



UPHOLDING PEACE FOR A PROSPEROUS AND INTEGRATED REGION SINCE 1986  
AU SERVICE DE LA PAIX POUR UNE REGION PROSPERE ET INTEGREE DEPUIS 1986

# LAND GOVERNANCE IN IGAD REGION



## DJIBOUTI Country Profile

Assessment of Land  
Governance Framework,  
Training & Research Land  
Governance Institutions

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# 1.1 Djibouti

## 1.1.1 Country Context

The Republic of Djibouti is located in the Horn of Africa between longitudes 41°8 ' and 43°4' E and the latitudes 10°9 ' and 12°7' N. It is bordered to north by Eritrea, to south-east by Somalia and to the west by Ethiopia. In the east, the country benefits from a seaside coast divided between the Red Sea and the Gulf of Aden and which extends on more than 372 km. It covers a surface area of 23 200 km<sup>2</sup> and has an estimated population of 900 000 people according to the United Nations Development Programme (UNDP, 2014), growing at 2.9% per annum. More than 70% of the population lives in urban areas, with nearly 60% in the capital and about only 16.3 per cent of the population lives in the rural areas.

The country is divided into five regions: Ali Sabieh, Dikhil, Obock, Tadjourah and Arta. The city of Djibouti has a special status. The biggest part of the land is pastoral and agricultural lands account for only 0.5% of the country. Djibouti has only 10,000 hectares of arable land, of which 1,000 are cultivated. Some 9.5 per cent of the land under cultivation is irrigated. Half of the arable land is in the north; the majority of crops are grown in the south, however, mainly in the districts of Ali-Sabieh, Dikhil and Djibouti. There are around 1,600 farms in Djibouti, employing an approximate total of 3,600 people. The average area of farms is one half hectare

Three-quarters of the population live in Djibouti city and the few other urban and peri-urban areas. The remaining quarter of the population continues to pursue the traditional transhumant pastoralist lifestyle that predominated in pre-colonial Djibouti. Both the Afar and Issa people are herders of camels, goats, and sheep. The Afar, in the northern region of the country, are part of a larger Afar group located mostly in Ethiopia, while the

Issa, who live mostly in the south, are related to the Somalis of neighboring Somalia. In addition, approximately 25,000 Somali refugees currently reside in Djibouti.

## 1.1.2 Policies and Laws Relevant to Land Governance in Djibouti

### (a) The Constitution of Djibouti 1992 as amended in 2010

The Constitution under Article 12 of Chapter II recognizes the right to property and sets forth that ‘the right to property is guaranteed by this Constitution. It may not be infringed except in the case of public necessity legally established, under reserve of a just and prior indemnity. The domicile is inviolable. It may only be subjected to intrusions or searches in the forms and conditions specified by the law. The measures infringing the inviolability of the domicile or circumventing it may only be taken to respond to a collective danger or to protect persons in peril of death’ (Art. 12). The Constitution does not provide provisions on land tenure system and land institutions.

### (b) Law n°171/AN/91/2nd L on Carrying definition and organization of public domains (lands)

This law provides for the establishment and organisation of the public domain or land.

Under the law all land belongs to the state. Article 1 provides that public land consists of all property assets, whatever their nature, whether immovable or movable, classified and delimited as belonging to the public domain, whether they are, or are not, intended for use by the public.

According to Article 2 the state public land consists of the natural domain and the artificial domain and Article 3 provides that public land consists of natural sites determined by the law which include the sea water front, up to the limit of the highest tides, as well as a zone of 50 meters starting from such limit; islands and small islands water sources, as well as non-navigable and not floatable watercourses, within the limits determined by the highest water levels before overflowing, and a servitude (right of

way) of a 25 m. width starting from these limits on each bank lakes, ponds and lagoons, within the limits determined by the highest water levels before overflowing, and a servitude (right of way) of a 25 m. width starting from these limits on each shore and groundwater aquifers, whatever their origin, nature and depth.

Article 5 provides that private lands and buildings may be subject to all types of easements, including rights of way, rights of overflight, easements for the installation of structures, easements of support and rights of access necessitated. Further under Article 6 all urban private properties may also be subjected to easements for reasons of hygiene, aesthetics, alignment, public security, as well as to those easements that may be imposed by a development or expansion plan, of which the terms of establishment and implementation are set by the competent authorities in accordance with urban planning regulations and there is no compensation due to the owners because of the easements (Article 7).

(c) **Law n°173/AN/91/2nd L on organization or management of State private domains (Lands)**

This law makes provisions for state private land. Under the Act, State Private includes free Lands and without owner and lands acquired by the State, from donations, inheritances, or of any other manners recognized by the law (Article 1) Under Article 2 private land is divided into two categories namely urban land designated as such by the legislation in force and rural land which is other land.

Under Article 3 the sale of state land is subject to the following rules. Land acquired by the state in what whatever manner of acquisition and already developed and duly registered is subject to common law rules on property and contracts and vacant and ownerless land and in general, all non-registered or undeveloped land, may be regarded as urban land.

Articles 4-21 makes provisions for the management of urban land.

Article 4 makes provisions for parcels of urban land intended for construction, after prior registration in the name of the State. This may be transferred against payment or for

free, by agreement, by order on proposal of the Minister in charge of the domains, upon the advice of the land commission. Exceptionally, land may be sold by public tender when, being on sale at the initiative of the administration, it remains unsold for six months from the date of sale, or where the land to be sold is located in an area that has been the subject of development of an exceptional quality.

Under Article 5 the land parcels underlying public roads or buildings decommissioned in accordance with the provisions on the public domain may be transferred to the owners of adjoining land. A period of three months from the decommissioning order shall be granted to these adjoining owners to exercise their preemptive rights to these plots. If, at the expiry of the period of three months, the adjoining owners have not declared their intention to use their preemptive rights, the State may dispose of the parcels.

Under Article 7 for Urban land parcels intended for cultivation, of an area not exceeding one hectare, and for industry, of an area not exceeding three hectares, may be granted by order of the Council of Ministers on proposal of the Minister in charge of the domains, on a temporary basis, upon the payment of a fee established according to a scale fixed by decree of the Council of Ministers, and according to the terms and conditions determined in each case by the act of concession and the specifications annexed thereto.

Article 9 provides that plots of land not exceeding one thousand square meters may be assigned free of charge, by order of the Council of Ministers on the proposal of the Minister in charge of the domains, to recognized public utility institutions, provided that the lands concerned will not be sold by the beneficiary institutions, and will not be put to use in a manner other than the one provided for in the order.

Article 10 provides that the perimeter of urban centers is fixed by decree of the Council of Ministers, on the proposal of the Minister of Interior on the advice of the Minister in charge of the domains and the Minister of Public Works and Urban Development. For each urban center so defined, the domains service establishes and maintains a land map showing the lands registered in the name of private individuals, those registered in the name of the state, those reserved to the public domain, as well as vacant lands and

lands without owner. A copy of this map is transmitted to the districts competent for the geographical area in which is located the urban center concerned, another copy is sent to the Department of Public Works and Urban Development. Based on the established map, the chief of the domains service initiates, on behalf of the State, the registration procedure for vacant lands and lands without an owner, by lots as large as possible.

Under Article 11 Once the rights of third parties have been regularly cleared (through the removal of liens) through this registration procedure, the domains service may, on behalf of the administration, sell the land or grant a concession for the land, as provided for in this law, taking into account the urban development plan, if it exists, or, in default of a plan, subject to consultation with the Republic Commissioner for the district and the ministry of public Works and urban development, particularly concerning the development of the specifications (cahier des charges).

Under Article 12 when the lots are to be disposed of by auction the tender is held at the district headquarters, under the care either of the chief of the domains service, or of the Republic Commissioner acting on his behalf. Each lot is subject to special auction, with the minimum price set by the specifications. In case of competition, it is attributed to the strongest and last bidder. The auction takes place provided that the sale is approved by order of the Council of Ministers, upon proposal of the Minister in charge of the domains, after advice by the Land Commission.

Under Article 13 if the chief of the domains service, or the Republic Commissioner acting on his behalf receives only a single declaration of participation in the auction, the auction does not take place and the lot is sold directly to the author of the declaration, according to the conditions and the minimum prices set in the specifications for the tender. The tender is also subject to the procedure of approval by order.

Under Article 14 the awarding of the full ownership of the transferred lot only takes place after the implementation of all the clauses and conditions set out in the specifications, verified by a report of the chief of domains or of the Republic Commissioner acting on his behalf. Based on this report, the transfer of the land title to the name of the transferee is authorized by order of the Council of Ministers issued on

the proposal of the Minister in charge of the domains, after advice by the Land Commission.

Under Article 15 failure to implement the terms and conditions provided for in the specifications entails ipso facto the restitution of the land, free of all charges, to the State domain; this measure is subject to an order of the Council of Ministers on proposal of the Minister in charge of the domains, after advice by the Land Commission. In exceptional circumstances beyond its control, the winning tenderer or concessionaire may be afforded an additional period of time by the Minister in charge of the domains.

Article 16 provides that the terms of reimbursement of the price paid for the land in case of restitution to the state domain are determined by the specifications (cahier des charges). The same applies to the moneys to be deducted from this reimbursement and to be paid to the State as compensation for failure to implement the specifications.

Article 17 provides that if there are installations on the land, the administration has the right to take them. If it renounces this right, a three-month period is accorded to the winner of the tender of the concessionaire to remove these installations, materials, etc.

At the expiry of this period, the administration becomes the owner, without having to pay compensation.

Article 19 provides that the vacant lands and lands without an owner which are not yet registered in the name of the state and are located outside the areas covered by a housing development plan may be granted for temporary occupation by the Republic Commissioner of the District. To this end, the Commissioner shall issue a permit authorizing the immediate temporary occupation of the land, at the risk of the applicant, who is allowed to build thereon easily removable structures. The permit indicates the surface area to be occupied, the obligations imposed on the occupier, the amount of the fees payable and prohibition to sub-let, which entails withdrawal of the occupancy permit.

Under Article 20 any person occupying land under these conditions may, if this land is subsequently registered in the name of the state and sold by the domains service,



obtain, in the form of a special privilege, the cession of the lot at the price fixed by the administration, and under the terms and conditions established in the specifications (cahier des charges) attached to the act of cession, provided that the cession is authorized by order of the Council of Ministers on proposal of the Minister in charge of the domains, after advice of the land Commission. The occupant shall declare his intention to acquire the land to the chief of the domains service or to the Republic Commissioner of the district within fifteen days from the putting on sale of the land.

Under Article 21 the concessions of urban land intended for agriculture, by lots of a surface not exceeding one hectare, and for industry, by lots of a surface not exceeding three hectares, are granted by order of the Minister in charge of the domain issued by the Council of Ministers, on a temporary basis, upon payment of a fee and under the conditions determined in each case by the act of concession. As provided for in the case of urban land, registration is made in the name of the State and the transfer of the land title to the name of the concessionnaire is authorized according to the rules laid down in Article 14 above.

Articles 22- 45 provides procedure of acquiring rural land.

Under Article 22 rural lands are granted in the form of provisional concessions by order of the Council of Ministers on proposal of the Minister in charge of the domains, after the advice of the Land Commission.

Article 23 provides that any person intending to acquire rural land shall file with the Minister in charge of the domains, through the Republic Commissioner of the district where the land is located, an application indicating his name, first name, place and dates of birth, domicile and type of intended land use. A sketch showing the situation of the land as compared with the already known details, and the approximate size and general boundaries of the land shall be attached to the request.

If the request is made in the name of a company, a certified copy of the statutes of the latter and the applicant's powers shall be attached to the request.

Under Article 24 the Commissioner of the district, after consultation of the administrative services concerned, shall establish the specifications (cahier des charges), the clauses of which shall be based on both the proposed development and the local conditions. He shall then send the file to the Minister in charge of the domains who, after hearing the chief of the domain service, shall approve it with or without modification. The decision of the Minister in charge of the domains concerning the conditions for the granting of the concession shall be notified to the applicant, who shall indicate whether he accepts these conditions.

Article 25 provides that after reaching the prior agreement, the chief of the domains service informs the public of the application, both by publication in the Official Journal or in a bulletin of legal notices, and through posters displayed in its offices. The application is also displayed at the office of the district in which the land is located.

Under Article 26 if the land is not already registered, the chief of the domain service shall initiate at, in behalf of the administration, the procedure of registration of the land in the name of the State.

Oppositions not filed within the deadlines are not admissible.

Article 27 provides that before the expiry of the deadline for filing oppositions, all persons are entitled to inspect the specifications (cahier des charges) deposited at the district capital and at the domain service offices, and to deposit in any of these offices, together with a declaration of preliminary acceptance of the specifications, a request to be granted the land under consideration.

In this case, an auction shall be organized among competitors at the conditions applying to urban lands. However, the opposition made by a concessionnaire who has not fulfilled the conditions of the specifications (cahier des charges) attached to his act of concession, is not admissible, whether or not the deadlines are expired. Each competitor is informed of the date of the auction by the Republic Commissioner of the district in which the land is situated. The land is awarded to the highest and last bidder, subject to the approval of the transfer by order of the Council of Ministers, on proposal of the Minister in charge of the domains, after advice by the Land Commission. The

minimum price is fixed by the specifications (cahier des charges). Only the persons who have informed the Republic Commissioner of the district of their intention to compete for the allocation of the land within the established deadlines may take part in the auction.

Article 28 provides that the concession of rural land is granted by order of the Council of Ministers on proposal of the Minister in charge of the domains, after advice of the Land Commission and Article 29 provides that the order on the granting of a rural concession is cancelled in the same manner.

Article 30 provides that the granting of rural land is limited to the land surface. The products of the subsoil are reserved. However, building materials and quarries are included in the grant.

Under Article 31 the public domain of the State (watercourses, roads, etc.) that surrounds rural land, or which is included in it, may not be the subject of any particular appropriation and under article 32, the administration reserves to itself the right to resume at any time the free use of the land, as may be required to satisfy state service needs and for the execution of any public works.

This shall be subject to the reimbursement of the fee already paid for the surface recovered. The amount of the fee to be paid annually is adjusted by the administration in proportion to the area remaining granted under the concession.

Article 33 provides that the administration also reserves to itself the right to establish rights of way, to which the concessionnaire shall be subject without compensation.

Under penalty of loss of his rights, the concessionnaire shall comply strictly with the terms and conditions established in the act of concession and in the specifications annexed thereto, concerning the development of the land which is the subject of the concession (Article 34)

Under Article 35, any partial or total cession, whether permanent or temporary, for free or for valuable consideration, of the right of provisional possession of rural land granted under a concession, shall be authorized in advance by order of the Cabinet of Ministers, on proposal of the Minister in charge of the domains, after advice by the Land

Commission. In default of this prior authorization, the cession entails ipso jure withdrawal of the concession, as well as the monetary penalties provided for by the specifications.

Article 36 provides that the rural land is allocated under the express reservation of the rights of third parties and without any guarantee of its capacity: in case of appeal, the administration is not liable to pay any indemnity or any fee refund for this title.

Article 37 provides that the development of the land shall be carried out within the deadline set by the specifications. At the expiry of the deadline, the chief of the domain service, or the Republic Commissioner of the district on his behalf, shall assess progress in the development and record his findings in a procès-verbal. The procès-verbal is transmitted to the Minister in charge of the domains.

Under Article 38 a concessionnaire whose land may be considered as definitely developed, may at any time request a statement that the terms and conditions of the act of concession and of the specifications annexed thereto have been met.

Article 39 provides that the developers under temporary concessions may be granted ownership of the land plots developed in accordance with the conditions stipulated in the act of concession and the specifications annexed thereto. However, the plots so acquired in full ownership by a developer may not exceed a surface area of one hundred hectares and must have a single holder.

The allocation of plots exceeding one hundred hectares may only be made in the form of a long term lease.

Under Article 40, the transfer of the land title to the name of the concessionnaire who has met his development obligations is authorized by order of the Council of Ministers upon proposal of the Minister in charge of the domains, based on the procès-verbal referred to in Articles 32 and 33 above.

Under Article 41 the transfer of the land title in the name of the concessionnaire, duly authorized, is carried out by the Land conservator against payment, within twenty days following notification of the order authorizing the definitive transfer, of:

- a) The price of the land as stipulated in the specifications;
- b) Provision of a fixed amount of ten thousand DJF per hectare for the work of delimitation; the amount so paid is deducted from the actual amount of costs of demarcation and survey of the registration plan;
- c) Stamp fees, registration, advertising, etc., as provided for by the regulations.

Under Article 42 , the price of rural land is based on local conditions, in particular the situation of the land with regard to the means of transportation of products and (the availability of) water resources.

Article 43 provides that all titles of allocation of rural land are recorded in a special register kept by the chief of the domains service, and is subject to the formality of registration.

Article 45 provides that all disputes between the administration and the concessionnaires are submitted to the administrative court.

(d) **Law n°172/AN/91/2nd L regulating the expropriation for Public Purpose Interest.**

This law makes provisions for the expropriation of land for reasons of public utility in the Republic of Djibouti is effected by authority of justice.

The procedure consists of four phases:

- 1) The declaration of public utility;
- 2) The order of transferability, which has for essential purpose to determine the properties to expropriate and to give interested parties the opportunity to assert their rights and to produce their titles; and
- 3) The pronouncement of the expropriation by authority of justice;
- 4) The fixing of the compensation for expropriation by an Arbitration Board.

The declaration for public utility shall be a decree or an order made by the Council of Ministers, stating of public utility operations or work to be undertaken, such as construction of roads, railways or ports; urban works; facilities of public services; military works; development, agricultural centers or natural reserves; protection of site or monuments; the work of research or development of water points, irrigation, sanitation; distribution of energy; the work of triangulation, surveying, levelling and Installation of terminals, etc..

An administrative investigation always precedes the Act concerning the declaration of public utility. The form and the duration of this inquiry are laid down by order of the Minister responsible for the Areas, taken in the Council of Ministers.

No planting or improvement may not be made on the land located in an area to be fixed by the Declaratory Act of public utility without the authorization of the Minister responsible for the areas. The duration of the easements which arise from the declaratory act of public utility can be by order of the Minister responsible for the Areas, extended for a period of one year, when it is not intervened in act of transferability in the time primitive.

The declaratory act of public utility can designate immediately the properties reached and takes place then of Order of transferability subject that have been observed the formalities prescribed in the next title.

Other relevant laws include:

- (e) Law n°174/AN/91/2nd L Allocating plots of state-owned land in temporary concession.
- (f) Law n°175/AN/91/2nd L Granting in temporary concession a plot of land located at the former (old) salt-works to the Djibouti Arta Plages Company.
- (g) Law n°176/AN/91/2nd L Carrying creation of Special Specifications applicable to the old neighborhoods and to Balbala.

### 1.1.3 Land Tenure Systems

Although the under the law all land belongs to the state, urban land can be owned privately.

Under Article 2 private land is divided into two categories namely urban land designated as such by the legislation in force and rural land which is other land.

Nomadic pastoralists control their traditional pasture areas through customary rights.

Indigenous tenure systems in Djibouti involve the rights to pasture land and water points. The Afar and the Issa maintain similar customary tenure practices, both investing regional tenure control in tribal groups. Local tribal units are subdivisions of the sultanates that have historically spanned Djibouti's borders with Ethiopia and Somalia. A portion of the land traditionally used for transhumant herding is assigned to each family within a tribe. This land remains within a family, and the use rights are inherited by sons of successive generations. If a family has no male heir, the tribal chief may choose to reallocate the land to other families. Among the Afar, tribes are divided into noble and vassal groups. Noble tribes will cede to related vassal tribes the use rights of pasture and water points in exchange for their support and services in the event of warfare.

Unrelated vassal tribes must borrow pasture land in exchange for a tribute payment.

The tribes of the Issa are less hierarchical than the Afar, and a larger portion of traditional Issa territory lies outside of Djibouti's contemporary borders. The head of an Issa family unit will decide when and where next to move the herds, taking into account the current state of familial and/or friendly relations with other Issa families whose lands he might traverse.

Since the Djibouti government consists of both Afar and Issa people, and since there are few crops to be threatened by the pastoralists' herds, there is no national tenure legislation that favors agriculturalists' rights over pastoralists' rights. Unlike most African countries where pastoralists are disadvantaged by tenure codes that do not recognize

grazing as a productive use of the land, Djibouti upholds (or, with an absence of other legislation, it at least does not contradict) the traditional tenure rights and management practices of pastoralists.

There is little pressure or concern to codify pastoralist grazing rights, or to title their tribal and family-based landholdings, because the customary mechanisms of conflict resolution regarding pasture lands and water points continue to function. Furthermore, due to the droughts of the 1980s and the draw of urban-based amenities and services, there is an increasing trend towards sedentarization.

Gender issues are acute even by regional standards. The country's clerics follow a local interpretation of Islamic tradition that differs from Islamic inheritance practices elsewhere in the Muslim world, women do not inherit land or land access. Men own the animal herds as well as the land. Women may possess only few animals from her dowry.

## 1.1.4 Land Administration and Institutions

There are some institutions that are responsible for land administration. The major one are as follows:

- a) Ministry of the habitat, the planning and the environment

This Ministry is responsible for the preparation and the application of the Habitat Policy, town planning, the environment and the development. The Secretariat of State of the Ministry of the Habitat, the planning and the Environment responsible for housing prepares coordinates and implements the policy of the government in the matter of housing. It is in charge of ensuring the security of land and to facilitate the access to housing. In this title, it defines and implements the policy of simplification of procedures



in accordance with the policy of reform of the administration and in conjunction with the relevant Ministries.

#### b) Ministry of Agriculture, Water, Fisheries

The Ministry of Agriculture is responsible for the implementation of sectoral policies in the areas of food security, rural development and water. It also has for mission the promotion and the development of animal production and plant, the improvement of the vegetation cover, the study and the exploitation of water resources, as well as fisheries production. It is also responsible for the policy of rural development especially assistance to the production, promotion of agricultural activities and agro pastoralists.

#### c) Ministry of the Interior

This Ministry is responsible for guaranteeing public security and civil, to organize the elections and to implement the policy on decentralization. It designs and implements the policy of decentralization of the services of the State and the transfer of skills between the State and the territorial communities for local governance. It defines and implements the policy of implantation of the administrations and the services of the State in the regions in particular in the field of approximation of public services of the users.

#### d) Ministry of Higher Education and Research

This Ministry is responsible for Higher Education and Research and in liaison with other interested departments, prepares and implements the policy of the Government relative to the development of the Higher education and research. It supervises University of Djibouti and the Center for the Study and Research of Djibouti.

## 1.1.5 Land tax in Djibouti

The law levies rental income tax on income from renting out land. However, rental income is not included in the profits that are subject to the tax on business profits when they are related to a land tax on built properties. The law also provides for tax on capital gains realized on property transactions related to buildings or property rights and

securities. The law further provides for land contribution and built properties where the tax base for property tax on built property consists of the perceived rent or rental value determined by a commission, the composition of which is defined by law. This tax is generally calculated on all land titles held by the taxpayer.

The law specifically provides for unconstructed properties where annual tax on undeveloped property concerns all undeveloped land, except for properties that are specifically exempt by law. This tax is at the rate of 25%.

## 1.1.6 Gender concerns in Djibouti land governance

Article 1 of Djibouti's Constitution as amended in 2010 states that the state assures to all equality before the law without distinction of language, of origin, of race, of sex or of religion. It respects all beliefs. Under Art. 12 the right to property is guaranteed by the Constitution. It may not be infringed except in the case of public necessity legally established, under reserve of a just and prior indemnity. From the above provisions it is deduced that the constitution upholds the rights of women to property including land.

## 1.1.7 Challenges and Gaps Land Governance

- There is no National land institution responsible for land administration;
- The land law is inadequate especially in relation to land acquisition and resettlement;



African Union



African Development Bank



Economic Commission for Africa



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## LAND POLICY INITIATIVE

# LAND GOVERNANCE IN IGAD REGION

Assessment of Land  
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## DJIBOUTI

Country Profile



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

**Swiss Agency for Development  
and Cooperation SDC**