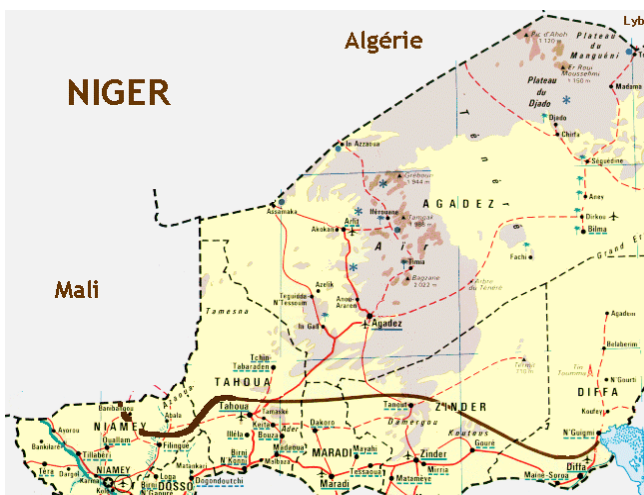


LAND TENURE OPTIONS: EXPERIENCES SHARED AND IMPLICATIONS FOR ETHIOPIA

Background

Ethiopia is in the process of developing pastoral lands administration and use policies and laws at both federal and regional levels. To date only one pastoral-dominated region – Afar – has developed its Pastoral Land Administration and Use Policy (2008) and Proclamation No. 49/2009, whilst regulations for implementation are still in progress. Critical issues that need to be addressed in the continuing development of these policies, laws and regulations include i) identifying the most appropriate land tenure system that works within the limitations of federal law¹ and Ethiopia’s Constitution yet provides for the effective functioning of the spatially and temporally flexible pastoral (and other rangeland) production systems; and ii) an accompanying governance system that can effectively govern and manage the ‘nested hierarchal’ set of rights found in multi-use landscapes such as rangelands.



Map showing the border between the pastoral (and desert) zone in the north of Niger and the agricultural zone in the south.

north of the country where pastoralists reside (77% of the population), and the agricultural zone in the south, as redefined in the Rural Code 1993 (Articles 23-31) and Pastoral Code 2010. In the agricultural zone land is subject to private ownership, but even here, pastoral enclaves, corridors, and grazing enclosures are protected. Pastoralists also have priority use rights after the official ‘opening day’ of fields post-

In order to inform these developments, two experience sharing visits were recently organised for, amongst others, government and NGO representatives from Ethiopia, to a) Niger (funded by USAID and Oxfam GB); and b) Kenya and Tanzania (funded by IFAD and the International Land Coalition – ILC). This briefing highlights some of the experiences shared during these two learning visits.

Experiences shared from Niger

In Niger, the country is clearly divided into the predominantly pastoral zone in the middle to

¹ Namely the Federal Land Administration and Use Proclamation No. 456/2005, as well as the Federal Lands Expropriation and Compensation Proclamation No. 455/2005.

harvest, and grazing in ranches and forest reserves is allowed during times of pasture scarcity. In the pastoral zone land is owned by the State and pastoralists enjoy exclusive collective priority access use rights (*terroir d'attache*). Private water points are prohibited. Pastoralists are given priority use rights in their 'home grazing areas' – their 'normal' place of residence, which provides opportunities for them to be attached to (administered by) a Land Commission. To protect pastoral resources and prevent the granting of private concessions by the State in the pastoral zone, Article 5 of the Pastoral Code provides:

“Subject to provisions within the current law, all forms of exclusive appropriation of pastoral areas under the public domain of the State and local government is prohibited. In particular, no land may be leased if it constrains the mobility of herders and livestock as well as access to pastoral resources.”

Experiences shared from East Africa

In Kenya, there are three categories of land: public land, private land (in predominantly urban areas), and 'trust' land (recently renamed 'community' land in the 2010 Land Policy, endorsed in Kenya's new Constitution, 2011).

'Trust' or 'community' land

'Trust' land was established under the British colonialists who placed community common property lands 'in trust' under County Councils. However there have been problems with this approach and those who live on trust land for generations have often found that they cannot assert any rights to the land when decisions about its use or allocation are made. Under the new Land Policy 'community land' (previously called 'trust' land) will be demarcated and its title allocated to a particular community group.² The Policy seeks to recognise the rights of communities (including pastoralists) to access resources upon which they depend. Community (elected) Land Boards will be established to manage access to the land and resources. Secondary-use access of land e.g. to access water, is also accounted for, and the particular role of women recognised.

Within this context, communities have already been able to strengthen their rights to land and resources through the development of by-laws based on documented customary management systems and institutions, which are given legal backing at the County level. This has enabled a re-strengthening of customary mechanisms of rangeland management including across traditional grazing areas such as in the case of the Boran, Garba Tula District, where management has been reinstated across *dheedas*.

² A six step process is provided including documenting and mapping of customary land tenure systems; establishing a clear legislative framework and procedures for registration; reviewing all acquisitions; developing participatory processes; incorporating customary mechanisms of conflict resolution.



Group ranches

During the drive to privatise land and resources in Kenya, the post-colonial government established group ranches in many trust lands. This went hand-in-hand with the development of the Kenya Livestock Development Project. Mainly established in Maasai domains, group ranches were a land tenure system that was common yet private. It had been agreed that the ecology of these areas did not favour the registration of an individualised land tenure system, but could accommodate division into smaller units (ranches). These would then be registered as owned by the group of people customarily resident and having recognised customary rights in or over the area. It was anticipated that range management would improve and groups would be able to access credit. This was facilitated by the 1968 Land Adjudication Act 40 and the Land (Group) Representatives Act 41.³



A young Maasai pastoralist on Olkiramatian Group Ranch explaining how having secure rights to their land has allowed them to adapt to new challenges by carrying out land use planning including zoning, and diversifying livelihoods whilst maintaining their pastoral production system.

By the 1980s the majority of the group ranches were in difficulty – rangelands had been degraded, management systems had broken down and there was increasing pressure to privatise the lands and in some cases to sell them off (including from government keen to see more individualised tenure in place). This led to an ongoing process of subdivision, which in time has led to a number of serious negative consequences including an increase in landlessness among the Maasai (much resulting from a lack of full understanding of the transactions taking place); and an increased vulnerability of land users to drought as mobility was severely curtailed and key dry season grazing areas lost to other land uses.

In Kajiado District (south of Nairobi) for example only a handful of the 52 group ranches established there have *not* subdivided. These few have managed to maintain their pastoral livestock production systems to the advantage of the community at large, whilst also diversifying their livelihoods by investing in tourism and agriculture in suitable areas. Olkiramatian Group Ranch for example has zoned the Ranch into grazing, conservation and agricultural areas (fed by permanent rivers) and has sub-divided the latter into individual plots though the rest remains communal use.

³ For a detailed description of group ranches, strengths and weaknesses see report by Peter Opondo in CDC (2002).

The implementation of Kenya’s new Land Policy is likely to further change the group ranch system, encouraging some ranches to further sub-divide and perhaps others to function as an interest group registered under ‘community land’. Whatever the future however, it has become clear that to maintain a productive livestock system which optimises benefits from the ecological and climatic vagaries of these predominantly dryland areas, mobility and collective sharing of resources needs to be maintained. And some kind of association or body is required to undertake land management functions on behalf of the group of owners who commit to this.

Village Land and village land use planning in Tanzania

Recently in Tanzania a number of Acts⁴ have been passed that provide for the recognition and formalisation of village lands⁵. The Acts cover both individual and common property – the latter being managed under the authority of the Village Council. This legislation has conferred property rights on occupiers of customary land that are as

secure as the property rights conferred on those holding land under granted (statutory) rights of occupancy. The Village Land Act requires villages to allocate lands between these individual and communal categories, zoning⁶ them for different purposes, as well as designating some lands as areas set aside (*akiba*) which will be allocated to the individual or communal areas at a later time. The Village Land Act thus provides a relatively secure tenure framework for communal land uses such as grazing pastures and forests, as well as specific requirements for basic land use planning and zoning.



Village land use plan of Loje Village, Chamwino District including zoning of grazing areas

The process of delimitating and formalising village lands is now being carried out across the country (albeit slowly). Over 600 villages (out of 12,000 on mainland Tanzania) have gone through the process. 266 of these include the protection of grazing land providing to a total of 1.4 million ha.⁷ Local by-laws provide the legal basis for enforcement of plans. Capacity building of local governments, Village

⁴ Namely the Village Land Act No 5 (1999), the Land Use Planning Act No 6 (2007); and the Grazing and Land Animal Feed Resources Act No 13 (2010).

⁵ In Tanzania radical title of all land is vested in the State.

⁶ “Zoning” may mean different things to different people. Officials see it as a way of permanently demarcating or fencing off areas for exclusive use i.e. ordering complex landscapes into relatively simple and non-overlapping categories. Pastoralists tend to have a more flexible and integrated approach, reserving areas for particular use and managing them through conditions/rules of access, sometimes with physical demarcation occurring along a gradient of scarcity/importance (i.e. the more strategic/high value an area is, the more likely there is to be a barrier of some sort (UCRT 2010).

⁷ Personal communication Maria Mashingo (2010).



Councils and local communities is an important part of NGO and government support in the process. Cross-village agreements that can be used to formalise sharing of resources such as grazing and water between two or more villages, can be established. Further details of the village land use planning process can be found in UCRT (2010).

Key lessons learned

Where land is registered or titled (to a group or individual) security of tenure appears to be greatest. However tenure security alone does not make people feel secure: it also relies on a number of other factors.

No tenure system is secure unless government and other responsible authorities enforce it. The examples above show that this is possible where commitment, resources and an effective governance system exist. Such a governance system seems to work best where it has been developed specifically for the given tenure regime as well as local production/livelihood and rangeland management systems. For multi-use landscapes and in particular where there are different overlapping (e.g. primary and secondary) uses of land and resources and/or a need for different tenure types, a 'nested' governance system can work best. This can incorporate both customary, and 'modern' or government organisations and institutions.

Other factors that influence the level of perceived tenure security that people have include: knowledge of and documentation of boundaries and resources; transparent, accountable and strong leadership; management regimes with clear roles, responsibilities, rights and distribution of benefits (security improved by formalisation through by-laws); positive/negative relationships with other land users/owners; and the ability to realise benefits from the land and resources both directly and indirectly – where more direct benefits are realised security tends to be higher (in particular in common property regimes where the realisation of such benefits provides



Participatory mapping of natural resources can be a useful starting point for better understanding resource distribution and boundaries, their documentation, and negotiations over access and related agreements.

access to collective and reciprocal support mechanisms).

Village land use planning (as in Tanzania) seems to be a model that can protect common property lands, and if well implemented facilitates continued sharing of resources across village boundaries, and the protection of pastoral production systems. However, often the VLUP process is compromised by a failure to provide adequate time, space and resources for appropriate levels of community participation, sufficient negotiation between different actors to ensure all land conflicts are resolved and consensus is reached, and the development of facilitating and binding agreements including for cross-village sharing of resources. A major factor in this is the relatively high cost of the VLUP process, which can be TShs 35million per village (over US\$21,000).

Finally, it seems that many of the major forthcoming threats to the security of rangeland users including climate change and population growth, can be better accommodated by those tenure systems that are more flexible and open (i.e. those existing as community or communal land), as opposed to those that are 'locked-in' to a specific tenure arrangement (for example the group ranch system). This not only relates to the flexibility of the tenure system to respond to such challenges but also the temporal and spatial flexibility for resource use that the more 'traditional' systems offer.

Implications for Ethiopia

The experiences of Niger and East Africa provide important lessons for Ethiopia and the development of policies and land tenure systems for pastoral areas. The exact nature of these land tenure systems should be influenced by factors including current land use systems. For example those areas/regions that require and support more mobile forms of pastoralism are likely to require different land tenure systems to those that are more agro-pastoral in nature. And those areas/regions where there is a strong governance system still in place, through clans or other customary institutions, are likely to be able to support different land tenure systems than those where such institutions are weak. The decentralised political structure in Ethiopia through the regions provides the room and flexibility for incorporating such variation.



Regional specific policies and legislation are required to reflect the different livestock production systems found in the country.

The development of regional policies would be assisted by the presence of a more detailed guiding policy framework at federal level for development of land tenure and related governance structures in the rangelands. This would help to resolve current contradictions and confusion in the legal system and inconsistencies in public

administration and resource governance.⁸ Drawing on the lessons learned above, such a guiding framework could include:

1. In-depth consultation and information gathering processes with the full participation of local communities in order to fully understand current (customary) land tenure, use and management systems, governance structures, and their strengths and weaknesses. In Ethiopia, conducting consultations with all stakeholders during law-drafting processes is a requirement under the Federal Council of Ministers' Working Manual, however there is no developed procedure or guideline to determine how this should be done or the level of consultations that are expected.
2. Multi-level planning, management and securing of resources that provide for an understanding of, accounting for, and protection of the complexities (spatial, temporal, institutional) of rangeland systems. This planning should be informed by current land use and management practices: in some cases the village may be the most appropriate starting point, but in others it is likely to be a much larger unit – the landscape or rangeland. In the case of the latter there will be added challenges of working across smaller administrative boundaries, however the



Where customary institutions are strong they should form the basis of adapted or strengthened governance structures that can effectively manage new challenges faced by pastoralist communities.

continuing functioning of traditional resource management units such as the *dheedas* in Borana, show that governance is still possible at this scale. The right framework for this process can be informed by a number of 'system' approaches that have been developed and are being tested – see for example Flintan and Cullis (2010) in Ethiopia; the work of Alden Wily (2008; 2005) in Sudan and Afghanistan; and ICARDA/IFAD in northern Africa (Nefzaoui et al 2007).

3. Clear and workable decentralised governance structures, which reflect the complexities of land and resource access, use, and management in rangelands where multiple uses and users (and their rights) can overlap and rights of access may be dependent upon a number of factors. These should be based on current customary institutions and practices, but may require adaptation to new challenges facing rangeland users and for example, reflect human rights standards accepted by the Federal Constitution. A 'nested' hierarchal system of governance that functions from the

⁸ For example, the Afar regional State has developed and issued a Pastoral Lands Administration Proclamation that clearly provides that no private holding shall be allowed in the area assigned for pastoral grazing lands. However, under the current Federal settlement program individual holdings will be created in areas that used to be pastoral grazing lands; etc (Mulatu 2012).

landscape/rangeland level through to very specific tenure niches such as for a tree or water point, is likely to be most appropriate. These should include mechanisms for incorporating all land users in decision-making processes and conflict resolution on an ongoing basis.

4. Better-defined guidelines for investments (and investors) in pastoral areas, which are fully enforced. These will serve to encourage investors to provide benefits for local users including protection of migration routes through farms, ensuring use of by-products of crops by pastoral communities, strict pollution control measures, ensuring timely payment of compensation to local communities for lost land and resources, as well as preferential treatment in employment. These will assist in providing clarity to local land users of the terms of agreement of investments and help resolve local conflicts.

And finally, the guiding framework should include

5. Enough room for flexibility and adaptation to the many challenges that rangelands and rangeland users are facing and will continue to face in the future including climate change. As described above, it has been shown that land tenure systems that provide for rangeland use and production over a larger administrative unit (such as a landscape), have proved more effective in adapting to new challenges than those formulated on a smaller unit such as a village.

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