capture all the literature on land conflict in Somalia. Therefore, priority was given to analysing gaps in existing research, as well as providing recommendations for future research that will guide the design and implementation of appropriate frameworks for land conflict management and dispute resolution.

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Land conflict in Somalia is shaped by—and has shaped—the historical trajectory of the country. In particular, the land management and agricultural development policies of the Siad Barre regime are key drivers of the dynamics of current land conflict. Not only did the policies disrupt the functioning of traditional frameworks for land governance, they also planted the seeds for the clan-based mobilisation of political power and institutions in contestation for land rights evident in Somalia today. This history and these dynamics determine the practice, policy, and institutional options available to the country in seeking to design appropriate frameworks and mechanisms for land conflict transformation.

A critical challenge in designing an appropriate framework for land conflict transformation in Somalia relates to managing the legal pluralism that characterises land governance and management. While most published research prioritises the role of formal institutions and mechanisms, this research also confirms the continued relevance of traditional and religious frameworks, while noting that their effectiveness is increasingly undermined by the power imbalance borne out of long-term violent conflict.

RESEARCH FOCUS

This literature review aimed to capture the spectrum of research that has been undertaken on land conflict in Somalia, and to analyse major findings, conclusions, and recommendations, in order to identify gaps that require addressing in further research. To this end, the literature review focused on the following specific issues:

1. **Socio-cultural norms around land ownership or territorial presence:** Individual and communal perceptions of land ownership, territoriality, and political contestation.

2. **Changing demographic presence:** The displacement, movement, and resettlement of populations (triggered by ecological, economic, and conflict factors), and subsequent impact on land claims and engendering of land conflict.

3. **Land dispute-resolution processes and challenges:** Managing the interface between traditional, religious, and statutory conflict-management and dispute-resolution systems; legal pluralism and the challenge of forum shopping; how power asymmetry between clans influences conflict and dispute-resolution institutions; NGOs and alternative dispute-resolution (ADR) approaches to land conflict management; and Al-Shabab's approach to land dispute-resolution and the potential of Shari'a.

4. **Urban, peri-urban, and rural land conflict dynamics:** Differences in spread, typologies, drivers, causes, actors, manifestations, impacts, and trends.

5. **Environment and land:** Competition for access to natural resources, land-use competition, environmental degradation, and the consequences for land conflict.

6. **Economic drivers of land conflict:** Urbanisation, commercialisation of land, exploration for oil, minerals, and hydrocarbons, and diaspora investment as factors driving and shaping conflict.

7. **Tenure dimensions of land conflict:** Traditional and formal tenure and how they interact; farmer–herder conflicts; rangeland enclosures and privatisation of communal resources.

8. **Comparative experiences, regional and global:** Good practices, tools, and approaches to land conflict transformation from other post-conflict and fragile states.

The research paid attention to gender dimensions and the differential experiences of women, youth, and marginal communities with respect to land ownership, dispute resolution, and tenure security, as well as the changing and competing pressures around land occupation.

KEY FINDINGS

These findings are derived from the literature reviewed and what we see as the main gaps:

• **Land is a primary driver of conflict in Somalia.** For example, land grabbing in southern Somalia has the interdependent effects of dispossessing powerless groups from their holdings, creating animosity, and engendering poverty. These processes, which were historically enabled by a combination of corrupt governments and a dysfunctional land tenure system, have been key factors in shaping the way that the civil war and the ensuing conflict evolved in rural southern and central Somalia.

• Challenges to resolving land conflict derive from the **incapacity of traditional institutions** to manage conflicts involving interests that derive their power from outside of community systems. Moreover, changing demographics and population movement— as well as the increasing demand for investing in land and land-based resources by members of the Somali diaspora and foreign investors—are undermining the ability of communities, systems, and institutions to manage land conflicts.

• Although the reality of land and conflict in Somalia is defined by the unique circumstances of the country, the need for **policy and institutional responses** to land and conflict are not unique to Somalia or to post-conflict societies, as is evident from the fact that land and conflict are prioritised in the agenda of the UN, the AU, and the IGAD, as well as their member states.

• In addition to the legacy of the Siad Barre regime, the civil war and the prolonged conflict, **other factors that have shaped the interface between land and conflict in Somalia include** large-scale displacement and resettlement; competition for access to natural resources that support livelihoods in a context of population growth, climate change and environmental degradation; the rise in economic interest in land-based investments; political positioning and power asymmetry between clans; and weakness of institutions of governance generally—and those of land administration and dispute resolution specifically.

- Land conflicts in Somalia can be categorised by reference to their location, i.e., **urban and rural land conflicts**, with the former driven largely by competition for access to resources, and the latter driven predominantly by large-scale and rapid urbanisation underpinned by weak legal and institutional frameworks and limited economic opportunities.

- **Environmental factors are at the centre of pastoral land conflicts**. In particular, the growth of both human and livestock populations (and changes in herd and species composition) as well as socio-economic changes have increased pressure on rangelands, including through enclosures and introduction of unsuitable land uses. Managing challenges associated with pastoralism and agro-pastoralism is critical for securing the livelihoods of pastoralist communities, ensuring peaceful co-existence between pastoralism and other land uses, and realising the potential of the livestock sector to contribute to food security and economic development.

- In peri-urban areas, land-use conflicts frequently derive from **competition between pastoralism and urbanisation**—as in Somaliland, Puntland, and Jubbaland—where interactions between pastoralists and urban dwellers have led to an increase in disputes relating to both land ownership and land use (UN-Habitat, 2017).

- **Somalia's urban population is growing at an annual rate of 4%**, driven by violent conflict and insecurity in rural areas, climate change, population growth, and opportunities for economic security. Despite recent efforts led by UN-Habitat and associated NGOs to re-establish urban planning and land administration in major cities, rapid urbanisation is exacerbating urban land conflicts. Long-standing clan divisions pose further challenges to urban land governance and management.

- The status of **land governance and tenure security in Somalia is defined by legal pluralism**, whereby multiple legal orders or systems coexist in the same social field. These include formal systems of the state enacted in legislation, Somali customary law (Xeer), and local adaptations of Islamic Shari'a. The three systems are not mutually exclusive but rather have been shaped interdependently through interactions between customary law; Islamic law, colonial history; the socialist regime of Siad Barre; the collapse of the state following overthrow of the regime; and subsequent years of conflict and insecurity. These factors have contributed to challenges—as well as opportunities—with regards to land management and should be taken into account in reforms aimed at establishing a comprehensive legal framework for land administration.

- The **interface between land governance and tenure security** is most evident in the way that the weak land governance system in Somalia has impacted land rights of minorities and women. In particular, **gender inequality poses a challenge in the traditional dispute-resolution structures**, whereby women are excluded as key actors due to the expectation that elders lead community activities.

- Due to the absence of courts in rural areas, **Al-Shabab has established governance systems in many parts of Somalia** that include management of land transactions and dispute. This has raised additional challenges to land dispute management, as Al-Shabab has forcibly been involved with land grabbing and imposing heavy taxes on farm produce—actions which have created disaffection among Somalia's population. Moreover, Al-Shabab is reported to be selective in their interpretation and application of religious law, thwarting collaboration between Somalia's three legal systems and exacerbating competition over land.

- **Resolution of land disputes and conflicts is central to state building and peacebuilding in Somalia**. Yet, although the importance of addressing the land question as a basis for sustainable political settlement "has been acknowledged in successive peace agreements in Somalia", little progress has been made in mainstreaming it in the agenda of political settlement due to its political sensitivity and complexity (RVI and HIPS, 2017:53).

GAPS IN THE LITERATURE

This literature review identifies 10 major gaps in the literature on land conflict in Somalia, including:

1. **The nature and core elements of customary land law:** Other than the fact that land is held by clans, not much detail is available in the literature about the nature and content of Somali customary land law.

2. **Customary land law of Somali minorities:** There is need to conduct more research on the customary land laws of Somali minorities, which is largely absent from the literature.

3. **Principles of land dispute resolution under customary and religious law:** The literature is replete with assertions about how customary and religious courts are effective, particularly in resolving land conflicts and disputes, but little was found that identifies and analyses the principles, norms, and values that these courts use to resolve land disputes.

4. **Procedures for land dispute resolution in traditional and Shari'a courts.** More research is needed on procedural aspects of traditional and Shari'a courts in order to assess conformity with constitutional and international human rights standards, and to address any shortcoming in the process of building the capacity of the courts.

5. **Land governance issues and challenges within farming communities:** There is little in the literature about the land issues and challenges among the members of farming communities. This research is needed to inform the design of land governance and dispute-resolution frameworks.

6. **Legal education and its appropriateness to land conflict management and dispute resolution:** No literature was found on the legal education and professional development that those presiding over the traditional, Shari'a, and formal courts undergo. This research is necessary to identify challenges and generate appropriate strategies to ensure that courts are up to the task of delivering land justice.

7. **Al-Shabab, land governance, and land dispute resolution:** Although challenging to carry out, more research is needed on the impact of the militia group on land governance in southern and central Somalia.

8. **Research on options for land reform:** There is need for research on land reform options that can be implemented in the short, medium, and long-term.

9. **Impact assessment of urban land administration reforms in northern Somalia:** Research should be undertaken to assess the impact of the urban land administration reforms in Somaliland and Puntland to generate lessons that may inform such reforms in southern and central Somalia.

10. **Research on the feasibility of establishing frameworks or processes to address historical land grievances in Somalia.** This should focus on gauging public opinion on the need to address historical land grievances.

These gaps should be addressed in future scholarship in order to formulate and implement sustainable solutions to land conflict in Somalia.

OTHER CONTEXTUAL EXPERIENCES

- The management of land-related conflicts in other countries in the Horn of Africa inhabited by Somali communities—particularly northern Kenya and eastern Ethiopia—could provide models for effective conflict management and dispute resolution in Somalia. In particular, Somali communities in northern Kenya and eastern Ethiopia have adopted hybrid institutional arrangements that integrate traditional, religious, and statutory mechanisms of conflict management. These approaches address the root causes and intricacies of specific conflict incidence to restore sustainable peace, and thus may have better chances of success.

- Further afield, Afghanistan's experiences with conflict management and land dispute resolution demonstrate the potential importance of grassroots-based approaches that draw on traditional values, norms, and institutional arrangements, while also highlighting that the success of such efforts cannot be sustained without being institutionalised into a reformed justice section. An important lesson for Somalia is that land justice needs to be explicitly prioritised in the political transition from conflict to peace. Furthermore, with regards to land conflict, Afghanistan's experience shows that the international community cannot be depended upon to support comprehensive processes aimed at redressing historical land grievances. It is thus only through political will and commitment from within that land justice can be prioritised and acted upon in a post-conflict context such as Somalia.

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RECOMMENDATIONS

To address the challenges underpinning land conflict in Somalia and promote effective land management and land dispute resolution, we propose the following recommendations:

1. **Support research to fill the gaps identified in this literature review** in order to generate data to inform the design of appropriate legal and institutional frameworks for land conflict management and dispute resolution.

2. **Mobilise key political actors and development partners to prioritise land governance and land dispute resolution** in the state building agenda and in the manifestos of the different political parties.

3. **Engage the African Land Policy Centre and the Intergovernmental Authority on Development (IGAD) Land Governance Unit, as well as the Food and Agriculture Organisation of the UN (FAO)** (within the framework of its support to mainstreaming of the VGGT and the F&G), to initiate a partnership with the FGS and governments of FMSs on structured support to development (and reform) of legal and institutional frameworks for land governance, including through peer learning exchanges with relevant countries.

4. **Establish the status of the cadastre for Mogadishu** that is reportedly held by an individual out of the country. Initiate a process of reclaiming it to use as the basis for re-establishing the land registration system.

5. **Invest in the development and implementation of 'fit for purpose' land registration systems**, where this is possible in urban and rural areas, to pilot innovative methods for strengthening tenure security

6. **Establish frameworks that integrate traditional court mechanisms with religious jurisprudence underpinned by municipal documentation and secular law** (NRC, 2015). To effectively accommodate the socio-political, economic, and environmental opportunities and challenges of the 21st century, traditional and Shari'a systems for resolving land disputes are required to be formalised and properly integrated into the statutory framework for governance and administration of justice.
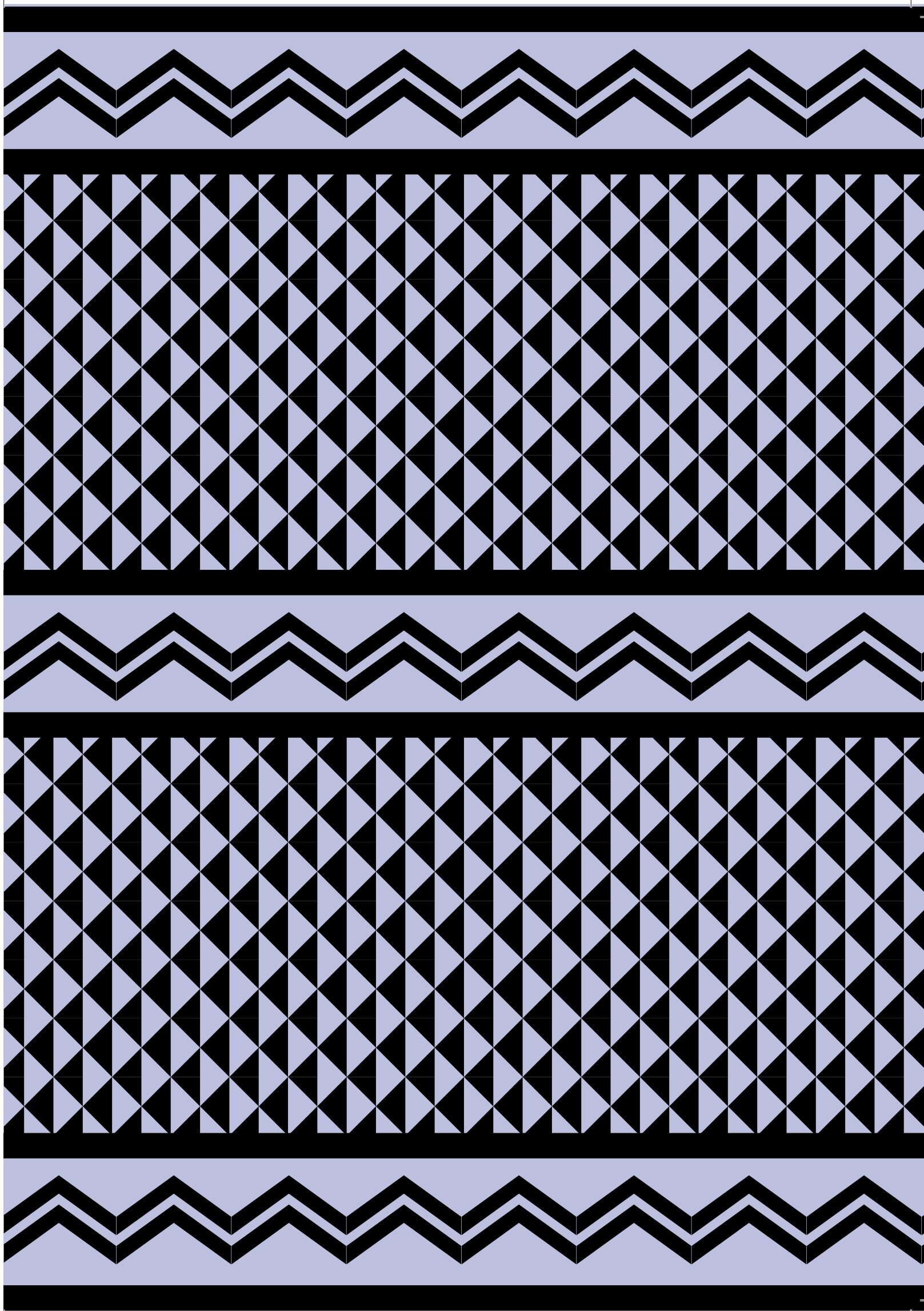
Adam Smith
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