

Challenges and Gaps on Pastoral Land System: Ethiopian Focus

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Abstract: Pastoral and agro-pastoral areas in eastern Africa and elsewhere on the continent have long been regarded as peripheries, especially in economic terms, but also in terms of social and cultural accomplishment governments do little to formally recognize or integrate pastoral lands as critical parts of rural livelihood systems and economic development models. Instead, many states give preference to other alternatives. Aiming to search for comprehensive suitable policy line for Ethiopian pastoral land system, the study employed qualitative data analysis methodology with primary and secondary sources by comparative approach. Though lowland in Ethiopia holds 60% of total land mass and the future of the nation, the normative and institutional framework is unable to govern adequately in manner to effectively utilize the potential. The failure of national law to recognize the customary rights of pastoralist groups, policy and strategy gaps, lack of registration and certification communal land holding rights put the pastoral tenure un secure and has left those communities highly vulnerable. The main contemporary problem in Ethiopian pastoral societies, however, is that various indigenous forms of tenure that no doubt evolved as indicated above now are increasingly subordinated to unitary national land tenure legislation. The situation in the pastoral areas is either ignored or very superficially treated. The critical thinking and appropriate legal as well as institutional framework with the right policy direction is neccessarily needed by taking lesson, like recognition customery land tenure, enactment of detailed laws which adequately protect the interests of pastoral community, registration and certification of communal holding rights, legitimazing the power of traditional institutions and authorities from successful countries. This can be used as appropraite behicle to eradiction of poverty and shortens the journey towards growth and transformation of the country.

Keywords: Land Tenure, Communal Holding, Indigenous Peoples, Pastoral Land, Land Administration, Voluntary Guideline, Land Policy

1. Introduction

1.1. Background of the Study

As one of the natural resources, land is central to the existence and livelihood of humankind. It can be said that both traditional and modern societies have used and subjugated land for a variety of purposes since the past. It is suggested that the human-environment tie in traditional and agrarian societies is so strong that land has emerged as one of the main means of survival for humans [1].

Land in pastoral communities is considered to be the most important thing, as it is not only a means of livelihood, but also a source of wealth, ownership, social peace and a source

of conflict. This means that the lack of access to land not only deprives rural people of a great source of livelihood, but also threatens their very existence as human beings. Historical evidence points to the extent to which pastoral societies became accustomed to harsh environments and formed symbiotic harmony with both social and environmental contexts. In recent times, many domestic animals, especially in Africa, have experienced much conflict and bloodshed. This is due to a number of factors such as high population growth, recurrent drought, environmental stress and climate change. Under the pretext of “development”, pastoral properties have been taken over and given to foreign investors, without regard to the historical right of local communities and their livelihood interests [2].

Pastoral and agricultural areas in eastern Africa and elsewhere on the continent have long been regarded as surrounding areas, especially economically, but also socially and culturally. Although biased views on the 'non-productive' use of livestock have expired, government policies still do little to recognize or integrate pastoralist areas as important components of rural livelihoods and economic development strategies. Instead, many provinces prefer higher agricultural investment in livestock, which leads to the loss or disintegration of livestock, resulting in pastoralist settlements, and a significant reduction in livestock numbers [3].

A major problem is that in many regions governed by this new investment, the rights of land users are not properly protected. As a result of plans to have the land inherited from colonial rule, much of the land in the rural areas is legally owned, and land users do not have the title deeds of the land they cultivate. This situation creates legal uncertainty. It also means that land users will not be able to access legal remedies, and will not receive adequate compensation if they are evicted from their land, for example after their government agreed that foreign investors could take over the land [4].

Pastoral lands in Ethiopia are largely managed by customary authorities using rules and regulations that evolved over a long period of time [5]. The pastoralists in Ethiopia are also tribal communities with a structure of tribes, clans and sub-clans. They are minorities representing more than 20 different ethnic groups belonging to Cushitic and Nilotic speakers [6]. It is very important to note from the outset that their traditional systems have survived many centuries in a difficult and harsh natural environment [6]. Clans operate in a socially recognized territory over which they have exclusive primary land use rights. Such territories have dry and wet season grazing areas where members of the clan practice rotational grazing. River basins that are usually flooded during rainy seasons and valley bottoms whose soils retain moisture far into the dryseason constitute dry season grazing areas. There has been considerable pressure and interference on customary management of pastoral lands in Ethiopia, particularly in those pastoral lands that contain river basins in which the State has initiated irrigation developments since the mid-1950s. These interventions have exercised out large areas of dry season grazing from pastoral landholdings, reducing their capacity to maintain their livelihood in the face of increasing population and occurrences of drought [4].

During the monarchical period, particularly due to the consolidation of the 'Ethiopian territory' under the last two emperors, the lands of Ethiopian pastoralists were virtually considered as 'no man's land' and they were denied rights to their communal land holding system. The result was the constitutional and legal recognition of this assumption during the 1950s and 1960s. In fact, this was the time the pastoralists were marginalized in all aspects of their life; they were not even considered citizens of Ethiopia. This policy of denial was clearly reflected, for instance, in the 1955 Revised Constitution of the monarchical regime [7]. This 1955

Revised Constitution made all lands occupied by the Ethiopian pastoralists state property by declaring: "[all property not held and possessed in the name of any person... including all land in escheat, and all abandoned properties... as well as all products of the sub-soil, all forests and grazing lands, water courses, lakes and territorial waters, are state domain" [7]. From this publication, it is clear that the Constitution considers grazing land to be privately owned and not owned by anyone. The pastoral areas, according to Mohamed Abdullah, were officially unoccupied and unoccupied [6].

At the end of the state, and in the lowlands, small 'ethnic' groups and pastoralist communities continue to use land, pasture and other resources according to local or indigenous systems. The potential for modern irrigation agriculture along rivers along low-lying areas from the 1950s onwards has been a major issue between traditional land use schemes and government. Land ownership in tropical and subtropical areas was actually of limited interest to the Ethiopian feudal elite and soldiers and immigrants alike [8].

It should be noted that the Ethiopian government, which transferred the rights to the most important agricultural (land) property to the neftegna (or rifleman) immigrants, did not attempt to seize and transfer control over the equitable property to the farmer, i.e... animals. It seems that there have been a few remarkable examples of soldiers — always trying to build their own pastoral care as an economic enterprise. Apparently there were economic connections between neftegna and herdsmen (trade, debt and sometimes pastoral contracting) but the military was not integrated into the pastoral economy in the lowlands of Ethiopia. The neftegna style of the clergy did not develop. Thus, poor environmental conditions in the domestic areas, perhaps combined with a clear agricultural bias in the military's economic outlook, seem to have protected herdsmen from severe economic exploitation of shareholders in the agricultural areas of Southern Ethiopia [8].

The pastoral communities now seem to have become more vulnerable than they used to be. Drought, that after all is quite common in the Ethiopian lowlands, now seem to translate into famines more quickly and more frequently [8]. Pastoralist communities face difficult questions and decisions about their future. They are under constant pressure to change, and to change at a pace that is often too fast to allow a proper and positive adaptation of pastoral culture and systems. Pastoralists and their production processes have been marginalized from investments and support: there is no system of land use planning that fully reflects pastoralist needs, and access to resources remains highly insecure and increasingly competitive, often leading to conflict [9].

The 1975 Land Reform is one of the most comprehensive land reform programs launched in Africa. In 1975 all rural areas of Ethiopia were placed under state ownership and renamed the combined property of the Ethiopian people. But in line with the general social and political contempt of shepherds in Ethiopia, issues of land tenure as they address pastoral and pasture resources are largely ignored in public

policy. In the 1975 Proclamation of Land Reform, only 4 short episodes (of 33) were directed to the “traveling countries” [8].

At present, formal land rights in the pastoral areas of Ethiopia seem to be a matter of loosely defined group rights that are granted to named ethnic groups without taking locally evolved tenure rights, if and where these exist, much into consideration. Security of tenure remains poor, particularly in relationships affecting the interests of the state. These interests are often expressed in policies favoring other economic activities, including alternative uses of pastoral lands. In strictly legal terms, all pastoral lands are now owned by the state on behalf of the peoples of Ethiopia. The 1994 Constitution guarantees access to land for all Ethiopians who want to earn a living from farming, but leaves it to subsidiary legislation, to be worked out by the ethnically based regional states, to specify the terms and conditions under which land is made available to users. The present government of Ethiopia has been reluctant to change the main structures and policies of the 1975 Land Reform. The 1994 Constitution declares that all land is the common property of the various ethnically based regional states (‘the Nations, Nationalities and Peoples of Ethiopia’) and says (in Article 40), that Ethiopian pastoralists have a right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law [8].

National land tenure law, which arises from agricultural practices in the highlands, is now increasingly applicable in the lowlands. Indigenous settlement schemes are therefore in line with national law to create a new standard of living. The reorganization of settlement programs in clerical communities may be seen as part of a common denominator of the clergy community in Ethiopia. This process is partly a result of the historical processes of political domination and is partly due to the unification of pastoralist communities in a country dominated by a pro-agricultural ideology. Increasingly, pastors are losing their influence on goals and stages that are at the core of their livelihood [8].

There seems to be a widespread belief that the pastor is no longer a livelihood, leading to pressure on traditional land rights and land management. Even during the Imperial Empire and during the Dreg era, there were attempts to settle farmers in a river irrigation system near government irrigated farms developed in grazed pastures. Because pastoralists lacked agricultural skills, the State built irrigation infrastructure and farm equipment while herdsmen worked to cultivate and harvest crops that had been planted, especially cotton. These settlements were eventually abandoned in the late 1980's because the State could not sustain these facilities.

A major current problem in Ethiopian pastoralist communities, is that the various forms of indigenous ownership that no doubt originated as mentioned above are now increasingly becoming subject to national land ownership law. Efforts and changes within Ethiopian land ownership law at the national level are made on the basis of issues relating primarily to agriculture in the highlands,

secondly to urban areas. The condition of the veld is overlooked or overlooked [6].

The main contemporary problem in Ethiopian pastoral societies, however, is that various indigenous forms of tenure that no doubt evolved as indicated above now are increasingly subordinated to unitary national land tenure legislation. Initiatives and reforms within Ethiopian land tenure legislation at the national level are formulated on the basis of issues relevant primarily to the arable agriculture in the highlands, secondarily to urban lands. The situation in the pastoral areas is either ignored or very superficially treated [8].

1.2. Statement of the Problem

The current government included most important land policies in the constitution. The constitution delegated the details of land issues to be proclaimed separately. Rural land Administration and use Proclamation no 89/1997, which later on replaced by proclamation 456/2005, which is currently active, was the result of the constitutional provision [38]. The problems and challenges faced in implementing rural land administration programs in Ethiopia fall in the areas of policy and legislative gaps. The federal and regional land policies and laws enacted prior to 2008 attempted to address tenure insecurity only for landholders in the settled agricultural areas. Oromia and SNNP regional states have considerable pastoral lands for which the regional land laws are inapplicable. The Afar regional state has issued its rural land use policy in 2008 and rural land administration and use proclamation no. 49/2009 in respectively. However, while this legislation gives responsibility of managing pastoral land resources to customary institutions other legislation confer this responsibility on the woreda and kebele administrations [39].

Moreover, the land policy in place in Ethiopia has been found to fall short of the principles of responsible land governance. The land policy in place and the whole land governance system focus too much on the highland agrarian societies, which account for almost 85% of the population. The pastoral and semi-pastoral land, even though it encompasses over 60% of the nation's land mass, is anchored on customary rights or is neglected. In principle, it is supposed to be governed by the formal law which is less suitable and not agreeable to the way of life of the communities. The legal approach is ‘one-size-fits all,’ which undermines the efficacy of the law on ground [40].

In a nutshell, the rules of law are incoherent and inadequate on many counts as far as the land governance of Ethiopia is concerned. Among many other things, the land governance was unable to comprehensively govern the pastoral lands of the nation which accounts for 60% of the land of the nation, and hence creating legal lacuna that could be exploited by the international and domestic land grabbers. Moreover, the absence of comprehensive land use plan has also dogged the country with problems, among others by hampering the environmental protection effort of the nation and all concerned [40].

The lowland in Ethiopia holds the future of the nation. Critical thinking and appropriate legal framework with the right policy direction can turn these massive land masses into engines of growth and development [40].

Comparatively speaking, there are some sub-Saharan countries with good experience of administration of communal land rights pastoralists. Their normative and institutional framework would be good lesson for betterment of pastoral rights in Ethiopia. This study selected sub Saharan countries, Namibia, Tanzania, Uganda, Botswana and Mauritania. The express constitutional recognition of equality of all land rights before the law, massive scale registration and certification of communal land rights, empowerment of customary institutions and traditional authorities, gender representation and environmental protection are among experience of Namibia while codification of special, clear and concise pastoral law, code pastoral, recognition of the right of movement explicit prohibition of any physical barrier to free pastoral movement, traditional dispute resolution.

With this problems in hand, the central concern of my research is showing the policy direction, how Ethiopia can frame good policy on pastoral land in order to use the underutilized and potentially high sector, towards eradication of poverty and sustainable development, standing from and global guide lines and frameworks experience of successful countries. Therefore the main theme of this study is identifying the main gaps of Ethiopian pastoral land system and filling them by taking experiences.

1.3. The Objective of the Study

The general objective of this research is scientifically investigating and assessing the basic challenges and gaps on pastoral land system: Ethiopian Focus. In addition to this general objective this study has the following specific objectives

- 1) Assess the nature and basic challenges of pastoral land system in Ethiopia.
- 2) Identify the normative and institutional gaps in pastoral land administration of Ethiopia.

1.4. The Research Question

In order to meet the target of the research, the study has employed following research questions.

- 1) What are the nature and basic challenges of pastoral land system in Ethiopia?
- 2) What are of the normative and institutional gaps pastoral land system in Ethiopia?

1.5. The Significances of the Study

As mentioned before pastoral land sector is marginalized and most ignored sector and as result there is dearth of literature despite relatively wealth of international experiences on the subject matter. In order to fill this gap this study attempted to assess the experience which could be lesson to Ethiopian context. This study provides an input for policy makers and legislatures to design comprehensive

pastoral land policy. Second, the study further provides a blue print for interested researchers, legal scholars to undertake investigation on the issue in greater depth. Lastly, this study provided new insight in to pastoral land of Ethiopia and will add some underpinnings up on existing knowledge concerning the issue.

1.6. Methodology

To achieve the intended objectives and to come up with reliable findings, the study employed a qualitative research approach. The main reason to use this method is to enable informants freely express their ideas in their own words and get the full picture of the situation. At the same time almost all qualitative studies are in one way or another in touch with the comparative approach [17].

This research employed both primary and secondary sources of data. The primary sources were gathered from different legal documents such as, Constitutional provisions, federal and regional rural land administration and use proclamations and evaluated. Voluntary Guidelines on Responsible Land Governance, (EU, AU, UN guidelines) and land policy documents of selected countries will be investigated. Eventhough the research is desktop it also gathered data from different categories of informants through key informant interview. The primary data was gathered from important interviews of individuals and institutions that easily available. These include expertise from pastoral affairs commission, agriculture and natural resource development bearou of SNNPR. Secondary sources of data were gathered from published books, journal articles, reports, conference papers, news papers and the internet, published and unpublished research papers, working papers. The study will also employ comparative method in the sense that legal literatures and material documents from comparative jurisdictions will be investigated and analyzed systematically. Hence, the research is doctrinal legal research and employed qualitative research methodology of data analysis. The justifications for selection of Namibia, Tanzania, Uganda, Botswana and Mauritania, to taking lesson from, emanates from the country's relatively successful experience in governance of pastoral land and relevancy of it experience to Ethiopia to take lesson from.

2. Pastoral Land System in Ethiopia

2.1. Nature Pastoral Land in Ethiopia

Dryland [41] comprise the greater component of Ethiopia's landmass. It encompasses areas traditionally described as arid, semi-arid and dry sub humid, as well as the driest hyper-arid areas. Arid and semi-arid lands (ASALs) are estimated to cover 560 000–615 000 km² (50–55%) of the total landmass of Ethiopia. When dry sub humid areas are included in the description, the total extent of the country's drylands may be 860 000–915 000 km² (76–81%) [20].

"The socio-economic and cultural systems of pastoralist communities in the Horn of Africa and Ethiopia are based on

communality. Land, for instance, is held traditionally under the collective possession and ownership of their community. Their communal land tenure arrangements have traditional rules and regulations that aim at harmonizing ecological, economic and social benefits. In contrast to the communality of land holding, livestock ownership and management is for individual households." [6].

Pastoralist areas cover about 61 percent of Ethiopia and almost 14 percent of the total population [43]. The pastoral populations are likely to live in the drier and hotter lowlands of the country: these include the whole of Somali region (accounting for 57% of the pastoralists in Ethiopia) and the Afar region (26% of Ethiopian pastoralists). The *Borena* and *Karrayu* pastoralists in Oromia Regional State together account for about 10% of the total pastoral communities in Ethiopia. The remaining 7% of Ethiopian pastoralists inhabit the lowlands of the Southern, Gambella and Benshangul regions [43].

"The pastoral and agro-pastoral production system also represent approximately 45-55% of the cattle, 75% of the small ruminants, 20% of the equines and 100% of the camels of the total national livestock population. Accordingly, they contribute about 50% to the national agricultural Gross Domestic Product (GDP) and 90% of the annual hard currency earnings from live animal exports. The main mobile pastoralists in Ethiopia are the Somalis (Somali region) in the east, the Afars (Afar region) in the northeast, the Oromos (Oromia region) in the south and south-east and the Southern Omo people (Southern region) in the south and partly in the Gambella and Benshangul regions and around the Dire Dawa Administration" [22].

Despite the general perception that drylands are resource-poor areas, several studies indicate that the forests and woodlands in Ethiopia's drylands offer excellent opportunities for improving rural livelihoods and reducing poverty. Dry forests, which cover about 55-60% of the country's drylands, are important in terms of their contributions to human welfare and environmental health [20].

The way of life in arid and semi-arid areas of Ethiopia has its own sole nature which differs them from the high land community of the country. Their wisdom to cope up with the changing conditions attracts attention. The Ethiopian pastoral forum (EPF) [44] in its publication called, "*Pastoralism and Land: Land Tenure, Administration and Use in Pastoral Areas of Ethiopia*" [42] describes the way of life of pastoral society under title "elements of pastoralism" expresses it by taking realities from different pastoral areas and society of Ethiopia as follows. The pastoralist management system involves a complex set of elements that are linked together by a requirement for land and a responsibility to safeguard it. They include:

- 1) Mobility.
- 2) Keeping or possessing large herds of livestock.
- 3) Herd diversification and splitting.
- 4) Focused mutual assistance systems.

The book describes mobility as the traditional knowledge

given inherently to the pastoral community which is strategy suitable to the fragile land, allows communities to best use limited pasture and other resources and to balance and conserve rangelands through careful management. "In Afar, Somali and South Omo regions movement is further dictated by the seasonal flooding of the Awash, Wabi-Shabelle, Ganalle and Omo rivers, which threatens lives and livelihoods. Some others express, Mobility is the prime feature that characterizes Pastoralism in Ethiopia, as also elsewhere. Mobility is the art of rangelands management, and adaptation to temporal and spatial resource dynamics in the system" [19].

Keeping large herds is the second element of pastoralism. As to the wording the book, the main production objective of pastoralists is not just to increase herd/flock size. Pastoralists aim to increase milk yield, maintain an appropriate herd/flock structure for short and long-term reproductive success and make certain disease resistance by selective breeding. Accumulation helps ensure the long-term survival of herds/flocks despite losses incurred during periodic droughts and disease outbreaks and to use as alternative means of investment and asset storage. Herd diversification further reduces risk and insures against natural as well as human-made shocks. Herd splitting achieves two things: it maximizes animal production and protects rangeland and grazing reserves for later use. Moreover, mutual help systems are one of crucial element of pastoral life style. It enables pastoralists to help and support each other. There is community support system [19].

"The Afar has various institutionalized mutual aid associations in their communities (kaidoh) which lead to the growth and establishment of new households. Local communities reinforce these mutual aid associations. Some of these include; hantilla which are lactating animals are given as free loans to destitute Afars so that they can have some milk. While the Borenas have developed a social security system where wealth, land, water and pasture are all communal and shared fairly among the tribe using a unique system of indigenous management, governed by the Gada system. Buusaa-gonofa helps people in need and also maintains solidarity and shares wealth. This strategy ensures survival despite losses caused by drought, animal or human disease. It also restocks and maintains the health of the herd. In South Omo richer people are obliged to help the poor as they live in a risky environment and are vulnerable. They share common grazing areas and water resources but livestock is owned individually. They must cooperate to use resources efficiently. Means of cooperation include: gifts of free labor, livestock, grain and honey" [43].

This shows the traditional knowledge how the pastoral communities of Ethiopia cope up with the changing condition and environmental uncertainty and their blessing to live together by cooperation. But this community did not given attention. Areas in Ethiopia's drylands are probably amongst those with the country's highest incidence of poverty and poor access to basic social services such as infrastructure, education and health services [43].

2.2. Historical Overview of Pastoral Land Tenure in Ethiopia

This part discusses how the pastoral land system was treated in the history of Ethiopia. It examines the extent of protection of pastoral land rights under laws of different regimes. It tries to analyze different laws and policy documents.

2.2.1. Pastoral Land Tenure Before 1974

State expansion in the 18th and 19th centuries from the central highlands of Ethiopia in every direction, particularly under the last two emperors—Emperor Menelik II and Emperor Haile Selassie I—put most communal land of Ethiopian pastoralists under the central control of the state. The lands of Ethiopian pastoralists were practically considered as 'no man's land' and they were denied rights to their communal land holding system. This policy denial is reflected by the 1995 revised constitution. It reads as "*[all property not held and possessed in the name of any person... including all land in escheat, and all abandoned properties... as well as all products of the sub-soil, all forests and grazing lands, water courses, lakes and territorial waters, are state domain [7].*

On the basis of the 1955 Constitution, the Government started to grant formal fixed-term concessions for the growth of commercial agriculture (mostly cash crops like sugar and cotton) in the Awash Valley [8].

2.2.2. Pastoral Land Tenure During Derg

"In 1975, with the coming to power of a small military junta called the *Derg*, a radical land reform based on socialist ideology was introduced that abolished tenant-land. Land Proclamation No. 31/1975 was introduced. The Proclamation included: public/state ownership of all lands; distribution of private lands to the tiller; and the prohibition of transfer of possession rights by sale or exchange. In the case of communal lands, possession rights over land were guaranteed for "those working on the land at the time of the reform" [8]. Pastoral resources and grazing lands are not given much attention in public policy. "In the 1975 Land Reform proclamation, only 4 short articles (out of 33) were directed at the situation in the 'nomadic lands'" [8]. Forced sedentarisation of pastoralists was a major feature of land tenure policy in the lowlands of Ethiopia [8].

According to the words of full book, in the 1975 land reforms proclamation, the state monopoly of ownership of land was reaffirmed and the rights of pastoralists were limited by law, only to usufructuary rights. Pastoralists have possessory rights over the lands customarily used for grazing or other purposes related to agriculture. It proclaimed that pastoralists pay all dues to the state; instead of *Ballabats* (traditional chiefs), urged to set up associations and government improve grazing areas and settle the pastoralists. Substituting traditional resource management system by pastoral associations caused the erosion of traditional institutions and contributed greatly to the distortion of the pastoral way of life. In subsequent years decades there was increased encroachment and interventions to pastoral land for

large state farms in the rift valley regions and national parks and protected forests and land that are not useful for pastoral production and social organization as well as outlawing pastoralists from using them for grazing [45].

From the above discussion and overview laws and policies of Dergue regime one can clearly observe that the laws of the time were in favor of to government to do its social and economic plans on the pastoral area. Holland express this fact as, "*Pastoralists usually retain rather vaguely defined rights of access and use, as granted by the state in the most general terms, but the pre-eminent rights of the state to do as it pleases with pastoral lands is usually not in question*" [8].

2.2.3. Current Regime

As a new government, which assumed state power in 1991 by revolution, the government has tried to address the needs of marginalized peoples such as pastoralists. EPRDF has enacted policy measures which directly or indirectly impacted on the life of pastoralists. One of the policies is the pastoral extension systems. Like its predecessors, the pastoral extension programme fails to adequately address the problems of pastoralists. It is simply dictated by the rationales of agricultural extension programmes [10]. The Ethiopian Constitution, 1995 (Article 40) has established a non-flexible land policy. There is threat to land tenure security under which the holder of land may lose the holding right. Most prominent threats include displacement because of private investment and eviction on account of the need to use the land for public purposes.

The FDRE constitutions recognize fundamental rights and freedoms by this one portion. These provisions include both individual and collective rights. It granted 'nations', 'nationalities' and 'peoples' the absolute sovereignty [7]. This community/ groups have the right of self-determination and self-administration. Ethiopian pastoralists are among the 'nations', 'nationalities' and 'peoples' that are beneficiaries of collective rights guaranteed under the Constitution. Moreover, it is important to note that most Ethiopian pastoralists are anything but 'indigenous communities' in the sense of international instruments and under any criteria provided by international law" [6]. The rights of Ethiopian pastoralists to ecological self-determination and customary management of natural resources are thus inalienable fundamental rights that impose a duty on the government to take positive measures in ensuring the enjoyment of these rights [6].

Some appreciate the Ethiopian constitution as "unique constitution in recognizing collective or group rights of 'indigenous communities' by giving reason that it gone far beyond what is provided under international legal instruments as far as collective rights of 'indigenous communities' are concerned [6].

However, the main thing to the pastoral society is the extent how the existing legal system give recognition and protection to their way of life, customary land rights and traditional institution and authorities which is the reality and social fabrics of pastoral communities. Therefore recognizing

communal land holding system is central importance, more than anything, for the existence and livelihood of pastoral community.

According to the FDRE Constitution, land is common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or other means of exchange. Article 40 (3) of the Constitution also provides that the right to ownership of rural and urban land, as well as of all natural resources, 'nations', 'nationalities' and 'peoples'. Furthermore, the constitution guaranteed that Ethiopian farmers and pastoralists the right to obtain land for free and protected from eviction [7]. These Constitutional provisions are a general and indicated that the details will be specified by special laws. These special laws are land proclamation and regulations issued by both federal and regional governments. Though vividly stipulated under Article 40 Sub-article 5, that Ethiopian pastoralist have the right to free land for grazing and cultivation as well as the right not to be displaced from their lands, such rights are not yet legally protected within the broader institutional framework. Customary authorities and the rules and regulations that were used to manage and conserve the rangeland resources have remained either unrecognized or under recognized over the years, contributing to deterioration of the rangeland conditions [11].

However, the role and authority of traditional institutions and the customary rules and regulations of rangeland use and management in pastoral communities remain essentially unrecognized under the formal/state land use and administration policy and legislations.

The provisions proclamation no. 456/2005 made obstacle for protection of pastoral land system. First it defines "communed holding" means rural land which is given' by the government to local 'residents for common grazing, forestry and other social services [7]. Furthermore, Government being the owner of rural land, communal rural land holdings can be changed to private holdings as may be necessary [7]. These provisions are against the constitutional principle of ownership of land, that it is common property of the state and the people. But in the light of these provisions the state is in the place to be the sole owner of the land. At the time it empowered the government to use its power up to snatching the land from the hand the community, the equal co-owner with it. Therefore, the rural land administration and use proclamation no. 456/2005 is against constitutional ownership of land between state and people and at the same time against communal holding rights of community.

(i). Pastoral Land Rights Under Federal Land Laws

FDRE constitutions divided the law making power on land and other natural resource to the federal government and the power of administration of land and other natural resource is granted to regional state. Accordingly, the federal government enacts framework legislation and regional states administer the land and other natural resource, in line with the federal laws [7]. The regional states may enact their own law without contradicting with federal framework legislation. Accordingly federal government enacted rural land

administration and use proclamation 456/2005. Plus each regional state had promulgated their respective rural land proclamations.

Mohamed Abdullah dictates the failure of the law to give worth protection to pastoral system. *"The definition of the term 'pastoralist' together with the term 'holding rights' to mean the rights of an individual pastoralist and the fact that a holding certificate' is the legal base to claim land use rights have numerous implications upon the rights of pastoralists to their communal land. The fact that individuals (as opposed to communities) are the major landholders recognized under the 456/2005 Proclamation together with its silence on holding certificates for collective landholders clearly reflects that the communal landholding systems of pastoralists have no place in this law"* [6].

So, it is clear from the above facts, that the federal rural land proclamation, which empowered by FDRE constitution to prescribe the detailed conditions of protection of pastoral land right, is not in position to deliver meaning protection.

(ii). Regional Land Laws and Pastoral Land System

(a). The afar national regional state rural land administration and use policy

According to the National Population and Housing Census of Ethiopia, January 2004, Afar regional state composed of 92% pastoral land agro pastoral society. The policy indicate that the land used for purpose of agriculture and grazing. The lands are under clans leaders mostly as communal grazing and communal farms. Problems like recurrent drought, deforestation salinity of the soil overgrazing etc are listed as obstacles in the region. Therefore the policy set its objectives to solve this land use and administration problems and to lay the ground for sustainable use of land and land resources and to ensure the tenure security of pastoralist. The policy also pin pointed the reasons for adopting the policy document. Among others, the traditional land administration and use system is not in line with the formal government land administration and use system. Further the policy dictates the fact that the traditional system emphasized over the formal system formed hindrances to investment and tourism activities in the region [13].

When these wordings of the policy document analyzed, as the objective, ensuring tenure security of pastoralist can be taken as a significant policy direction towards solving the real problem of pastoral communities i.e. on security of tenure. However, when we look deep into the policy document there are many indications of concepts which against tenure security of pastoral community. Expressions like, making of favorable environment for development policies and strategies, determination and negotiation of land payment with clan leaders, instead of government agency do not create conducive environment to investment, does not provide legal guaranty security to investors. Furthermore the afar national regional state land use and administration policy had taken, the traditional, clan based land administration as hindrance to the equal use rights of pastoral land. So, instead it encourages and resemblance to

replacement of this system by the formal law system.

(b). *Afar national regional state rural land administration and use proclamation no. 49/2009*

"The rural land law which is enacted to implement the rural and administration and use policy in the same way to the policy of afar the also uses the same word as its aim. Among others, it says whereas, it is necessary to establish a suitable land administration system so as to ensure tenure security of pastoralists, agro pastoralists, and investors" [13].

Communal pastoral lands used communally by pastoralists shall not be transferred into private holdings. Communal lands that are used communally by pastoralists for grazing, and social services shall not be given/leased to investors. This, however, shall not affect the power of the government, as holder of all lands, to transfer communal holdings into private holdings as deemed necessary and in consultation and in agreement with pastoralists [13].

These provisions seems to protect the communal holding right of pastoralists. The first sub article prohibited the transfer communal land to private holding. But this cannot limit the power of government to do the same, when it thinks necessary. Plus it failed to point out exceptional legal conditions and preconditions which should be fulfilled before government transfer communal holding to the private.

Further the law gives the power of dispute resolution to the formal institution. Where a dispute arises between land holders over a rural land holding; the complaining party shall submit a petition to the kebele administration. The kebele administration shall cause elders to be elected by the disputants or otherwise who shall resolve the dispute through arbitration or conciliation. A party who is not satisfied with the decision of the arbitrators may file an application to the woreda regular court [13]. So one can easily understand that the law failed to adequately protect communal land holding right of pastoralist.

Therefore, afar national regional state rural land administration and use policy and the proclamation no 49/2009 failed to recognize traditional system of land administration, communal holding right, failed to empower traditional institutions and it authorities. The law does not consider the situation prevailing on the ground, as result it failed to serve the interest of the 92% pastoral and agro pastoralism community of Afar.

(c). *Rural land law of Oromia regional state*

Oromia region is home of most efficient pastoral community in Africa, Borena pastoralist. It is by some that the oromia rural land administration and use proclamation is relatively better than other regional laws in terms of recognizing pastoral land rights its wordings are somewhat beneficial to pastoralism. The previous proclamations [14] do in better way recognized but the amended proclamation 130/2007 which is framed under fixed framework of the federal mother law 456/2005, is ignored the communal land holding. But recently oromia regional state developed special draft regulation to pastoral community of Borena; it will be discussed in more detail in next part of this paper.

(d). *BenshangulGumuz rural land proclamation*

Among the objective of BenshangulGumuz Regional State Rural Land Administration and Use Proclamation No. 85 /2010, gives special attention for securing the holding rights of farmers. The Amharic version....

የመሬት ባለቤትነት መብት በተግባር በመተርጎም እያንዳንዱ መሬት ተጠቃሚ በተለይም የአርሶአደሩን የመሬት ባለቤታነት፣ የመጠቀም መብት ግዴታውን በመወሰን የመሬቱ አስፈላጊውን እንክብካቤ በማድረግ እንዲጠቀም ምቹ ሁኔታዎችን መፍጠር አስፈላጊ ሆኖ በመገኘቱ፡፡ [15]

The English translation is "By applying land ownership, land ownership has proved to be an important means of creating amenities for the land user, especially arsoadder, by determining the right to use the land".

This literally mean whereas to ascertain land holding rights of each user, especially the farmer's holding and use right and duties, it is important to conserving and take care of the land. One can easily understand from the wordings of the preamble that much focus and emphasis is given to the farmers, rather than pastoral land as far as securing holding rights concerned.

(e). *SNNPR rural land proclamation*

The prevalence of pastoral land SNNPR covers 10% of national pastoral land and 30% of land mass of the region. The pastoral land covers 262 kebele which are lightly diversified in different areas of the regional state, in 12 woreda namely six woreda in South Omo zone, five woreda in Bench Majji zone and one woreda in keffa zone, administration areas [16]. This pastoral land is governed by rural land administration and use proclamation no. 110/2007 which is enacted in the framework of the federal law and almost the same. As its mother law 456 /2005, it predominantly focuses on agricultural land. There is no specific strategy determined which is suitable for land administration, tenure system and land use planning for pastoral areas.

However, regional state agriculture and natural resource development bureau land administration agency given more emphasis to pastoral area by its draft rural land administration and use proclamation. The draft aimed to revise proclamation no. 110/2007. The draft law gives better attention to pastoral area, than 110/2007. As it is clearly mentioned, among its objectives, in the preamble of draft proclamation, securing the land holding right of pastoralist. By the wording of proclamation, whereas it is necessary to guaranty the holding right of pastoralist, which are administered by tribal leaders and lead dispersed and movable way of life it necessary to collect them into one center to ascertain holistic development benefit and facilitation of basic infrastructural service.

To meet this general objective, the draft proclamation included special provisions applicable to the pastoral community. Article 11 given heading, "land administration in pastoral semi pastoral areas". Sub article (1), in order to lead the pastoral community to settled way of life by voluntary villegization, land holding certificate with plot map will be given for both private and communal holdings. Moreover, sub article (3) further provide, until intended villegization and settlement process is completed traditional land holding system of pastoral and semi pastoral, shall be given legal

recognition and certified. The detail will be determined by regulation [18]

This provisions probably open door for legal recognition of communal land holding of pastoral community. It may also create possibility to registration of pastoral land in the name of the community. Even though it is difficult to know clearly and to be sure, what will be practically applied, before the regulation is enacted, the provisions of the draft proclamation under article 11 guarantees protection traditional landsystem. Obviously, the traditional land system in pastoral area is communal land holding. And it is administered by customary authorities and institutions. So, one can safely conclude the new draft rural land administration and use proclamation, recognized communal holding right of pastoral communities.

Additionally, when one critically analyzes the draft proclamation, the draft proclamation, it says *voluntary to villegization*. This shows that, there is possibility of being not voluntary. If the certain pastoral community is involuntary for villegization, giving legal recognition for existing traditional system of life is important. So, the spirit of the law indicates that, their traditional/indigenous way of life, communal land holding, mobility for search of pasture, customary institutions and authorities, shall be given legal recognition. Plus such holding system will be guaranteed by issuance holding certificate with areal map. This recommended and expected to clarify by the regulation to be issued. Hence, the draft proclamation reveals that much attention given by government for protection of customary land rights.

Therefore, one can safely conclude that, the draft rural land administration and use proclamation of SNNPR is in better position to protects pastoral land right, than laws in force, the 456/2005 and 110/2009. This experience, giving legal guaranty to protection of traditional of system land of SNNPR, should be taken as good lesson by other regional states as well as the federal, as far as normative framework of pastoral land system concerned.

To conclude, the pastoral land system in current regime of Ethiopia, even though the constitution guaranteed protection of pastoral land rights by recognizing communal land holding system, the special land laws which are expected to prescribe detailed rules and regulations failed to do so. Due to this their land holding system, life style and culture are denied legal protection. Constitutional recognition lacks meaning without detailed protection by special laws. It is proclamations, regulations, directives and rule which breathe life constitutionally recognized rights. Simple constitutional recognition is incomplete for meaningful protection of pastoral land system. In depth analysis of ruralland administration and use proclamations of the federal and different regional states reveals that the communal land is a land which granted to the community by government. This land is open to be converted to private or state holding. However, the reality is that communal land is inherent nature of pastoral community which is traditionally practiced from the time immemorial. It is not something which government

gives and takes. The only duty of government is recognizing giving legal protection to the land holding system and the way of life which they had been experiencing, even before birth the government.

Therefore, Ethiopian government failed to fulfill duty of giving legal recognition and protection to indigenous people which is prescribed by international instruments concerning endogenous community right. Beyond that it had been taking away their land. Instead of giving legal protection to land right by promulgating suitable law, current government has been taking the land of indigenouspeople byenacting law. This is totally against the right of enginous peoples.

2.3. Basic Challenges of Pastoral Land System in Ethiopia

The challenges to pastoral land system problems naturally connected to the pastoral system and pastoral production. Among these problem the major environmental challenges, scarcity of resourse, recurrent conflict over resource, misconceptions to the pastoralism. The next part devoted to the discussion each turn by turn.

2.3.1. Environmental Challenges

A lot of researches, reports, conferences and workshops have widely documented and discussed about the growingenvironmental challenges of pastoral system in Ethiopia. Among the major difficulties the system has been facing is therecurrent drought with its devastating effects on the rangelands, livestock, and the general livelihood of pastoralists. In someareas of the pastoralist communities, on the other hand, floods have been disastrous. In fact, drought being a natural shockthat have been occurring in the past, the aggravating factor for drought incidence in Ethiopia has been lack of proper management of the natural resources, and lack of disaster oriented development strategy and policy in the areas which are flat to such natural shocks like drought [19]. Demographic, environmental, socio-economic and political changes are putting force on the use and management of drylands. Today, many dry land communities are experiencing increasing hardships, frequent droughts and food insecurity, as well as a declining quality of life [20].

2.3.2. Recurrent Conflicts and Threat to Livelihood

The prevalence of conflicts among the Ethiopian pastoral communities also characterizes Pastoralism. Conflicts largely stemfrom resource competition where the traditional tolerance, sharing and conflict resolving mechanisms fail to mediate thecompetition. Not only do conflict lead to disasters that include loss of life and asset, they also contribute to inefficient rangelands resource use by hindering the traditional management and mobility.

2.3.3. Basic Services and Infrastructural Challenges

Remoteness characterizes Pastoralism in Ethiopia whereby road and communication infrastructure is at low level. Unbalanced development services, poorly developed market and urban centers, lack of market information, unharmonizedcross -boarders trade are the major

bottlenecks to the pastorals development. Access to education, health and other social services is in general at low level. It is within the circumstances of these challenges that Pastoralism strives to create value and livelihood of millions of people [20].

2.3.4. Misunderstanding the Value of Pastoral Community

The absence of an appropriate conceptual framework and monitoring system to identify and track the true and various contributions of pastoralism is a major constraint. Though statistics are fragmentary, there is growing evidence of the significant contribution pastoralism makes to national and regional economies [21]. According to EARO (2002), "the drylands of Ethiopia are dominated by rangeland based livestock production systems known as pastoralism and agro-pastoralism (partly involved in opportunistic cropping) represent a significant sector of the national agriculture in the country. It produces 80% of the total annual milk supply, provides 90% of the meat consumed in East Africa, and contributes 19% of GDP" [21].

The pastoral and agro-pastoral production systems also represent approximately 45-55% of the cattle, 75% of the small ruminants, 20% of the equines and 100% of the camels of the total national livestock population. Accordingly, they contribute about 50% to the national agricultural Gross Domestic Product (GDP) and 90% of the annual hard currency earnings from live animal exports. Despite the large size of the regional livestock population, its economic contribution to the regional and national economy is not significant, mostly due to natural and human limitations [22]. However, despite of such tremendous significance, over successive political regimes, Ethiopia's highland elites, despite differences in approaches and political ideologies, have considered the lowland peripheries underdeveloped territories to be colonized and developed. This land is claimed on the premise that it is empty or underutilized. These pastoral landscapes are simply represented as being inhabited by people who are not 'civilized' sufficient to make 'proper' claims to the land [23].

So, misunderstandings to the importance, the contribution and economic value to national economy, due to lack of information system about the facts of pastoral system is base for marginalization and superficial treatment of pastoralism.

2.4. Gaps of Pastoral Land System in Ethiopia Answer There to from Comparative Experience

This part dictates the major gaps of pastoral land administration in Ethiopia. The gaps are classified as normative and institutional gaps. The former is about the gaps in laws, policies and strategies while the later is gaps in institutional arrangements and their practice in administration.

2.4.1. Normative Gaps

(i). Legal Gaps of Pastoral Land System

"The Federal Land Administration and use Proclamation no. 456/2005 does not have adequate provisions to determine pastoral land administration and use. All lands of farmers,

agro-pastoralists and pastoralists are mentioned together to indicate rights and obligations. This situation seems to provide less clarity on the administration and use of communal areas" [24].

The regional states with the highest percentage of mobile pastoralists (the states of Afar, Somali, Gambella and Benishangul-Gumuz) have, up to now, failed to adopt specific land laws suitable to conserve the way of life of these communities [6]. If the Federal Government and regions develop pastoral-relevant laws and pave a path for communal land leasing, the poor and dropouts could benefit from the land transactions through available capital to buy livestock or try other activities, jobs to be created and knowledge and skills to be transferred. With appropriate legal instruments and strengthened sense of communal land use rights, land transaction can help to arrange a contract between land leasers and communities in a way that ensuring fair and equal benefits among the members [24].

However, in practical terms, the pastoral lands have not been covered by specific national legislation granting security of tenure to the people who live from pastoralism. Land rights to agricultural land in Ethiopia are obviously much more elaborate than rights to land and resources in the pastoral areas, specifying the terms and conditions under which farmers gain and maintain access and security of tenure to land [8].

The Mauritanian Code Pastoral

"The code pastoral of the Islamic republic of Mauritania could be good lesson to this lack of special law. The Code Pastoral enacted in 2000 and published in 2004. Embodying a combination of both traditional and Shari'a law, the Code Pastoral represents one of the most far reaching examples of national codification of customary tenure of nomadic pastoralists. The law, drafted by tribal leaders and herders together with support from Islamic scholars, provides that overlapping, collective seasonal use rights to pastoral resources (land, water, forage, salt licks) prevail over individual cultivation rights. Rights to pastoral resources are exclusive to those who practice nomadic herding. Mobility is upheld over sedentarisation. Collective or private interests seeking to establish land rights must first obtain the permission of customary land users. The law is concise and clear, assigning specific rights to specific groups' land that is identified as "pastoral area" is completely excluded from private ownership. Water rights are an integral part of the Code" [25].

"The objective of the Code is a rational administration of the Mauritanian grazing range (*espace pastoral*) strengthening herder's rights. The principal concepts and rights of herding are defined. Its provisions stipulate the mobility of herders and access to pastoral resources. Pastoralism is defined as livestock rising based on permanent or seasonal mobility" [26].

(ii). Policy and Strategy Gaps

Pan African pastoral policy framework stresses on the importance of pastoral policy as follows,

Policy has always been at the center of successes and failures in the development of human communities. Similarly, policy can either promote or hinder economic and social development in pastoral areas of Africa [27]. Furthermore, a proper understanding of the system of rights governing access to the land, including pastoral lands, and the use of the resources on it, is essential to understanding rural Ethiopia. Initiatives and reforms within Ethiopian land tenure legislation at the national level are formulated on the basis of issues relevant primarily to the arable agriculture in the highlands, secondarily to urban lands. The circumstances in the pastoral areas is either ignored or very superficially treated [8].

The policy direction and legislative process underlying the Ethiopian land tenure system have continuously failed to integrate and accommodate the communal land tenure and governance system of the pastoral communities. The predominant focus of land policy formulation and legislation in the country has always been individual-based land use (farming/crop production) system, essentially disregarding the details of communal land tenure; property rights arrangements and the underlying customary institutions among the pastoral communities. This has led to continuous deterioration of the role and authority of customary institutions that sustained communal land use and rangeland resource governance system for years among the pastoral communities [8]. As a result, the pastoral communities continue living under insecure land tenure system characterized by lack of legal protection and increasing loss of land use rights and access to rangeland resources as investment initiatives and land use systems other than pastoralism advance into the pastoral systems [28].

(a) Lack of comprehensive national land policy

Lack of comprehensive national land policy is the root of this gap. There many sub Saharan countries with better experience in terms developing comprehensive national land policy. To mention some Namibia, Tanzania, Uganda, Kenya had successfully developed nation policy. Among these, National Land Policy Namibia's of (NLP) of 1998 taken as good experience for our policy problem.

National Land Policy Namibia's of (NLP) of 1998

Namibia is very largely a pastoral country; only relatively small areas in the north are suitable for crops and these are frequently stricken by drought [29]. The communal land comprises of 41% of the total land area. More than two-thirds of Namibians live in communal areas, which compose 36% of Namibia's land mass [37]. National land policy is the government's tool as a response to redressing the inequitable land distribution as a result of the colonial regime, and it further aims at tackling issues of discrimination amongst many others. The policy was designed to provide for a unitary land system where no Namibian should be left out by making provision for equal rights, opportunities and security amongst the land tenure types irrespective of whether such land is in a communal or commercial area [30]. The national land policy of Namibia has the fundamental principle like principle of tenure options to manage the biophysical and

cultural diversities of the country; and decentralized administration of land, equality of all land rights before law [31].

Therefore, Ethiopia has to necessary draw lesson from Namibian experience in formulation of national policy in order to be successfully achieve is usual aim of eradication of poverty and economic transformation. because it is difficult to achieve economic transformation and eradicate poverty without having land policy which precisely prescribes the its general objective, and fundamental principle and specific goals of land administration and setting suitable policy to different sector of such as farming, pastoral lands.

(b) Lack of suitable strategy to pastoral area

Moreover, beyond absence of comprehensive national land policy, the worst thing is the strategies designed to pastoral areas are discourages the pastoral traditions mainly mobility, communal holding system. The general strategic statement of the Federal Government in the short and medium term is to reduce pastoralist mobility, and in the long-term to sedentarise pastoralists, which is contrary to the customary rangeland management system.

The policy direction of government and our work in pastoral area is collecting people together in one area and supplying facilities. It is not encouraged living as their usual, following the tail of their animal. Instead collect in one place first and we supply what is necessary for them. This is what we done for people in kuraz sugar project [32].

Presently there are a lot of pastoral land management activities on the ground which are mainly project-based, and which the traditional customary system seems to totally ignore in Ethiopia [33].

"For instance in SNNPR there are mainly three projects working in pastoral community. Namely Regional Pastoral Livelihood Resilience Project (RPLRP), Drought Reliance Sustainable Livelihood Project (DRSLP) and Pastoral Community Development Project. These projects mainly focus on improvement of livelihood of pastoral households. This includes improving livestock bread, the vaccination and medical service and feed for animals. Additionally development of Social infrastructure to pastoral community like road, school, health centers, natural resource conservation and range land management and protection of land degradation and environmental protections. However these projects have nothing to do with land tenure and administration issues" [34].

Therefore it is safe to conclude that it is lack of proper understanding of the system operating in pastoral community and framing suitable laws, policy and strategies accordingly in which resulted in the existing problems in the area.

2.4.2. Institutional Gaps

At present, the Ethiopian constitution has decentralized rural land administration to regions and the regional states shouldered the duty to *kebele* level government structures, including in pastoral areas where previously customary governance structures were the only power on managing rangelands and their resources. Customary authorities

administered a set of rules and regulations for the proper management of these resources and fined transgressors accordingly. Local administrators are now given these functions. This has severely undermined the powers of the customary institutions adjudicatory powers. Individuals who break customary rules of communal lands and natural resources like cutting trees, making charcoal and inappropriate use of water and grazing are not bound to appear before customary authorities or may refuse to abide by their decisions.

Although the functions of administering and managing the rangelands and their natural resources have been taken by local governments, they do not have enough staff on the ground nor the knowledge to carry out this function effectively. This encourages violation of the customary rules and regulations by creating a vacuum of authority on the ground. At times decisions of the customary leaders are reversed by local administrators.

The main work of our institution is in agricultural land. We focus on farmers land. We have nothing to with pastoral land. They are administered by their own system, by tribal leaders. Even they did not allow entering in to their administration area. Because, they are aggressive and warriors. They are out of reach of our institution [32-35].

Therefore, this show in some part of the country the laws of government reach ground. This because of absence of specified formal institution responsible for the implementation and monitoring of the policies and proclamations by government and determines how effective they are. However, the institutional arrangements of pastoral land in Namibia well arranged from grass root level to national level and duties and responsibility each institutions are clearly prescribed by the relevant law.

1) Traditional Authority

In Namibia the Traditional Authority (TA) is the custodian of local communal land, though other agencies like the Ministry of Lands and Resettlement (MLR) and Communal Land Board (CLB) play respective roles in the administration and management of the communal land. Communal land in Namibia is vested in the state by the constitution. The state has a duty to administer communal lands in trust for the benefit of the communities residing on these lands and for the purpose of promoting the economic and social development of the Namibian people. Communal land cannot be bought or sold, but can be leased out by the state. In charge of the lease and access to land in the community is the traditional authority (TA). The Traditional Authorities (TA) in charge of the administration of the communal land in Namibia is structured in accordance with the Traditional Authorities Act of 2000 and the payment of allowances by Ministry of Regional and Local Government and Housing (MRLGH) [35].

TA's who play the biggest role in communal land management has responsibility to Allocate or cancel land rights, determine size and boundaries of land, approve application, investigate matters and consult people about application, resolve land disputes, ensure good management

and registration of communal land, ensuring security of land tenure [35].

2) Communal land board (CLB)

"Another institution entrusted with communal land administration is Communal land board. The passing of the CLRA gave birth to CLB's. There are 12CLB's in Namibia. CLB's were established in 2003. Functions of the CLB's is to exercise control over the allocation and the cancellation of customary land rights by chiefs and TA's, To consider and decide on applications for a right of leasehold, to establish and maintain register and a system of registration for recording and allocation, transfer and cancellation of customary land rights and right of leasehold., Controlling the erection and maintenance of fences in communal areas, Making sure that no unresolved disputes exist before a registration certificate is issued, by resolving, conflicts between neighboring land users over boundary locations. There high gender representation in composition of the board. Among members of the board, four are women, two of whom must be engaged in farming in the board's region, and two of whom must have experience that is relevant to the functions of the board" [35].

3) Land administration institutions of Uganda

The National Land Policy of Uganda 2013 provides for the need for legal recognition of the dual operation of both customary and statutory systems in land rights administration, land dispute resolution and land management by empowering customary authorities to undertake these functions. Land Administration operates within two parallel systems comprising a) the traditional customary/informal systems governed by customs and norms of given communities and b) the centralized statutory/formal (state) system governed by written law. The Constitution under Article 238-240 establishes the land management institutions, thus the Uganda land Commission and the District Land Boards. It also prescribes the functions for each of these institutions. While the Constitution prescribes the membership, procedure and terms of service of the Uganda Land Commission, it gives Parliament power to enact legislation prescribing the same for the District Land Boards [36].

2.4.3. Lack of Pastoral Land Registration and Certification

Ethiopia did not successfully registered pastoral land. The primary concern of land registration and certification program was guaranty security of land rights of farmers. Communal lands are not subjected to certification. This resulted in unsecured pastoral land rights.

Several countries in sub-Saharan Africa have revised their land laws to gift legal recognition to customary forms of land tenure. Moreover, it is increasingly thought that reforms that grant statutory recognition of customary land rights will enable these rights to be more secure and less vulnerable to effacement by others seeking to establish legal rights on the same land [25].

1) The Tribal Land Act, 1968 of Botswana

The Tribal Land Act, 1968 of Botswana vests tribal land in a decentralized system of land boards operating on behalf of

Batswana citizens. These boards administer rights to land in accordance with customary law. The Act drew on the core principle of customary law that all tribesmen should be entitled to land. The law was built on Tswana land tenure rules, eclipsing alternative forms of customary law practiced by other ethnic groups. Customary land rights are secured by a “customary land grant certificate” which grants exclusive, perpetual, and heritable use rights to individual applicants. In 1993, these rights could also be transferred, provided the land was developed for the purpose intended. Under the Land Act, once grants of customary land rights are acquired, they cannot be cancelled without just cause. To acquire transfer and mortgage rights, one must convert their tenure to a common law lease. Land Boards can grant common law leases on tribal land to Batswana citizens (whether tribesmen or not) and foreigners. Leases for residential purposes are for 99 years; for industrial and commercial purposes the lease is for 50 years and eligible to be renewed for an additional 50 years. Leases are fully negotiable [25].

This experience of Tribal Land Act Botswana teaches Ethiopia the lesson that the communal land rights are secured and guarantees the holding right by issuance of certificate.

2) Communal land reform act of 2002 of Namibia

In 2002, the Government of Namibia enacted the Communal Land Reform Act, in an effort to distribute land rights more equally and redress extensive enclosure of communal land. Enclosure of communal land by local elites and other actors had led to diminished access to grazing, disruption of traditional patterns of transhumance, confinement of seasonal grazing, and overuse of sensitive ecosystems. The Act also established communal land registration to “bring about tenure security and promote investment in land”. Two types of rights to communal land were established under the Act: customary rights (for the lifetime of the holder and inheritable) and leasehold rights (for 99 years and transferable). The Act prohibits any new enclosures of communal land [37]. This act established the organ which trusted with institutional duty and responsibility to registration and certification of communal land called *communal land board*.

3) Village Land Act (VLA) of Tanzania

In 1999, Tanzania adopted two pieces of legislation as part of a comprehensive land reform: the Land Act and the Village Land Act, with the latter law embracing customary tenure.

Under the new laws, the allocation of authority and responsibility for land administration depends upon the classification of the land. Land is classified as either village, general, or reserved land. The Commissioner of Lands within the Ministry of Lands, Housing, and Urban Development is charged with the allocation of general and reserved lands and the administration of the former, while retaining overriding powers in the administration of village lands. Around 70% of land in Tanzania is classified as village land. Village lands are governed by the Village Land Act which provides for two types of tenure: granted rights of occupancy and customary rights of occupancy. Both have equal status except that customary rights are permanent and perpetual whereas

granted rights are limited to 99 years. Those who have occupied lands for many years are entitled to customary rights of occupancy and are qualified to register the right and obtain a Certificate of Customary Right of Occupancy. Entitlement to the right does not require certification, though registration does afford one the ability to use the certificate as collateral for credit [25].

To sum up, the above discussion of experiences of different states give lesson that, legally establishing land administration institution and prescribing their specific duties and responsibility is necessary for successful communal land administration.

To conclude, experience of countries discussed show how they recognized customary land rights.

Some countries, such as Uganda, Botswana and Tanzania, have sought to codify dominant forms of customary tenure and either fully or partially replaces the role of traditional authorities in land administration with formal, state-sanctioned administrative bodies. In other countries like Tanzania the certificate of customary land rights is used as collateral.

Namibia customary rights are allowed to vary and traditional authorities continue in their roles, but their decisions are now subject to the approval of local land boards. Ethiopia as a country taken many lesson. Normatively formulation of land policy which is inclusive to the interests of all stock holders, promulgation of suitable laws, detailed legislations, and codification of special law concerning pastoral land is important to better protection of pastoral land rights pastoralists. Moreover, decentralized land administration, recognition of traditional authorities, equality of all land rights before the law, public participation and consultation of all stockholders in land policy making, communal land registration for guarantying security of land rights, principle of equity and redistribution of land, empowerment of gender and local elders in land administration, market value based compensation in compulsory land acquisition in the public interest.

Therefore, Ethiopia should devote itself to quick reexamination of its existing normative and institutional arrangement of land administration in general and communal land administration in particular and policy line towards improvement socio economic transformation.

3. Conclusion and Recommendation

3.1. Conclusion

The nature of the global pastoral system is almost the same all over the world. Ethiopia is no different in this regard. Pasture and livestock areas are characterized by fragility, lack of natural resources, variability and unpredictability of rainfall, increased resource conflicts. Additionally, there are two opposing realities of land ownership. The first is the public perception that the land belongs to them which is a practice derived from their grant parents and no one can be interested in his land. On the other hand the attitude of most governments is that land is considered private and not private land, so it is

state property. In particular the land grab program is shared and managed by cultural institutions. Animal pastures and wildlife searches are natural in such an area.

Although shepherds contribute much to the country's economy, they refuse to be treated. The national policies of many governments diminish their value. Ignorance, over-the-counter treatments are common in some areas. This is common all over the world, especially in sub-Saharan Africa. The low-lying area comprising 60% of Ethiopia's total population, mostly populated by pastoralist communities and a small proportion of provide a greater value than other agricultural sectors. Plus holds the future of the country. Despite the potential for growth and contribution it is not considered in the history of the nation. Therefore, natural and man-made challenges face global systems such as policy and institutional challenges. As a result, pastoral decline, livestock shortages, travel restrictions are common in pastoral areas of the country.

After international awareness about land ownership, various international communities are aware of the land rights of infinite people. This spawns the recognition of human rights rights through various human rights documents and voluntary guidelines. The main focus of these legal documents, although different from their content, compliance with formal and informal land laws, recognition of human rights, registration and certification of various land rights, is the principle of land administration in land administration. The documents state that the duration of the stay should focus on poverty reduction, food security, economic development, environmental protection, recognition and control of the land rights of women, pastoralists, minority groups, or indigenous peoples' rights.

So there are foreign countries with better knowledge in terms of principles and institutions with better knowledge, in global governance and in the public sphere system in particular. Foreign knowledge especially in Namibia provides us with lessons such as the consensus on the national and traditional land system, the registration and accreditation of community land rights, the empowerment of women in the land administration system, the timely reporting to the cultural center and authorities.

Of particular concern to this thesis is the identification of the challenges / problems of the world pastoral system and the identification of a way out of those problems in order to effectively govern and effectively utilize the 60% blessing power. In general, throughout the discussion of the Ethiopian pastoral system the following is found in this study:

First, the existing land management system undermines the right to grazing land. the general and institutional framework has failed to provide adequate protection for the interests and health of the pastoral community. The global grazing system has a greater impact on the country's economy than any other agricultural sector.

Second, the global pastoral system has been treated with the highest regard throughout the history of the world. policies and strategies followed by successive governments have been eroded from the global grazing system and against

the interests of pastoralist communities. Despite this situation the pastoralist land system continues to have a greater impact on the national economy than other sectors that have been the main focus.

Third, the general and institutional framework of the current government has failed to provide a comprehensive definition of a pastoral land system. Although the FDRE constitution respects the rights of traditional land, special law refuses to specify the laws that are consistent with the realities of the land pastoral system. Rural land management and regional declarations do not have sufficient provisions to determine the administration of the ecclesiastical land and the use and opposition to joint land tenure and cultural institutions. In addition, the institution in practice ignored the role of traditional authorities.

Fourthly, the strategies and policies used in livestock such as commercial agriculture on a large scale, human settlements and settlements, park development, nature reserves, nature reserves represent a large-scale conservation of land that is contrary to nature. an active lifestyle associated with the global pastoral system. This creates disruption to the lives of the clergy community.

Fifthly, the Ethiopian government is of the opinion that, it is the only landowner in the country. In particular the spirit of the state and local laws of the land and the practice of public land reflect a government that forgets the existence of people as equals landowners. Public custody, which is defined as something that the government can give and take for granted.

In general, the practical experience of the Ethiopian world pastoral system is not in line with the international commitment of the country and remains very much in the developed world. There are many lessons Ethiopia has to learn from the experience of a prosperous country, Namibia in terms of both common institutions and institutions, in governance of pastoral land system.

3.2. Recommendations

Having aforementioned facts in reality the following will recommended for betterment of pastoral land system:

1) Development of Comprehensive land policy

Ethiopia needs comprehensive land policy that is in the line with constitutionally recognized customaryland system. The policy provisions must necessarily accommodate the interests of all stockholders. In this respect balancing the interst of high lander and the low landers by adopting suitable measures, in the way they supplement the need of each other, like undertaking natural resource and land conservation works in highland areas which assist for the improavement of water source in lowlands. In turn the low land able to provide better animal breed to the lighlanders.

Itshould be given equal recognition and protection to all land rights.

2) Development of detailed laws and regulation that are suitable realities of pastoral community.

Detailed legal provisions which prescribe spedeficrules which determine the right of access, possession, use, transfer, disposes and other modalities of pastoral land. It should

specifically mention the right of individual household with in communal land holding right. The specific laws should be considered the life style and the context of pastoral community, the of powers and functions of customary institution and role local elders.

3) Registration and certification of communal land holding

To guaranty and security of communal holding right of pastoral community, holding certificate with map should be granted to the community. This is important to easily identify clearly the amount, boundary of land of specific community and at the same time reduces conflict and disputes. The registration will be in the name of the community and any want to take the land should first be consulted to community members and negotiated with elders. Additionally, this certification facilitate the process of compensation and replacement of alternative land.

In this respect the draft regulation of oromia regional state should be extended. The federal government should work on the extension of this good experience to other regional state with pastoral communities. Coordination and facilitation role should be taken by federal government whereas contextualization to their realities and giving legal base is expected from regional states.

- 1) The government should admit the fact that the land of pastoral community belongs to the pastoralist themselves by ancestral lineage. Plus this fact is

acknowledged by the constitution, by making the people co-owner of land with state. Therefore the government has no legal ground to do as it wants up on the land people. Prior consultation of people should be mandatory prerequisite. The land laws should incorporate the right to participate and to be consulted in this extent. Moreover, government is expected to show high commitment to empower the pastoral community in polical, economic and social aspects.

- 2) Development projects in communal area managed in the way that it does not disturb the livelihood of pastoral community.

Development and economic growth is inherently important to Ethiopia. However, maximum care should be taken not to disturb the livelihood and existence pastoral community in commencement of development mega projects. Giving them full rights to maintain their traditional life style with their traditional land use system, so that affects the existence in the name of 'development'. "Development" is meaningless if it adversely affect the life section of a society. It should be worked to assist co-existence of diverse land use system through investing in capacity building of pastoralist to management of pasture, water points and conservation of natural resource and advancing the role of traditional leaders should be emphasized.

Abbrivation

AAU	AdissAbeba University
AU	African Union
CLARA	Communal Land Rights Act
COMESA	Common Market for East and Southern Africa
CPRs	Common Property Resources
CSA	Central Statistical Authority
DF	Development Fund
EAR	CEast African Royal Commission
EPRDF	Ethiopian People Revolutionary Front
EU	Europeans Union
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Convention on Civil and Political Rights
IIRR	International Institute of Rural Reconstruction
ILO	International Labour Organization
NLP	National Land Policy
PFE	Pastoral Forum Ethiopia
SNNPR	Southern Nations Nationalities and People's Region
TA	The Traditional Authorities
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNC	Charter of the United Nations
UNID	RIPUnited Nations Declaration on Rights of Indigenous People
VGLT	Voluntary Guidelines on the Responsible Governance of Land Tenure
VLA	Village Land Act

Declaration

Here by We declare that this research work is entitled Challenges and gaps on Pastoral Land System in Ethiopia is our original work and has not been presented anywhere.

Dedication

Here by We declare that this research work is entitled Challenges and gaps on Pastoral Land System: Ethiopian Focus is our original work and has not been presented anywhere.

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