

The Political Economy of Land Reform in Pastoral Areas: Lessons from Africa, Implications for Ethiopia

By Fiona Flintan

Paper presented at the
International Conference on the
**Future of
Pastoralism**
21-23 March 2011

Organised by the **Future Agricultures
Consortium** at the **Institute of
Development Studies**, University of
Sussex and the Feinstein International
Center of Tufts University

THE POLITICAL ECONOMY OF LAND REFORM IN PASTORAL AREAS: Lessons from Africa, Implications for Ethiopia

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Abstract

In the last decade land reform in pastoral areas has gathered pace across Africa. From the *Code Rural* in West African states to village land use planning in Tanzania, policy and legislation has taken positive steps towards providing greater protection to rangeland users and the formalisation of customary rights to land and resources. Despite this however, implementation and positive impact on the ground has been hampered by a lack of accountability, transparency, enforcement and unequal power relations between different stakeholders. Pastoralists and other rangeland users face ongoing if not, increasing, insecurities as land is removed for commercial and subsistence agriculture; conservation, tourism and wildlife hunting; and dams and other infrastructure. Where there is space for the growth of social movements and civil action, there have been better examples of success in preventing such appropriation.

As such this paper highlights that though policy and legislation is improving, the political economy of land reform also needs to be taken into account and addressed: good governance; the development of appropriate institutions with 'balanced' and effective power; and 'space' for civil society growth and action, are as vital to securing land and resource rights as a proclamation declaring village rights to a piece of grazing land. This paper will discuss these issues in the context of current land reforms and land use change taking place in Ethiopia. It is produced with input from members and partners of the International Land Coalition (ILC) – a membership organisation lobbying for fairer pro-poor policy and implementation of land reform across the globe.

Introduction

Ethiopia's pastoral areas are being highly threatened with the rangelands becoming increasingly fragmented and barriers to mobility rising. The causes for this are complex and are related to historical, political, economic and environmental factors that have influenced how the pastoral areas are valued, managed and changed (for a discussion on this see for example Helland 2006).

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¹ The views expressed herein are my own personal reflections and do not necessarily reflect the views of the International Land Coalition or its members.

Today, many pastoralists have chosen to, whilst others have been forced to, change their livelihood system away from livestock production and towards a more diverse system, which includes such as trading of goods or employment, and/or eking out a living growing crops in what is commonly an unfavourable environment. Though for some, a more sedentarised living has its advantages (such as being able to access services) for others it means increased poverty and food insecurity.

A key factor in these changes has been the lack of security that pastoralists and other rangeland users have over their land and resources. In Ethiopia, all land belongs to the State, and though pastoral rights have received recognition at the highest level, as embodied in the Federal Constitution (1994)², they are not protected in practice nor has effective land tenure systems been developed for the pastoral areas. As a result, pastoral lands have been encroached upon, enclosed, lost, leased, or because pressure on remaining land and resources is so high, degraded.

According to the most recent data on land use coverage of the different pastoral regions at the time, in 2000 it was shown that there had been a dramatic increase in land use change to crop agriculture with figures around 2 million hectares. These included 178,000 hectares in the Afar Region, 390,000 hectares in the Somali Region, 1,332,900 hectares in the Borena Zone of Oromia Region, 58,503 hectares in South Omo of SNNPR, 32,452 hectares in Gambella Region, and 38,717 hectares in Benshangul Gumz Region (Beruk Yemane 2000).

In the Awash Valley by 1973 52, 370 ha of prime dry-season pastures were irrigated by 23 commercial schemes (Beyene 2006). By 1989 the area had expanded to 68,000 hectares (Rettberg 2010). Water resource development here continues. In 2009, two new large dams, the Kesseme and Tendaho dams were nearing completion. The objectives are to irrigate 90,000 ha. of sugar cane, generate 100 MW of hydropower and facilitate socioeconomic development (Beyene 2006). And a study conducted in 2010 found that all Karrayyu households surveyed had lost grazing and water resources to non-pastoral uses (Eyasu Elias & Feyera Abdi, 2010: 7).

Other losses and encroachment have been encountered in other parts of the country through the enclosing of land for individual use (in Borana – Gezu Bekele 2008 and in Somali region – Sead Oumer 2007); the removal of land for government livestock ranches (Boku Tache 2000); the redrawing of administrative boundaries (Homann and Rischkowsky 2005); the establishment and enforcing of national park boundaries (Beruk Yemane 2000); the loss of land to invasive species such as *Prosopis juliflora*, which has taken over more than 1 million hectares of land and over 600,000 in Afar alone, important for grazing and access to water³; and through the leasing of land to commercial investors.

Indeed, Ethiopia is said to have “huge investment potentials for agricultural development” (MOARD 2009). For the past five consecutive years the agriculture sector has grown faster with more than 11% average annual growth. The agriculture

² “Ethiopian peasants have the right to free land for grazing and cultivation as well as the right not be displaced from their own lands” (Article 40 (5)).

³ Based on amending figures quoted in Flintan 2009, based on a growth rate of 18% p.a.

sector accounts for 47% of GDP, provides 85% of employment and 90% of foreign currency earning. It is said that out of the total area of the country (111.5 million hectares) 74.3 million is suitable for annual and perennial crop production and only 15 million is under utilisation. The irrigation potential of the country is estimated at around 4.3 million hectares (FDRE Embassy, Stockholm 2008). Of the total areas of the country approximately 45% is mid-highland and highland and the remaining is lowland despite their challenging climate: low and erratic rainfall, and high temperatures. These lowlands are also where the majority of the country's roughly 9.5 million pastoralists and agro-pastoralists live (in Kloos et al 2010).

3.7 million hectares has already been identified by the federal government and delineated as agricultural investment areas, with nearly 1.6 hectares already deposited in the federal land bank. The land is found in four regional states: Gambella, Beneshangul-Gumuz, SNNPR and Afar⁴ – all areas with significant number of pastoralists and agro-pastoralists (see for example Figures 1 and 2). Though it is said that land is most suitable for agricultural crops, the large areas of grasslands in these parts are also said to provide opportunities for livestock production (ibid). Further threats to loss of lands come from such as the Gibe III dam in South Omo (Kloos et al 2010).

Figure 1: Agricultural investment areas in South Omo (Source: FDRE Embassy, Stockholm 2008)

⁴ The hectarage is divided as follows: Beneshangul Gumuz – investment areas have been delineated in Dangur, Guba, Wombera and Assosa districts – a total of 691,984 hectares; Gambella – investment areas have been delineated in Akobo, Dima, Itang, Goge, Jikawo, Jor and Wantawo to a total of 444,150 hectares; SNNPR where a total of 180,625 hectares have been identified in Dassenech, Nyangatom, Hamar and Southern Ari districts (all pastoral areas); and Afar – a total of 409,678 hectares have been delineated in Asayta, Dubti, Afambo, Mille, Gewane, Amibara, Awash Fentale, Dalifage, Dewe districts – again all areas dominated by pastoralists.

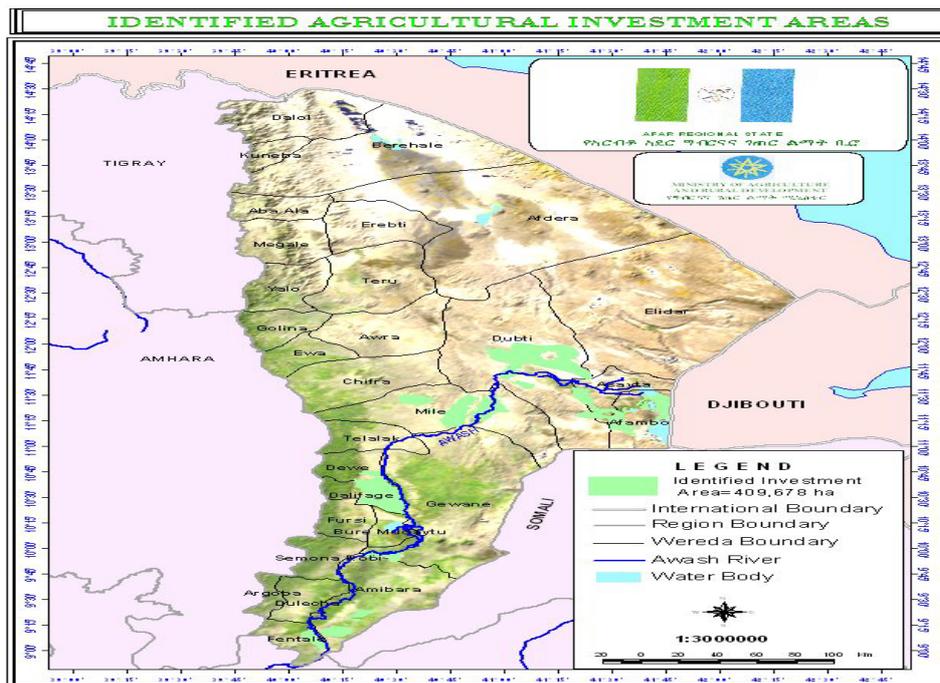
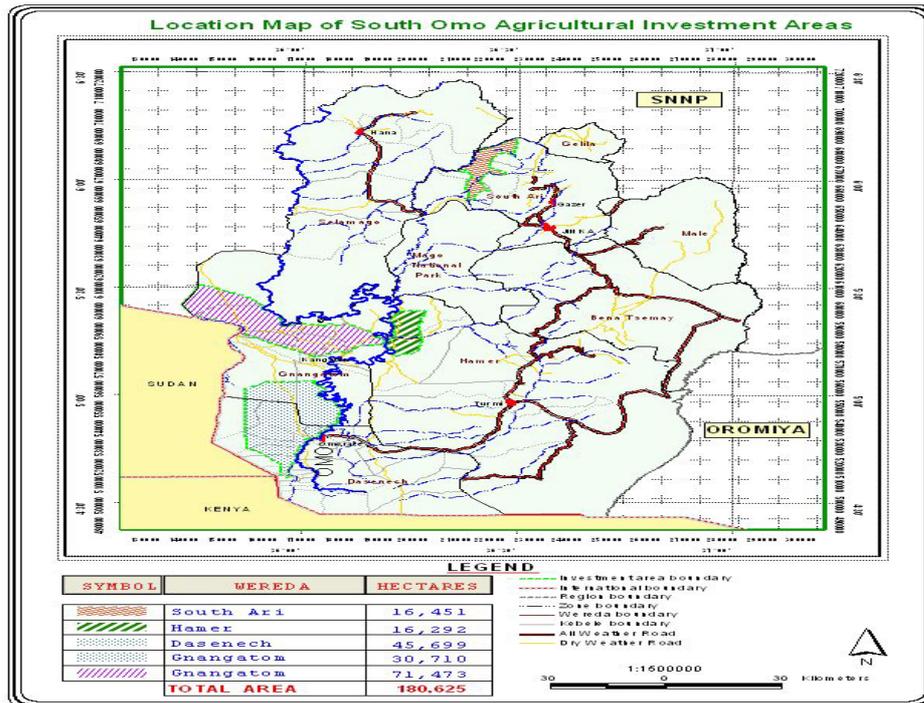


Figure 2: Agricultural investment areas in Afar (Source: FDRE Embassy, Stockholm 2008)

Though some regional governments are in the process of developing policy and legislation, which could secure a greater degree of rights for pastoral communities these are unlikely to succeed unless the political economy of land rights is also addressed. For example in Afar, where policy and legislation has been developed for pastoral areas, the accountability and administration of investment land has recently been transferred from the region to the federal government (Sutton and Kellow 2010). Few pastoralists know about the rights they already have, nor how to defend them. Illiteracy is high – in 1999 the literacy rate was 25%, and only 8% in pastoral

areas (EFA 2006) and there is a lack of judiciary and law enforcers even if they were willing to defend pastoral rights. Conflict between different groups has increased and insecurities are high. Civil society organisations and NGOs are constrained from assisting pastoral communities due to restrictions placed on them by the government such as the Proclamation for the Registration and Regulation of Charities and Societies (2009) (EthioMedia Website 2009). As such, even if Afar's legislation is fully implemented and a clan's rights to resources are registered, what impact this will have in protecting those rights is highly questionable.

This paper will discuss these issues in relation to land reforms that have been carried out in Niger and Tanzania, and what impact addressing or not addressing these issues has had on land reforms in pastoral areas there. Experiences will be drawn from members of the International Land Coalition – a membership organisation lobbying for fairer pro-poor policy and implementation of land reform across the globe. The paper will then suggest what implications this has for Ethiopia and how best such aspects can be addressed if a more positive and beneficial land reform process is to be supported.

What is meant by political economy of land reform

However, first I would like to clarify what I mean by 'the political economy of land reform.' Blaikie (1985) concluded in his pioneering work on soil erosion in developing countries, that we should not only address land-related problems with a 'place-based' concern where a problem occurs, but with a 'non-place-based' concern for political-economic relations between people who use land, and between them and others. Politics are influential in the strategies used to present different environmental explanations as legitimate bases for policy (Forsyth 2003). Ecological arguments are never socially neutral any more than socio-political arguments are ecologically neutral (Harvey 1993). And it is only through political means that a solution to environmental [and I suggest other resource related] problems in developing countries will be devised (Bryant 1997).

There are three key areas of focus when taking a political economy approach: one, narratives based on different knowledge and value systems and their political agendas; two, the relations between different actors including contestations, negotiations and cooperation; and three, pluralism – different people have different needs, interests and positions based on different sets of knowledge, understandings and assets.

Narratives

The narratives that different groups of actors use to describe each other and how they believe development (including land reform) should 'progress' find their roots in political-historical influences. Narratives are formed as a result of how a particular group of actors understand the world, understand 'development' and understand such as 'pastoralism'. This understanding is influenced by different underlying agendas and goals, based on different value systems. For example within discussions over

pastoral land tenure there may be a number of narratives that are regularly used but bear little relation to reality. For example, Hardin's (1968) 'tragedy of the commons' narrative or the narrative that forms the basis of many a land tenure programme - that 'land privatisation will lead to greater security, and hence greater investment in land (resulting in greater productivity) and the use of land for collateral.'⁵

More often than not these narratives tend to be marked by a state of 'crisis' that can challenge and obstruct environmental management at the local level by treating the existing rural economy as a problem to overcome rather than an asset on which to build. Often local communities have little political space to challenge such narratives, though in some circumstances they can be used by local 'elite' and powerful groups for their own agendas and in justifying certain actions and control (Amanor and Brown, 2003).

Such all-encompassing narratives have been criticised and found to be inadequate in acknowledging the institutional nature of many environmental problems as experienced by different people in a variety of locations and circumstances (Forsyth, 2003). "Discourses simultaneously have a structuring capability, by providing the parameters within which people act and shaping the way actors influence the world around them" (Keeley and Scoones, 2000:91). Further, actors (sharing common values and outlooks) can join together (consciously or sub-consciously) to form 'actor networks'. These networks strengthen and extend the reach and influence of the actors and their favoured discourse. They are able to establish discourses in policy by taking advantage of *policy space*. Policy elites have agency to control the timing and content of policy reforms and so increase prospects for their success within certain parameters.

A better understanding of this has led to a call for the 'democratisation' of environmental explanations by providing greater accountability for how scientific 'facts' have evolved. "This knowledge allows greater ability to criticise hegemonic explanations of environmental degradation, and provides more scope for alternative framings of environmental explanations" (Forsyth 2003: 208). It can be achieved by the use of different methodologies for more realist and socially relevant forms of explanation that consider local framings of external ecological reality from the perspectives of both scientists and local citizens. This can increase the transparency of explanations and allow a local approach to them "on terms determined by people experiencing the problems, rather than according to meta-narratives of explanation or fixed spatial scales (*ibid*: 230).

Contestation, negotiation, cooperation between different social actors

Processes of environmental (and indeed developmental) change are the outcome of negotiation/cooperation or contestation between social actors who may have different priorities in natural resource use, distribution and management (Mearns *et al.*, 1998; Leftwich, 1993). Land is a highly politicised phenomenon: a melting pot of often conflicting interests of diverse stakeholders. As a result land and land issues are often extremely contentious and have formed the basis of many a power struggle. Those actors with the greatest access to power are best able to control

⁵ All these statements are questionable assumptions and discussed in detail in Flintan 2011b

and influence natural resource decisions in their favour (Peet and Watts, 1996). However as Scott suggested in 1985, even the 'weak' have weapons.

For example in mid-2009 in Tanzania, a Police Field Unit evicted pastoralists from a hunting block in Loliondo district allocated to a commercial company called Ortello Business Cooperation. All in all eight villages were burnt down and the inhabitants chased off the land: over 200 Maasai *bomas* were said to have been burnt; women were raped; and more than 3000 people were left homeless without food and other social basic needs and more than 50,000 cattle left without grazing and water. Civil society organisations and NGOs are well established and networked in Tanzania and given a relatively large amount of political space to advocate for land rights and lobby for positive change. On hearing of the incident in Loliondo, a number of these organisations and networks came together, with representatives from the media and carried out a detailed investigation of the incident (FEMACT 2009). The incident appeared in the international press and in 2010, 400 Maasai women made a formal protest by handing in their government party membership cards. When the incident appeared in Parliament, many ministers justified the action in the interests of commercial development. However others condemned the action. Though government support still sits behind the investors, civil action has raised the profile of the incident and awareness.

Such activities are one of many that communities, CSOs and NGOs have been involved with in northern Tanzania and that have played a role in changing legislation, contesting and winning land rights, and changing challenges and threats to their livelihoods to their advantage. A detailed description of these activities is provided in Nelson (2009).

However it is usually the state that dominates as the most powerful actor in land-related issues: the custodianship of land, the environment and wildlife has been vested in it to a lesser or greater extent in all nations. This has been based on a universal cultural perception that the state has been the most appropriate institution to safeguard a national, even international, heritage. The historical development of states has been closely intertwined with the management of the local environments on which those states, and the people they govern, have been dependent (Bryant and Bailey, 1997).

Natural resources such as oil, minerals, water and forests are rare assets that the state still controls to a large extent and have become even more strategically important in the age of globalisation. Additionally, states may even use the control and protection of natural resources as a way of controlling society (local communities) itself. Authority can be asserted over peoples and environments hitherto subject to weak control, thereby strengthening the position of the state in relation to other actors (Bryant and Bailey, 1997; Peluso 1993).

Most *local* governments remain weak in their capacity and skills to take on fully the new responsibilities that decentralisation demands. They may be composed of people with very low education levels and technical capacity: technical expertise regarding forest management or any other specific natural resource is uncommon among locally elected officials, and hiring specialists is likely to be expensive (Larson, 2002). Government environmental agencies particularly those at a local level are

typically of fairly recent origin, possess little substantive power, and must confront the policies of diverse powerful agencies if they are to implement conservation measures. Indeed, some would argue that decentralisation should not take place until the necessary capacity exists (Conyers, 1990). However as Ribot (2001: 44) suggests, “this tends to be a ‘chicken and egg’ type of argument, since more often than not it is only the pressure of decentralisation which motivates the action necessary to improve capacity and the existing staff...to recognise their own potential and demonstrate their real abilities”.

Access to land is fundamental, particularly to the rural poor. As such land is a great source of power and can be used in various ways to control actors and their access to other resources. For local authorities, “land is critical and has played a legitimizing role...in the past” (Ribot, 2001: 52). Due to colonial and post-colonial centralisation policies such power has been somewhat usurped from local authorities: transferring it back can re-establish their legitimacy.

As such decentralisation of land is likely to be a complicated issue. Research in the social relations of common property systems in Africa reveals a seemingly endless variety and complexity of rights, obligations, and rules, many of them *ad hoc* (Bassett and Crummey, 1993). Rights to a particular area of land may have multiple claims upon them, both group and individual, and can include rights for water, fuel, grazing, and cultivation plots, which in turn may vary according to season, species, or intended usage. Questions of whose rights and which rights become ‘privatised’ are critical: the relative economic and political power of competing interest groups and individuals often determines which claims become documented in law (Neumann, 1997).

This lack of strength in regional/local governments opens up a political administrative vacuum at the intermediate level that may contribute to two phenomena. The first is that land-related decisions are taken outwards from formal state organisations towards associations based on kinship, gender, locality and ‘traditional’ political institutions and/or NGOs and other civil society groups. This can open up space for such organisations to mobilise themselves into powerful entities capable of fighting for their rights and control over natural resources. Secondly, management decisions may furthermore move upwards within the formal state apparatus: with central government, parastatals and absentee private capital all playing a more important role (Therkildsen, 1993 in Ribot, 2001).

Under pressure from above (TNCs and international conventions) and below (local communities), the state often uses a very particular strategy of separating policymaking over the use of resources from both the operational activities and the ownership of those resources. For example, if resource management (operations) is being decentralised to local communities, ownership will remain centralised at the national level. Or if ownership is decentralised, either policymaking or management will be centralised. As a result, communities are likely to be confronted with a policy *fait accompli* by the time it reaches them. A lack of willingness to devolve management and unclear chains of command can cause confusion and avoidance of responsibility (Banana *et al.*, 2002).

Such contradictions and unclear directives from central government, in their pull and push approach to devolving power and authority, can lead to confusion and conflict. Roles and responsibilities remain blurred. For example in Sudan, the distorted and confused decentralisation process from the Central Government to the regions have given rise to land claims with conflicting sources of legitimacy and contradictory outcomes regarding who can establish access to and control over land. As a result land scarcity and competition for land has intensified. It is suggested that the situation is triggered and sustained by the absence of effective conflict resolution mechanisms and accelerating poverty and environmental degradation (Egemi and Pantuliano, undated).

People's participation tends to be instrumentalised for the state's own legitimacy purposes. At the same time the state questions communities' own rights and legitimacy. For example, in Namibia, "the 'community' constituting a Namibian conservation conservancy (a government-approved area 'given' to a community for sustainable use of natural resources) is vested with legal status, but only through definition and registration of its membership and delineation of its boundaries. What this suggests, is that "a process which appears to be about the decentralisation of rights also becomes a way of vesting the state with more control over who has legitimate rights to land and resources, and over who is a legitimate member of 'a community'" (Sullivan, 1999a,b).

Conflicts over access to resources have grown as populations have increased, power relations have shifted, and resources have become scarcer and/or their value to different stakeholders increased. In addition resistance to controlling measures have increased in some contexts resulting in a range of methods used from high profile advocacy and lobbying to more 'every day forms of resistance' through 'weapons of the weak' (Scott 1985).

However it has become clearer that cooperation between the different actors is required if win-win situations are to be realised and the examples have shown from Tanzania that governments can come to understand the benefits of working with rather than against CSOs and local communities, and vice-versa. And though negotiations, agreement and consensus can be difficult to reach it has proved to be a fundamental element in sustainable land management and development (FAO 2005).

Pluralism

A political economy approach also recognises that there is likely to be pluralism in the ways that people access land and resources. Indeed in pastoral areas there are often overlapping and sometimes contradictory tenure regimes. Parties to land disputes invoke different norms to support competing claims, and choose the institutional channel, which is most likely to favour their cause ('forum shopping') though typically actors prefer one or the other (Cotula 2006). This can be advantageous to some parties, but others and in particular the less powerful, are likely to be marginalised. There can be competition between arbitration bodies, which can lead to conflicts and land grabbing (Lavigne-Delville 2010). As such the situation is not sustainable and does not provide many rangeland users sufficient protection over the resources that they require for effective livelihood systems.

With a very few exceptions customary land tenure systems are not offered the same security and protection by the government as statutory systems, and until this changes they will always be more vulnerable. Indeed, the large number of incidences of land evictions, appropriations and other losses or conflicts found within the rangelands today is evidence of this. Land reform is said to be a 'complex construct' (Bonfiglioli 2004). Where it has taken place it tends to favour agricultural systems, even where land is predominantly used for other purposes, such as pastoralism. "Land tenure has increasingly become the point of convergence for two principal objectives: the economic goal of making land profitable, and the political goal of gaining control over social groups" (Bonfiglioli 2004: 22). Land use policies have often disrupted traditional mechanisms of control over common property resources, and lead to overgrazing and reduction in quality of vegetation.

Land reforms in pastoral areas

The majority of rangelands are held as commons under customary tenure regimes. The sound management of rangelands is promoted through norms of inclusion (and to a lesser extent exclusion) designed for pastoral activity. In Borana, Ethiopia for example traditional laws are called *seera marraa bisanii* – 'the law of grass and water' (Boku Tache and Irwin 2003). Resources are managed as common property with access derived in the first instance as a member 'of the group' (Cousins 2007).

Common property is characterised by the following elements: overarching ritual and cosmological relations with traditional lands; community 'rights' of control over land disposal (sometimes delegated to traditional leaders); kinship or territory-based criteria for land access; community-based restrictions on dealings in land with outsiders; and principles of reversion of unused land to community control (Fitzpatrick 2005).

Customary institutions and tenure regimes govern the different layers of overlapping sets of rights from the landscape/rangeland (such as those that control grazing across a *dheeda* in Kenya and Ethiopia – Flintan 2010) to 'tenure niches' such as for a water source or a tree (Maxwell and Liebe 1998). Land and/or resources are held 'in trust' for use by the group (and other permitted 'outside' users): they are not 'owned' (in the formal sense of the word). Due to its high connectivity it is impossible to focus on and for example, change one part of the territory, domain or system without affecting the rest.

Land' is a political space where different groups of actors negotiate, conflict and/or reach agreement over access, use and management of land and its resources. Through negotiations and reciprocity required for resource sharing, the use and management of rangeland resources play a key role in the development of social capital and of a strong social fabric among rangeland communities (Cotula 2006).

Access also relies on these positive social relations and the distribution of power between different authorities and actors. In Borana for example, words such as "we" and "our" feature predominantly in Boran conversations, expressing the philosophy of collective resource ownership (Boku Tache and Irwin 2003). This is key to ensuring access to resources in an unpredictable environment. Even the poorest members of rural communities, those without land or too little land to live on (the

'land poor') share the customary ownership of these estates with other, richer members of the community. This may be their only real 'property' (Alden Wily 2005c).

Until the early 1900s 'the commons' and customary systems of land use were allowed to develop with little 'external' interference. However as interests in Africa as a source of natural resources and labour grew, so too did such interest and in particular, focusing on the vast seemingly 'empty' or 'undeveloped' rangelands.

Kenya for example saw the imposition of colonial policy and law in its rangelands. Beginning with the Maasai treaties of 1904 and 1911, and continuing through such as the Kenya Land and East Africa Royal Commissions, 'unoccupied' Maasai lands were appropriated, native reservations were created, and grazing and development schemes dividing up the rangelands into ranches were imposed. The outcome was a shrunken resource base that proved inadequate to sustain Maasai systems of production and an increased sense of land insecurity (Mwangi 2005). In Botswana too, a similar approach was applied with similar outcomes: those who were too poor or too weak to legitimise their claim to what had been common-pool resources were excluded from such privatisation processes (Taylor 2007).

Though independent states (post-colonialism) pushed forward individual titling in an attempt to eradicate this tenure dualism, unlock economic growth for title holders and reduce the powers of traditional leaders, the approach achieved little. And on the contrary, has in the majority of cases led to disempowerment and increased vulnerability of rangeland users, stirred up innumerable costly disputes and tied down substantial state resources (Adams and Turner 2005).

Talking of Kenya, Mwangi and Ostrom (2009: 214) suggest: the 'real' tragedy of the commons is not as Hardin (1968) suggested, but rather the lack of understanding shown by colonial and contemporary government officials of the importance and effectiveness of the customary systems of the Masaai.

Garrett Hardin (1968) presumed that pastoralists involved in a tragedy of the commons dilemma could not extract themselves from it. He proposed that government should control access and use of a commons or that private property rights should be assigned. These are the two "solutions" that have been imposed on the Maasai over time....Neither of Hardin's preferred solutions were more effective in the short term, or more robust in the long term, than the nested layers of institutional rules that the Maasai had developed.

Indeed, legislation across Africa has not only failed to recognise pastoral land use but also given priority land-use rights to agricultural production (West Africa – Hesse and Thébaud 2006; East Africa – Niamir-Fuller 2005). "Mobility was still seen as a problem to be eliminated, not a trump card to be strengthened" (Niamir-Fuller 2005). Individualisation has been promoted rather than collective property rights strengthened.

Land reform in pastoral areas of Niger

In Niger for example a 1961 law established a boundary protecting the pastoral zone in the north from the burgeoning agricultural population in the south. However the

law has not been enforced, there is no coordinated effort to manage the pastoral lands and agriculturalists have increasingly encroached the area resulting in conflicts and degradation of resources (Snorek 2011).

In 1993, the government of Niger wanted to change the way the land tenure system was managed by the traditional chieftaincy by creating more favourable conditions for wider access to land for citizens. This political vision for land tenure management was translated in the “*principes d’orientation du Code Rural*.” The main axes of this policy are (i) securing land tenure for rural actors, (ii) organising the rural population, (iii) promoting sustainable natural resources management and (iv) planning land use (*aménagement du territoire*). The *Code Rural* is a pragmatic and iterative process based on two complementary mechanisms to establish the legal framework and an institutional framework (village, local government (“*commune*”), department, region, nation) to facilitate implementation and supervise. Inter-ministerial collaboration at the departmental and regional level is a key feature of the *Code Rural* (Hilhorst 2008).

The *Code Rural* assembles all formerly valid legislation on rural affairs and defines basic principles. However, such processes tend to oversimplify the complexities of customary tenure systems and as such have failed to accommodate the diversity, variability, imprecision and flexibility of local rules, which are difficult (if not impossible) to capture on paper (Cousins 2002). And as a result, as Lund (1998) concludes the implementation of the *Code Rural*, although designed to enhance clarity, certainty and institutional order, has in fact had the opposite effect: increased unpredictability, increased institutional incoherence, and a greater state presence but with ever decreasing legitimacy.

It is suggested however, that improved implementation could offer better results. ILC is working through the *Code Rural* with IFAD and government partners, with a project called CALI (Collaborative Action on Land Issues). The project provides a focus for convening government and civil-society institutions in order to build a history and culture of collaboration on land policy and practice issues with the hope that the collaboration extends beyond the project cycle.

The project supports a piloting of a process to register household land parcels (agriculture and/or grazing) and protected migration routes. In Dan Saga district, 1271 landholdings have been registered with information concerning the ethnic group and sex of the landholder, the type of land use and how the land was acquired (Issa and Maroussa 2010) (see Figure 3).

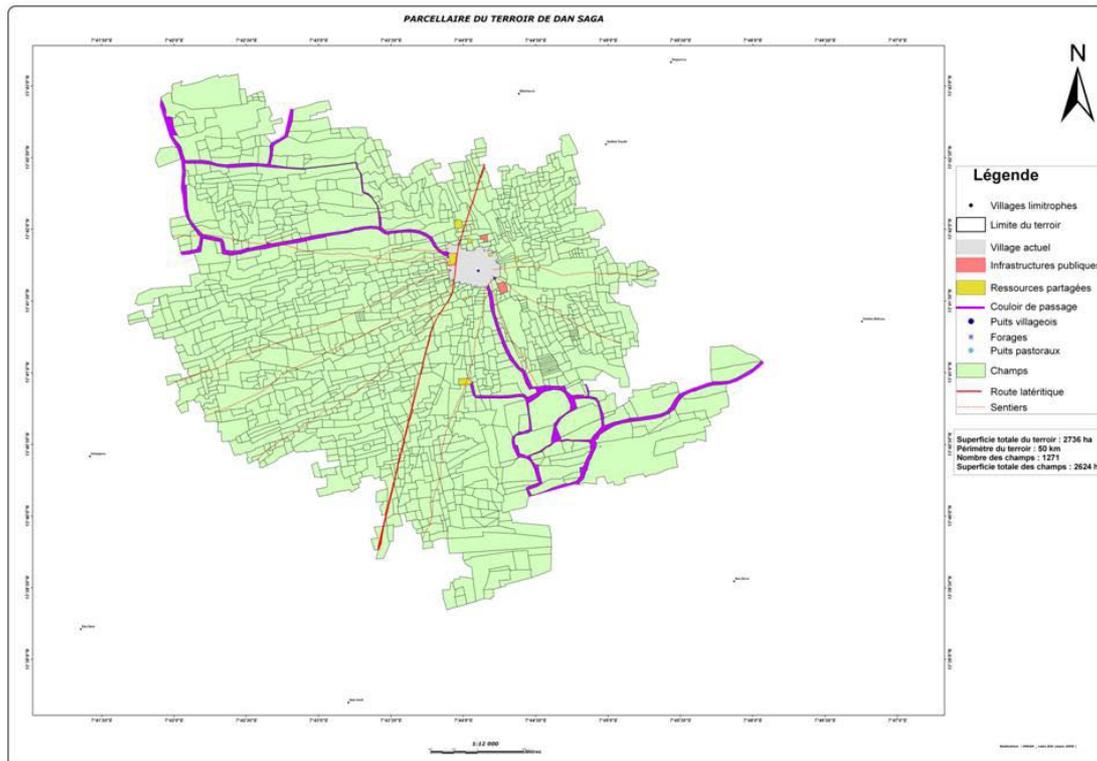


Figure 3 Map of land holdings and migration routes in Dan Saga district, Niger.

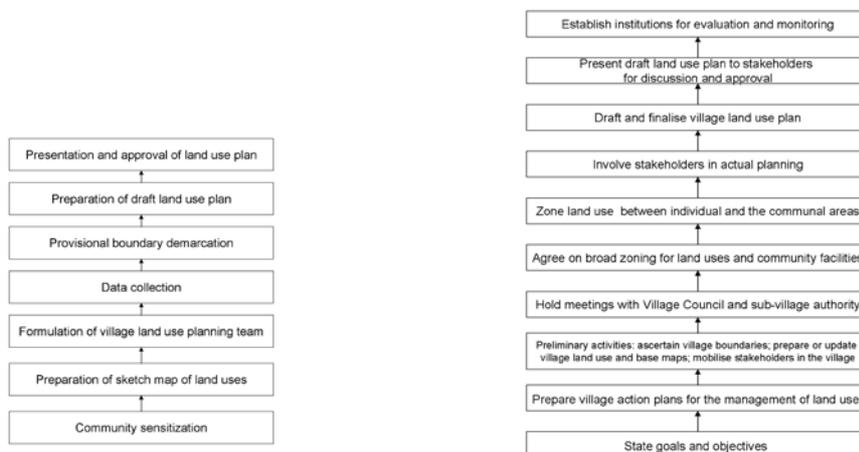
Locally negotiated agreements or *conventions locale* between land users, through a process of stakeholder consultation and dialogue are also becoming popular in Niger. Rules and regulations may address bushfire surveillance brigades, marking out livestock routes, fixing periods for harvesting wild fruits or for entering grazing lands, quotas for resource use (fuel wood/ timber), protection of regenerating forests. Such measures are generally developed between cooperating groups and are not expensive in terms of financial investments, often being based on customary practices. A few of these conventions have been registered with local administrations, but in general the legal status is unstable and suggestions for improving their ‘judicial stability’ generally focus on the role of local governments or on the basis of “*droit privée*” (private rights) through the courts (Hilhorst 2008).

Land reform in pastoral areas of Tanzania

In Tanzania a number of Acts⁶ have been recently passed that provide for the recognition and formalisation of village lands. The Acts cover both individual and common property land – 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 (Adams and Turner 2005). The Village Land Act requires villages to allocate lands between these individual and communal

⁶ 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).

categories, zoning⁷ 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 (UCRT 2010).



(a) (b)
Figure 4: Formal steps in land use planning process in Tanzania as described by 1998 National Land Use Planning Commission guidelines (a) and the Land Use Planning Act of 2007 (b) (Source: UCRT 2010).

The process of delimitating and formalising village lands is now being carried out across the country (albeit slowly). To date, village land use planning has been carried out in approximately 600 villages (out of 12,000 on mainland Tanzania), 266 of these include grazing land providing protection to a total of 1.4 million ha (Mashingo 2010). The PLUP (participatory land use planning process) (see Figure 4) is described in UCRT (2010). Local by-laws provide the legal basis for enforcement of plans. These are developed by the Village Assembly and the Village Council through community consultation. Capacity building of local governments, Village Councils and local communities is an important part of NGO and government support in the process. Local CSOs have trained paralegals who assist communities to understand and defend their rights, and to seek recourse within the courts (ibid).

⁷ “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).



Figure 5 Village land use planning in Loje Village

What lessons have been learnt?

Key lessons have been learnt from these processes that have relevance for further development of land tenure security and reform in pastoral areas. Some of these lessons are discussed here, and further lessons are provided in Flintan (2011a).

1. Land use planning and securing of rights to land and resources needs to be achieved as part of local development processes

Despite the rhetoric of 'participation,' land use planning is still being carried out in a top-down, technocratic and 'one size fits all' fashion. A key objective is to tidy up the perceived 'messy' and 'fuzzy' nature of customary tenure and property rights into a more technical and orderly system.

Many land use planning and land tenure interventions are not included in nor built upon the long-term vision or strategies of land users. Rarely are the specific needs and dynamics of local users, their institutions (including levels of authority, perceptions, trust, access to information), behaviour, interests, or priorities considered. Likewise, external and internal factors that may influence the 'success' of land use planning and its implementation including management of resources, and the demand and supply of goods and services derived from the resource system, are not taken into account. Land use planning is seen as an end rather than a means. And many governments rely on CSOs and NGOs to help communities react to land use planning rather than the communities steer the process; and to adapt their livelihood systems to land use planning rather than adapt land use planning to their livelihoods.

As a result not only might such interventions conflict with the different priorities of land users, but also there is less incentive for land users to invest in the enforcement of and comply with new regulations or institutions, as they have little feeling of 'ownership' or control over them: they are simply imposed. And herders' view of

development involves not just technical innovation, but aspects of institutional organisation and land management at the regional level, which often falls outside the scope of local-level projects that are linked to reinforcing decentralisation (Crane undated).

2. Land users must be involved in decision-making processes

Under the schemes and initiatives described above, land users tend to be given only a limited role in planning, management and investment decisions and an even smaller role in deciding on the evolution of property rights. Even where citizens are invited to participate, insufficient attention is paid to creating the conditions for this to happen effectively.

Not only is the process rather mechanical and driven by central concerns with very short deadlines, but citizens themselves lack the skills to debate the issues and provide alternative policy options backed by strong arguments. Furthermore, even if citizens are able to provide strong evidence-based arguments, these are not necessarily sufficient to ensure appropriate policies (Mali and Niger – Hesse and Thébaud 2006: 19).

As a result policies and their implementation fail to provide land users with the authority or power they require effectively manage the rangelands. Often users do not have the right to reallocate common land to alternative activities like cropping or reserves, so limiting ability to respond to changes in local conditions. Where communities do play a greater role (such as in Tanzania) concerns are raised about the capacity of local groups to enforce rules governing use and access of resources, particularly in relation to more powerful actors (UCRT 2010).

By appropriating local resources and limiting the role of local-level institutions, state ownership has often fostered land use conflicts and the breakdown of collective action within and across customary groups. In particular, where the state claimed ownership but expended limited resources to manage rangelands or relied on bureaucrats to implement management schemes without knowledge of local resources and institutions, many land use conflicts have arisen and resources have become degraded (Africa – Nori et al undated; East Africa – Ngaido and McCarthy 2005).

In Loliondo, Tanzania for example, violent clashes between different land users have taken place on a regular basis despite the fact that land use plans were drawn up in the villages involved ten years ago. These are blamed on inappropriate and non-inclusive land use planning processes that failed to fully address the core problems in the area. And this highlights the need for a) an inclusive and consensus-building land use planning process and b) the importance of ongoing engagement with political and policy processes if local planning initiatives are to have their intended impact (UCRT 2010; Baha et al 2008).

3. The building of effective and accountable institutions and good governance must accompany land reform

Though governments may support decentralisation of authority on paper, in reality this rarely happens and rather, deconcentration tends to be the result extending

responsibilities to lower levels of government without devolving power and providing needed financial and human resources and guidelines. Land committees or associations dominated by civil servants and with token representation of land users may frequently be biased and prone to corruption such as the illicit, taxes for livestock-passage or charging fees for using public water points (West Africa – Cotula 2006) or the receiving of bribes to allow pastoralists to graze on village lands (Tanzania – UCRT 2010).

Such inefficiency from the side of public institutions (partially filled by CSOs and NGOs) creates obstacles to the realisation of development objectives and causes a decreasing credibility of public administration in the eyes of civil society. In turn, this lack of credibility reduces the margins of action of public administration when enforcing law and order, redistributing welfare, collecting taxes, and providing basic services (FAO 2005).

Formalisation and registration processes often prove unfair and inequitable, being open to manipulation, corruption and exclusion by those with more power in societies, particularly if land users are not physically present (Lavigne Delville 2010; Ngaido and McCarthy 2005). In many cases, people with previous customary claims (primary and secondary) to resources have been dispossessed and/or denied future access without compensation.

4. Land tenure reform needs to be built upon customary use of land and resources

Land tenure systems that have supported the registration of individual land holdings have promoted sedentarisation, fragmentation of the rangeland and encouraged the growth of agro-pastoralism and/or agriculture. The impacts of this individualisation and privatisation of the rangelands has in general proved to be negative for the majority of rangeland users: socially, economically and environmentally increasing their vulnerability (Mwangi and Dohrn 2006).

Protection has not been provided to secondary or tertiary users of land and resources, and in many cases their rights have been completely lost. Even within the more progressive policies (such as in Tanzania) livestock mobility is restricted through an increase in fences, enclosures and conflicting boundaries, and the further removal of land for such as fodder and crop production. Land tenure policies tend to demand occupation and cultivation of land to ensure 'ownership' or long-term use: this makes it difficult for pastoralists to be absent from the land for long periods of time and to practice their migrations.

As a result in times of crisis and change such as drought, pastoralists are prevented from moving to use alternative resources – this has greatly increased their vulnerability and the likelihood of greater livestock (asset) loss (West Africa – Hesse and Thébaud 2006; Flintan *forthcoming*). In addition, loopholes combined with poor and unjust procedures still leave the commons more vulnerable to appropriation by governments than house and farm lands (Alden Wily 2011). Increasingly commercial investors focus on these commons as the overall amount of 'available' or 'free' land and resources decreases.

These changes have also impacted on social systems and institutions. As individual values have increased, collective action and reciprocity has reduced. Customary institutions and practices have broken down. Consequently pastoralist households are even more vulnerable to drought and other crises (Flintan *forthcoming*).

Options for Ethiopia

So what does this mean for Ethiopia? There are two key areas to focus on:

1. The development of an appropriate land use and tenure system that provides for an understanding of, accounting for and protection of the complexities (spatial, temporal, institutional) of customary common property systems, particularly those that exist in multi-use landscapes such as rangelands where local development and livelihoods rely on the tracking of rangeland resources across a domain or territory; and
2. The development of an effective governance system that recognises and accounts for different power relations, capacities and needs/interests; and that provides local users with appropriate tools and mechanisms for protecting their resources and land from more powerful stakeholders.

Concerning the first area. There are a number of approaches being developed that offer greater scope for the securing of pastoral rights to land and resources required for their livelihood systems. These approaches are summarised in Table 1, and discussed in more detail in Flintan (2011a). They include:

- i) Rangeland co-management based on the experiences of CBNRM (community based natural resource management) approaches and the development of CCAs (Community Conserved Areas).
- ii) Participatory rangeland management (being piloted in Ethiopia) or community-based pasture management (being piloted in Afghanistan) which has grown out of such as participatory forest management.
- iii) Community development planning based on the use of community level plans within which rangeland management is a part.
- iv) Participatory and negotiated territorial development, developed and being tested by FAO. Its central tenet is that it conceives the 'territory' as an arena for dialogue and negotiation and aims to strengthen social cohesion to improve local resource use and management through a territorial approach and by building credibility between public and private actors.
- v) The protection of communal domains or customary land areas, which secures rights through a nested hierarchy of tenure systems from the landscape through to the common and individual properties found within. The approach is being modified for application in Sudan and Afghanistan.

The exact nature of land tenure depends upon the unit of land or resources, its make-up and how it has been protected and/or managed in the past. 'Security' (and 'insecurity') will mean different things to different people (land users) under a broad range of settings, and/or for different resources at different times and scales. 'Security' and its meanings will need to be 'unpacked' in order to develop the right institutional framework for improving it (Mwangi and Dorhn 2006). And it is unlikely that such security will be achieved by formalisation alone. Fisher et al (2005) suggest: "In fact, legal rights are not always enforced and may even be ignored by

government agencies, while oral agreements may be sufficient if there is a history of their being honoured.” However Liz Alden Wily (2005c) argues:

Whether we like it or not, this means registration. *We cannot escape the reality that each and every common property estate must be defined, its customary owners known and institutional representation established in order for the owners to hold onto that property and reap future benefits from it. If this is not undertaken we are merely sustaining the past and present in which some millions of hectares of invaluable property on this continent are annually lost to the majority rural poor.*

While registration can include titling (an exercise during which rights to clearly defined land units are vested in clearly defined individual or group “owners” and are documented and stored in public registries as authoritative documents) it does not have to. Registration can include the maps and records as well as land registers by village chiefs to track tenure changes (Lavigne-Delville, 2010; Meinzen-Dick and Mwangi 2007). The key is that statutory (parliamentary approved) status is given to the records (Alden Wily 2005c), resulting in greater tenure security (indefeasibility of title) than simple recording does (AusAid 2008).

The importance of providing protection to the whole rangeland, territory, domain or landscape has been highlighted above. However it has also been stressed that beneath this larger layer (however it is defined), it is likely that a number of further layers of different sets of rights also exist that equally need strengthening and protecting. Some of these may already be protected by statutory law including individual landholdings and in the case of Tanzania, common village lands. Others may require recognition and/or formalisation/registration either through already existing legislation or through the design of new. Of prime importance are those ‘hot spot’ areas (see Flintan and Cullis 2010) that are vital for rangeland users and often a priority for such as investors. New and/or adapted tenure options that can be considered include:

- i) Delimitation of community land which formally places a line around the local community’s lands and transfers it to an official map (FAO 2005; Hatcher 2009).
- ii) Rangeland management agreements across villages or other units e.g. in Tanzania
- iii) Group leases e.g. in Namibia (Roe et al 2009; Holden et al 2008).
- iv) Protection of ‘tenure niches’
- v) Other types e.g. conservation type arrangements

These are discussed in more detail in Flintan (2011a).

All the above approaches have a number of common features. Firstly the first step in all of them is achieving a full understanding of the tenure systems that already exist and how they function, how land is classified by local communities and why, and the dynamics of land and resource use. Community mapping is the most common tool used for assisting communities to document their knowledge. Other tools include such as ‘community consultations’ a process that has been incorporated into land-related legislation in Mozambique (see Tanner et al 2009).

A second common component of the territorial/rangeland approaches summarised above is the emphasis on a shared vision being developed and agreed upon by all

stakeholders. Without this it is unlikely that a process of collective access will be fully achieved. This shared vision should be part and parcel of a broader vision of social transformation and development. Land use planning and issues of tenure and property rights should be embedded within and/or linked with wider development processes from the start. Where there are multiple users of land and resources and different interest groups with different rural agendas the process can become complicated, though not unfeasible. 'Scenario planning' has proved to be a useful way of engaging with stakeholders, sharing understanding, exploring potential change and defining a common vision to meet development needs as well as achieving environmental management and protection (Sayer 2009; SOS Sahel/IIED 2009; Cavanna and Abkula 2009).

Thirdly – negotiating and building consensus – which for many is the most important stage of the process. Negotiations will be required between different stakeholders to reach agreement. Trade-offs are likely to be necessary. Special attention will need to be given to ensuring that groups who are normally marginalised from decision-making processes are provided with opportunities to fully take part. This may include women, youth, hunter-gatherers and those with lower status in the community. Societies more directly dependent on natural resources are likely to be happier to spend more time negotiating their access and management. There is a need to think of objectives and trade-offs in a way that minimises conflict; allows negotiation to focus on essentials; and allows for innovative approaches and solutions. Some important insights are contained in the literature on conflict management (Fisher et al 2000). It is suggested that parties in negotiations should not argue over positions but rather focus on interests, and the definition of the problem behind the interest is said to constitute a precondition for an analysis of the stakeholder's margin of flexibility (FAO 2005). Consensus should be aimed for.

Finally, the fourth common feature is the emphasis on developing realistic ways of implementation, which may involve capacity building, changing roles and responsibilities and the seeking out of new information and knowledge to deal with new challenges and problems. Monitoring and evaluation is also vital to good implementation, which should include mechanisms for reflection and learning and the feeding of results back into action. Having clarity on the overall goal of an intervention is essential, but it is a mistake to lock-in too early to a specific pathway to that goal. Rangelands and the aspirations of those who have a stake in rangelands are constantly evolving and changing. Many of the processes, activities and institutions may be new to different stakeholders and will require learning-by-doing. There can be no fixed target or endpoint and stakeholders need to be constantly experimenting, listening, learning and adapting. Muddling through provides a better conceptual basis for engagement than detailed design (Sayer 2009). And at the very least a process of adaptive management (see for example: <http://www.eeeee.net/watershed.htm>) should form the basis of implementation methodologies.

However what these approaches also stress is that there is also a clear need for a *functioning institutional entity or set of entities* through which common (and individual) property 'owners' and/or may protect, control, regulate, receive, deliver and use resources and distribute benefits (Alden Wily 2005c). As the 2010 AU Framework and Guidelines on Land Policy in Africa confirms:

Land policy processes should also see to provide for the necessary interface between state and indigenous systems, particularly with regard to the certification of land rights, the empowerment of decentralized institutions in land rights administration, and the management of land as a resource at the local level...In thus acknowledging the legitimacy of indigenous land rights, land policy processes must also recognize the role of local and community-based land administration/ management institutions and structures, alongside those of the State.

In multi-use landscapes such as rangelands it is suggested that this can be achieved by working towards a **'nested' hierarchical governance system based on pluralistic tenure regimes** working at different spatial scales, authorities and functions and that reflects the overlapping and overlaying rights described above (Marshall 2008; Mwangi and Osrom 2009; Niamir-Fuller 2005; Cousins 2007; Alden Wily 2011).⁸

To date, identifying and maintaining such a governance system across the different layers and scales of rangeland customary and statutory tenure regimes has proved extremely difficult. Though for many resources, tenure regimes (customary or other) exist, they have often been unable to enforce regulations or to protect the resources from encroachment.

Cousins (2007) highlights that it is vital that tenure reform laws and policies acknowledge and take into different layers of nested system: "focusing on only one level...is likely to skew the relative balance of power between the different layers, create tensions and conflicts over jurisdictional boundaries and resource use, and undermine the flexibility and downward accountability of administrators to rights holders." Most importantly institutions (customary or other) should be provided with legal recognition, status and protection with clearly defined agreements and responsibilities and ability to enforce by-laws etc. (Global Drylands Imperative 2003; Botswana and Namibia – Atkinson et al 2006; Tanzania – Kipuri and Sorensen 2008) including being provided the legitimacy to do so by all land users.

These different layers are likely to include:

I. The rangeland, territory, domain or landscape layer

It has been suggested previously that the largest and most encompassing layer of a 'nested hierarchy of tenure regimes' is the whole rangeland, territory, domain or landscape/watershed. The appropriate institution for governing this area could take a number of forms; and some key characteristics include being able to accommodate, negotiate between and gain consensus for different actors with different interests, positions and needs; and being able to manage resources and make/enforce rules.

The appropriate institution may be based on formal government institutions or on customary ones, or it could be a new institution incorporating both such as a co-

⁸ For a discussion on the notion of 'nesting' see Marshall (2008) who is exploring what can be learned from nested community-based governance systems for Australian ecologies that are very large but composed of meaningful units at multiple spatial scales.

management institution (as in Mongolia – Fernandez-Gimenez 2002). It could play the role of an advisory council or group (as in Australia – AusAid 2008).

2. The village or district layer

A minimalist approach (Fitzpatrick 2005; Tanner et al 2009) would simply state that 'customary rights to land are recognised'. Certain areas would then be described in land registry maps as 'customary land'. There would be no attempt to define which groups held what customary land, and no legal intrusion into areas governed by customary law. Customary authorities would determine all issues (internal and external) in a 'tenurial shell' utilising customary processes. The only involvement of the state would be in establishing and enforcing the external boundaries of customary land. This approach provides flexibility inside the boundaries and opportunities for customary rights to evolve over time. It avoids difficult questions about state intervention, but provides communities with opportunities to control encroachment.

Examples can be found within forest management groups, where the boundaries have been demarcated and internal issues are regulated by the extent of conservation plans. Another minimalist example is provided by Mozambique, where the 1997 Land Law proposes a broad demarcation of customary areas while leaving land issues within those areas subject to unregulated customary processes.

An alternative is to work through government structures. For example in Tanzania the two main organs of village government are the Village Assembly and the Village Council. The Village Assembly comprises of all the adults resident in a village and the Village Council is the main executive body of the community and is elected by the Village Assembly every five years. The Village Council must receive approval from the Village Assembly for many key decisions involving the use of resources. The further approval of the elected District Council must also be received for village by-laws. As much as possible the whole village is involved in the development of village land use plans, which will be approved and ratified by the Village Assembly, Council and District Council. Once approval has been obtained the villagers begin implementing the plans, demarcating the different land use zones with paint to mark certain landmarks (UCRT 2010). Though legislation encourages Village Councils to work together on village land use planning, to date there have been few examples of this and particularly in the interests of developing cross-boundary inter-village agreements for use of resources.

Other options are landowning groups or land trusts (Fitzpatrick, 2005: 460; Tanner et al 2009). A trust is flexible because it is created by agreement among beneficiaries – the customary landowners. However they can also be open to abuse of power by the trustees and/or other interested stakeholders.

The final option is to create *land boards or commissions*, state bodies that administer and manage community lands, with some local representation of customary authority included in the board as found in Botswana (Fitzpatrick 2005; Tanner et al 2009). However the boards may favour elite groups and/or community representation is often low. In Niger, for example the Rural Code prescribes the creation of "commissions foncières" (land-use commissions) at all levels (regions, communes,

villages) and a by-law defines its composition. However they are unelected bodies largely composed of civil servants (rarely aware of the complexity of pastoral systems) and though they tend to include all professional associations they will only have one pastoral representative usually chosen by the village authorities. These boards have the power to withdraw access to pastoral land if they consider it is not being put to good use (WISP AND ILC 2011; Hesse and Thébaud 2006)

Implications for Ethiopia

Ethiopia is currently at a crossroads in relation to how it moves forward with the issues of land and resource tenure in pastoral areas. One, it could leave things as they are, leaving pastoralists with little tenure and resource security and vulnerable to the continuing loss of access to vital resources as their land is given away to such as commercial investors. Alternatively two, it could go down the road of promoting more individualisation and privatisation and the carving up of the rangelands into group ranches and/or individual holdings as in Kenya. Three it could take a minimalist approach, and delimit large areas of the rangeland and provide tenure rights over those areas to customary authorities to manage how they see fit. Or four, it could take a middle road and support a nested hierarchy of tenure systems that can be adapted to local needs and contexts and incorporate both individual landholdings and common property regimes.

This paper argues that the fourth option is the best option that Ethiopia can follow: a nested hierarchy of tenure systems that can be adapted to and build on the systems that already exist in pastoral areas today. To achieve this a number of issues will need to be addressed.

Firstly, space must be made for local communities and other actors to engage in the land reform process. This may be through series of community consultations, mapping exercises of existing rights to community resources, and/or through the development of and support for effective civil society organisations that are given the freedom to represent their local communities and their needs. If one looks at Tanzania for example, though the government might not always agree with what pastoral CSOs say and do, they are nevertheless effective representative bodies that the government regularly engages with, listens to and works with. In addition in Ethiopia, a national platform of organisations working on pastoral land and resource issues needs to be set up for exchange of information, collaboration and advocacy.

Secondly true and effective decentralisation is necessary. It is vital that power and authority to make decisions about, manage and protect land and resources is decentralised (through supporting policy and legislation) to the most appropriate and effective (efficient and accountable) institution or set of institutions. This is particularly important in rangelands where it is only at the local level that the complexity of access rights and such as conflict resolution mechanisms can be captured. As the experience from Tanzania also suggests – “for pastoralists and hunter-gatherers, the accountability of village governance institutions is often the key difference between whether or not local resources are secured and protected, or sold off and lost forever” (UCRT 2010: 15).

The devolution of power also needs to be accompanied by appropriate and adequate resources to function. This is not the case in Niger where the functioning of commission members is hampered by lack of economic resources and competencies. Without adequate control this leaves the system open for abuse and corruption (WISP AND ILC 2011). Indeed, as long as formal survey and mapping, official supervision of adjudication, computerisation of records and state-like bureaucratic procedures are required, costs and user fees are too high to encourage genuine devolution of land administration to the grassroots. Of necessity this must include democratisation of traditional authority to the extent that if traditional leaders become the designated legal land authorities then their decision-making is circumscribed by requirements for majority approval. Once simple models of community based land administration are developed, tested and adapted, it can be relatively easy to replicate at scale (Alden Wily 2011).

Ethiopia has proved that it is very capable of developing such models within the highlands with its highly efficient land certification process, and in the lowlands too through such as, *woreda* environmental management plans (WEMPs) or participatory forest management, which is now being replicated throughout the country (Flintan and Cullis 2010). Translating lessons learnt from these would be an important first step for developing an effective land tenure system for pastoral areas.

Thirdly, power relations must be addressed within and between local actors too. Legitimacy and accountability are not necessarily linked – traditional institutions are often most legitimate in the eyes of local communities, but rarely have formal systems to ensure accountability and representation, for example with respect to women. 'New' institutions may prove to be more democratic, but may not hold the power of group cohesion.

'Communities' are not bounded, homogeneous entities, but socially differentiated and diverse. Gender, caste, wealth, age, origins, and other aspects of social identity divide and cross-cut so-called 'community' boundaries. Power is a feature of social relations, and demands negotiations. Institutions have multiple roles, for example, marriage and kinship exchange networks facilitate many other things besides mediating access to land. They are also dynamic, changing over time as social actors alter their behaviour to suit new social, political or ecological circumstances (Mearns, Leach and Scoones 1997). The social heterogeneity of the user group may affect the collective action if there are distinct levels of authority, perception, trust, access to information, level of control, and reciprocity.

Ben Cousins (2007) suggests that one way of overcoming the 'customs versus rights' polarity is to vest land rights in individuals rather than in groups or institutions, and to make socially legitimate existing occupation and use, or de facto 'rights', the primary basis for legal recognition. These claims may or may not be justified by reference to 'custom'. Rights holders would be entitled to define collectively the precise content of their rights, and choose, by majority vote, the representatives who will administer their land rights (e.g. by keeping records, enforcing rules and mediating disputes). Accountability of these representatives would be downwards to group members, not upwards to the state. Gender equality would be a requirement before legal recognition of rights could occur. This would not be based on individual titling, which has been so problematic in Africa, but rather a form of statutory right

that is legally secure but also qualified by the rights of others within a range of nested social units, from the family through user groups to villages and other larger 'communities' with shared rights to a range of common property resources.

Fourthly management and implementation must be considered. It is not only about the allocation of rights (the substance) but also about the rules and mechanisms for regulating access and use among multiple interests (Sayer et al 2008). Or as Niamir-Fuller (2005) put it "to modify or create the institutional structure for a legitimate, locally controllable transhumance, the function—not just the structure—of new institutions must be addressed." This can rarely be achieved without social agreement on rules and regulations and how they are enforced (Sayer et al 2008). These need to be generated at the local level in order to fit with local needs. The development of by-laws can provide formal legitimacy to local rules and regulations. Again important lessons can be learnt from the experiences of PFM in the country.

Within management special attention needs to be paid to conflict prevention and resolution including identifying areas of potential conflicts or hotspots; the sharing of costs between users and the distribution of revenues and benefits; and monitoring and evaluation which should be based upon the original visions, scenarios and aims/objectives and provide opportunities for shared learning with (and not around) local populations and other stakeholders at different levels of the landscape, on an ongoing basis (discussed in more detail in Flintan 2011a).

Finally capacities of all actors to be effective partners in the land reform process needs to take place. Experience from Tanzania shows that it is critical that policy makers and local government officials better understand the dynamics of pastoral environments, the complex but essential role that social and political networks play in the management of natural resources and the central place of pastoralism as a viable system and major contributor to national economies, particularly in a context of increasing climatic uncertainty (UCRT 2010).

Weakened institutions need to be strengthened or the capacities of new institutions built up allowing them to negotiate access for members in times of need, develop reciprocal arrangements and management resources. They need to be able to find common ground for divergent interests and perspectives, and develop an agreed vision and goals. In addition the mediation/resolution of conflicts, enforcement of regulations and agreements, and appropriation of sanctions will be important for continuing security and sustainable land/resource management.

Pastoralists and other land users need a thorough understanding of the key legal provisions within decentralisation, pastoral and other sectoral laws. More importantly, they have to understand the issues at stake, develop the capacities to hold local government to account over the manner in which local affairs are managed, and articulate a vision for pastoralism in a manner that can be understood and accepted by policy makers (Hesse and Thébaud 2006; Nori 2007). In Cameroon, a local NGO MBOSCUDA has used REFLECT⁹ approaches to provide both men and women with opportunities to learn about their rights, laws and legislation (Fon 2010). And in Tanzania, civic education on land rights and the building of capacity of

⁹ Regenerated Freirean Literacy through Empowering Community Techniques

local communities to defend those rights is an important part of support programmes in village land use planning facilitation (UCRT 2010).

Land managers may also need to develop new skills such as dealing with 'invasive species' and restoring degraded rangelands or woodlands. Capacity building can be integrated with participatory experiments on technical innovations so that farmers and herders in the community do not only address their natural resource management problems more effectively, but are able to develop the social networks, institutional structures and social problem solving skills that enable them to address the broader sociopolitical aspects found in natural resource management.

Conclusions

Land reforms are unlikely to have a long-term positive impact on the development and security of its 'beneficiaries' unless the political economy is also accounted for and addressed. Environmental problems in developing countries are not so much problems of poor management, overpopulation or ignorance, but of social action and political-economic constraints (Blaikie and Brookfield, 1987). This means social and political change at all levels including the building of fair, accountable and transparent institutions, 'real' decentralisation, and the enforcement of local rights to land and resources.

Countries such as Ethiopia are faced with difficult decisions about which development pathways to take, how best to feed its population, and encourage economic growth. However turning one's back on the pastoralists of the country is not the answer and instead they should be provided with appropriate support so that they can continue sustainably using the rangelands and contributing to national and local economies and food and human securities.

This paper has suggested ways that land reform can move forward in the pastoral areas of Ethiopia that will allow for economic growth and commercial investment as well as the protection of resources for those who are capable and willing to continue using the resources for extensive livestock production – the only option for the many parts of Ethiopia's rangelands that experience low, erratic and unpredictable rainfall. However if these land users are to have any chance of continuing to practice pastoralism then there is an urgent need to address the land tenure gaps in pastoral areas today. Waiting until tomorrow can only mean further encroachment, loss of key resources, and degradation of others, and the destruction of an effective functioning land use system that could have catastrophic impacts.

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Appendix I 'Territorial' approaches for land use planning and formalising customary access and tenure in rangelands

Name & organisation(s)	Rationale	Key Steps	Key Outcome(s)
<p>Participatory and Negotiated Territorial Development (PNTD) - FAO (FAO 2005; Hatcher 2009)</p>	<p>Results in concrete answers to the challenges of improving trust and credibility among social actors; strengthening social cohesion to improve local resource use and management; and promoting systemic territorial development and management through conceiving the territory as an arena for dialogue and negotiation.</p>	<p>Phase 1: Views: Understanding the actors and the territory as a social product This process involves qualifying the territory and conducting an analysis of actors and institutions to understand the issues at stake and their causes and interdependencies. Using participatory tools and methods ensures that the process implementation is stimulating for social dialogue.</p> <p>Step 1: Rationale of the required intervention Step 2: The actors of the territory Step 3: Historical analysis Step 4: Analysis of the territory</p> <p>Phase 2: Horizons: Dialogue and proposals Alternative scenarios are developed and an assessment of alternatives is carried out using such tools as Social-Multi Criteria Evaluation.</p> <p>Step 5: Outlining coherent and feasible proposals for territorial development Step 6: Accompanying the participatory process and supporting social dialogue</p> <p>Phase 3: Negotiation process: seeking consensus for development of territory Step 7: Articulating a continuous multi-level multi-actors dialogue on territorial issues. Step 8: Negotiation at different levels and around various themes.</p>	<p>The Social Territorial Agreement can result in (among other things), conflict resolution, a territorial development plan, the delimitation of territorial boundaries taking into account customary rights, a new land tenure law. The agreement reached as a result of the negotiation process should define all the prerequisites (e.g. human, physical, social, and financial resources), the instruments and the roles and responsibilities required for the implementation of a Social Territorial Agreement.</p>
<p>Participatory Community Development Plan (CDP) - ICARDA, IFAD, Arab Fund for Economic & Social Development,</p>	<p>Provides socially inclusive community-led solutions to cope with desertification and land degradation in the Maghreb drylands and improve the development and</p>	<p>Step 1: Community characterization (Learning phase)</p> <ul style="list-style-type: none"> - Preliminary tasks - Exploratory visit - Introduction of the project to the community - Development of community map - GPS plotting of community and toponymic districts boundaries - Informal surveys and description of the production systems - Survey of social, land tenure systems and uses - Entry of survey and GPS data 	<p>A series of Community Development Plans and their implementation.</p>

<p>IDRC. (Nefzaouli et al 2007)</p>	<p>livelihoods of local communities</p>	<ul style="list-style-type: none"> - Data analysis - Development of the community 'knowledge book' - Validation of the knowledge book by the community <p>Step 2: Participatory planning</p> <ul style="list-style-type: none"> - Validation of the 'knowledge book' - Participatory diagnosis - Classification of problems - Recognition/validation of problems - Identification of solutions - Setting priorities - Preparation of the initial development plan - Drawing of the development vision map <p>Step 3: Promotion of local institutions/community-based organisations</p> <ul style="list-style-type: none"> - Inventory of existing local institutions - Analysis of the mandate and roles of each institution - Analysis of the decision-making process - Identification of improvements needed to the current decision making process - Development of methodologies to formalize local institutions <p>Step 4: Participatory programming</p> <ul style="list-style-type: none"> - Feasibility studies for activities recorded in the initial development plan - Presentation, validation and adoption of the adjusted activities of the initial development plan - Participatory programming of agreed upon activities - Synthesising and formatting the annual work plan - Discussion of the implementation procedures for the annual work plan <p>Step 5: Implementation of CDP and monitoring and evaluation</p> <ul style="list-style-type: none"> - Programme implementation meetings - Monitoring the implementation agreement - Monitoring the community-based organization's performance - Assessment of impact indicators - Adjustment of the multi-annual development plan and preparation of the next annual budget plan. 	
<p>Participatory Rangeland</p>	<p>A land use planning and management tool for pastoral areas that</p>	<p>Stage 1: Investigating PRM (participatory rangeland management) Step 1 Identifying rangeland resources and users Stage 2: Negotiating PRM</p>	<p>The customary institution or community rangeland management group is legally</p>

<p>Management (PRM) - Save the Children US, FAO, NRM Technical Working Group Addis Ababa (Flintan and Cullis 2010)</p>	<p>provides guidance to decision makers in a) the inclusion of interests, positions and needs or pastoralists specifically; and b) in developing a suitable and legitimising process of communal land and resource tenure that fits with priorities of pastoralists as well as government bodies.</p>	<p>Step 2 Setting up or strengthening rangeland management institutions Step 3 Defining the rangeland management unit and preparing the rangeland resource assessment Step 4 Developing the rangeland management plan Step 5 Establishing the rangeland management agreement Stage 3: Implementing PRM Step 6 New roles for communities and rangeland management advisors Step 7 Arresting and reversing declining rangeland management productivity Step 8 Participatory monitoring and evaluation</p>	<p>enabled to oversee the sustainable management of the rangeland unit. This is enabled by and dependent upon a negotiated and documented legally binding rangeland management agreement.</p>
<p>Community-based pasture or rangeland management (CBPM or CBRM) - FAO (Alden Wily 2008)</p>	<p>A process to improve management of community and public pastures and to systematically resolve inter-community disputes among settled communities as to ownership and control of local pastures.</p>	<p>Stage 1: Getting prepared (More detailed steps provided in Alden Wily 2008b) Stage 2: Learning enough to begin Stage 3: Understanding the pasture Stage 4: Seeing the pasture itself Stage 5: Deciding what to do next Stage 6: Helping villagers set up the pasture management system Stage 7: Helping resolve access and boundary conflicts Stage 8: On-site boundary agreement Stage 9: Laying the basis for monitoring Stage 10: Facilitating implementation Stage 11: Mapping the pastures Stage 12: Formalising custodianship Stage 13: Helping custodians deal with pressure Stage 14: Sharing experiences and moving forward</p>	<p>Areas of pasture and different types of pasture mapped. Pasture management system set up and functioning. Pasture Council established. Custodianship of 'owner'-managed pastures legitimised – Letter of Custodianship</p>
<p>Communal Domains (Alden Wily 2005a)</p>	<p>Formalisation of communal domains (or 'territories') is necessary in order to protect the different individual and common property regimes found within.</p>	<p>Stage 1. Committing to the approach Stage 2. Delimiting the Communal Domain by a representative Boundary Committee Stage 3. Securing support from seasonal right holders Stage 4. Establishing modern customary land management – Community Land Council (acting as trustee owner on behalf of community membership) and as formal Land Administrator responsible for land use planning and regulation of access and use Stage 5: Securing policy and legal support (or refined) allowing registration of Communal Domains and Common Properties found within</p>	<p>Register of 'customary domains', detailing registration of common rights over domain, as well as different tenure regimes found within. Community-derived/elected land administration body</p>

		<p>Stage 6: Registration of Communal Domains</p> <p>Stage 7: Simple land use planning and regulation e.g. zoning</p> <p>Stage 8: Restoring wrongly appropriated properties</p> <p>Stage 9: Formalising common properties</p> <p>Stage 10: Establishing community-based land dispute resolution mechanisms</p>	legalised.
<p>Community land areas (CLAs) - USAID (Alden Wily 2005b)</p>	<p>For communities to identify their land areas for future registration as locally-owned land.</p>	<p>Stage 1. Mobilising the community</p> <ul style="list-style-type: none"> Activity 1. Introducing the approach Activity 2. Describing the Community Land Area Activity 3. Appointing the Boundary Committee <p>Stage 2. Walking and Agreeing the Boundary</p> <ul style="list-style-type: none"> Activity 1. Getting ready Activity 2. Walking and agreeing the boundary Activity 3. Recording the boundary description Activity 4. Reporting back to the community Activity 5. Preparing the record for mapping and registration <p>Stage 3. Formalisation of the Community Land Area</p> <ul style="list-style-type: none"> Activity 1. Securing confirmation that the boundaries are agreed Activity 2. Mapping the boundary of the CLA Activity 3. Provisional registration of the CLA <p>Stage 4. Establishing the Community Land Council</p> <p>Stage 5. Land Use Planning in the CLA</p> <ul style="list-style-type: none"> Activity 1. Understanding the CLA Activity 2. Action planning <p>Stage 6. Managing Nomad Entry into CLAs</p> <p>Stage 7. Identifying Non-Customary Land Occupation</p>	<p>A formally delimited and recorded boundary around a CLA, mapped and registered based on village or tribal area. Boundary description and map registered by County Land Office. Establishment of a Community Land Council. Land use plan developed.</p>
<p>Rangeland co-management e.g. CCAs (e.g. Borrini-Feyerbrand 2008)</p>	<p>Communities are the best managers of their resources and depend upon them for their livelihoods. Therefore they should be given the right to manage and use resources according to an approved management plan.</p>	<p>Step 1. Organising;</p> <ul style="list-style-type: none"> - Developing a management partnership <p>Step 2. Negotiating and building consensus;</p> <ul style="list-style-type: none"> - Developing a management agreement (including project contracts, letters of intent, local by-laws) and management plan (written or non-written including conditions enabling sound management, objectives, priorities, expected results, recognized relevant actors, functions, responsibilities, entitlements). <p>Step 3. Implementing;</p> <ul style="list-style-type: none"> - Setting up one or more co-management organisations - Adaptive management 	<p>A management partnership is defined between stakeholders. A management agreement and plan are developed.</p>

		Step 4. Learning by doing.	
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