

# **Pastoral Land Tenure in Ethiopia**

## **Régime foncier pastoral en Ethiopie**

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### **Abstract**

The proposed paper will examine contemporary land and resource tenure arrangements in the pastoral areas of Ethiopia. National land tenure legislation, arising from conditions within arable agriculture in the highlands, is now made increasingly relevant also in the lowlands. Indigenous tenure arrangements therefore articulate with the national legislation to create a new tenure situation. The restructuring of tenure arrangements in pastoral societies may be seen as an aspect of the general process of marginalisation of pastoral society in Ethiopia. This process is partly the outcome of historical processes of political subjugation and partly due to the incorporation of pastoral societies into a state dominated by an outlook strongly biased in favour of agriculture. The pastoralists have to an increasing extent lost influence over policies and events that in fact are central to their livelihood.

The outcome of these processes of marginalisation will have grave implications for the communal resource management regimes that have sustained Ethiopian pastoralism. Resource depletion and resource destruction are linked to failing management regimes, and in turn, resource problems translate into food security issues. Changes in national tenure arrangements also distribute local user rights in new ways. A disturbing trend is the on-going exclusion of pastoralists from critically important key resources. This happens partly through internal stratification, as parts of pastoral society attempts to reserve previously common resources for their own use (at the expense of less fortunate members of the society), and partly due to external encroachment from various combinations of state and commercial interests. Resource poverty is thus becoming a major aspect of poverty in pastoral society.

Key words: Pastoralism, Ethiopia, pastoral resources, resource tenure, pastoral land tenure

## **Résumé**

L'exposé proposé examinera les dispositions du régime foncier en milieu pastoral éthiopien. La législation nationale du régime foncier, découlant de l'état de l'agriculture, est maintenant en train d'entrer en ligne de compte sur les basses-terres. Il s'ensuit que les dispositions foncières indigènes s'articulent avec la législation nationale pour créer une nouvelle situation de régime foncier. La restructuration du régime foncier pastoral est un aspect du processus général de marginalisation de la société pastorale. Ce processus est en partie le résultat d'assujettissement politique et est en partie dû au fait que les sociétés pastorales sont bien absorbées par un Etat dominé par l'agriculture. Les pasteurs ont perdu l'influence qu'ils exerçaient sur les orientations politiques et le cours des événements qui sont en fait indispensables à leurs moyens d'existence.

Ces processus de marginalisation aura de graves implications sur les régimes de gestion des ressources communales qui avaient maintenu le pastoralisme éthiopien jusqu'à présent. L'épuisement et la destruction des ressources sont liés à l'échec des régimes de gestion, et de même, les problèmes de ressources se traduisent en des enjeux de sécurité alimentaire. Des changements en matière de dispositions nationales du régime foncier répartissent aussi de façons nouvelles les droits des utilisateurs locaux. Une évolution inquiétante est l'exclusion en cours des pasteurs des ressources essentielles extrêmement importantes. Ce qui se produit en partie par le biais de la stratification interne, dans le cadre des tentatives de la société pastorale de réserver à son propre usage les ressources communes antérieures et partiellement en raison de l'empiètement de diverses conjonctions d'intérêts étatiques et commerciaux. Aussi, la pauvreté en ressource devient-elle la caractéristique principale de la pauvreté des sociétés pastorales.

## **BACKGROUND**

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 indispensable to understanding rural Ethiopia. Tenure arrangements are crucially important to the political economy of agricultural Ethiopia; additionally they structure a wide set of relationships within and between families, local communities, regional and national authorities. Tenure arrangements and ramifications arising from them are central components of public life throughout rural Ethiopia. Tenure issues have historically been at the core of a number of social economic and political events, and continue to underlie issues of central importance, like poverty, food security, local resource management as well as conflicts over land use, ethnic strife and regional unrest.

The central importance that land tenure issues play in rural society in Ethiopia is reflected in the attention that they have been given in the sociological literature on Ethiopia. This attention has to a large extent concentrated on land tenure in the arable agricultural areas in the highlands. Land tenure issues are crucially important to the population in the lowlands as well, even if only between 10 and 12% of the rural population of Ethiopia live here, divided between pastoralists and dryland or mixed farmers.

## **INTRODUCTION**

Pastoral adaptations in the lowlands of Ethiopia depend entirely on access to wide tracts of land to make full use of a resource base that is generally poor and unevenly distributed.. Although there is little specific information available about the different pastoral tenure systems, it is assumed that they display a number of differences. Land tenure systems must be linked to a number of organisational features (social, political, economic) of pastoral society; on the other hand land tenure arrangements are also assumed to have evolved in response to the nature of the resources involved.

The main contemporary problem in Ethiopian pastoral societies, however, is that various indigenous<sup>1</sup> 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.

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<sup>1</sup> 'indigenous' here simply refers to the many different pastoral societies found in the Ethiopian lowlands

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. 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. By implication, arable agriculture always enjoys precedence over pastoralism if there is a conflict over land use. As long as the pastoral areas only are of interest to the pastoralists themselves, access to the available resources is usually governed by the indigenous tenure regimes in place. If and when there is competition or any kind of confrontation between pastoralism and other forms of land use, however, the national legislation will, mostly by default, grant land rights to agricultural competitors.

. The recent system of ethnic federalism, which in principle should allow e.g. pastoral societies like the ‘Afar and the Somali to make their own arrangements with regard to land tenure, has not yet resulted in land tenure regulations specific to the pastoral system in question. But the introduction of new legislation itself is only one of many new issues faced by the pastoral societies. There are a number of other concerns arising from contemporary processes of national integration that may be equally threatening. Major issues like the recurrent food security crises of the pastoral areas of Ethiopia, may only be properly understood if the current changes in land and resource tenure are taken into account. The distribution of rights to resources and security of tenure will be central to any initiative to improve on the current situation of persistent poverty and high level of risk and enable the pastoral communities to create sustainable livelihoods in the drylands of Ethiopia.

## **LAND TENURE IN ETHIOPIA**

Access to land is a vitally important issue for the many people in Ethiopia who depend on agricultural production for their income and sustenance. Land tenure issues therefore continue to be of central political and economic importance, as they have been at several crucial junctures in Ethiopia's history. The decisive significance of the land question was perhaps most explicitly expressed in the course of events leading to the Ethiopian Revolution of 1974. The subsequent 1975 Land Reform represents one of the most important events in modern Ethiopian history and its imprint still weighs heavily on the rural (as well as the urban) communities.

The 1975 Land Reform no doubt has had its most significant social and economic impact in the arable farming sector of the country. Land tenure issues still remain, however, a central, contentious and highly flammable political theme in Ethiopia, in national as well as regional politics, in both urban and rural contexts (cf. Ege, 1997; Teferi Abate,2000).

## **The 1975 Land Reform**

The 1975 Land Reform is one of the most far-reaching land reform projects implemented in Africa. In 1975 all rural lands in Ethiopia were placed under state ownership and referred to as the collective property of the Ethiopian people. Within Peasant Associations (PA)s established to implement the reform, land was distributed to each household on the basis of central guidelines (using a standard model of 80 families and 800 ha of land for each Peasant Association) but with considerable local adaptations. The reform provided usufruct rights to everybody with a declared interest to farm the land, up to a maximum of 10 hectares per household (but normally considerably less). Sale, lease, transfer, exchange or inheritance of land was prohibited, as was the use of hired farm labour.

The Land Reform achieved equitable distribution of land within the agricultural communities, but did not confer secure ownership rights. Repeated re-distributions of land to accommodate new claimants diminished the size of holdings and security of tenure. The command economy of the state introduced compulsory delivery of set quotas of agricultural produce at predetermined prices, which impoverished households even further and deepened rural poverty. The originally autonomous Peasant Association soon became instruments for coercive state control over the rural sector. The highly extractive, centralised and authoritarian structure of the Derg military government rapidly undermined the initial popularity of the Land Reform.

## **Pastoral land tenure**

Access to land and to the natural resources on it is as important to pastoralists as to arable farmers. Pastoralists<sup>2</sup> represent some 10% of Ethiopia's population and approximately 40% of the land area of Ethiopia is considered suitable for pastoral land use only. But in line with the general social and political marginalisation of pastoralists in Ethiopia, land tenure issues as they refer to 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'! In the Ethiopian Constitution of 1994, one article only mentions the pastoral areas.

There are of course some good reasons for the pre-eminent attention given to agricultural lands in land tenure legislation in Ethiopia. Land is the overwhelmingly most important, valuable and scarce capital asset in agricultural production, on which the majority of the population depends. In pastoralism, on the contrary, the most important capital asset is livestock, not land!

In his seminal essay from 1973 on nomad-sedentary relations in the Middle East, Fredrik Barth points out that "... *the time required to extract value from land is great in agriculture, so control over land is*

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<sup>2</sup> The conventional definition of who is a pastoralist (those who derive 50% or more of their annual income from livestock and livestock products) is used here.

*essential, while the time required by grazing is minimal, so control may well be precarious and ad hoc*” (Barth, 1973). This observation reflects the empirical facts of land tenure systems in many situations also in Eastern Africa. While access to land is important to agriculturalists and pastoralists alike, the institutional arrangements governing access to and control over land resources are usually markedly different. Codified land tenure legislation in the region is primarily preoccupied with tenure of agricultural lands and to the extent land issues are brought into the public domain, such as in policy debates, legislation or litigation, the issues usually concern agricultural lands. Pastoral land tenure is at best a simplified version of the tenure regimes in the agricultural areas; a situation where tenure rights to pastoral lands are either assumed to be non-existent or are simply appropriated and held by the state is very common (cf S. Shazali & A.G.A.Ahmed, 1999 and Yacob Arsano, 2000)

### **State ownership of pastoral lands**

The exact content of the rights appropriated by the state is a moot point. 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. Beyond that, there is considerable variation in both the content and organisation of pastoral resource tenure. Much seems to depend on the extent of the involvement of the state, in a situation where the absence of the state has been, up to very recently, a major feature. Sometimes user rights are explicitly attached to social groups, i.e. land rights (such as they are) are an aspect of group membership (often according to some definition of ethnic groups) and sometimes the state even creates such groups<sup>3</sup> for the specific purpose of holding land, managing and/or developing it.

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 favouring 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.

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<sup>3</sup> Good examples are the groups owning 'group ranches' in Kenya. In strictly formal terms the 'peasant (pastoral) associations' created in Ethiopia in the wake of the 1975 Land Reform may be another example.

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.*

A system of leasehold of land from the state is envisaged, particularly in the investment codes of the various regional states as these are promulgated. The ‘pastoral states’ of ‘Afar and Somali in particular have yet to develop coherent land policies and as far as smallholder agriculture is concerned, the structures and regulations of the 1975 Land Reform have tended to remain in place.

The elaboration and codification of land rights which apply to agricultural lands, place legal restriction on the state to an extent not found in the pastoral areas. The payment of agricultural land tax, for instance, has provided and continues to provide a large measure of legal protection and security for farmers in Ethiopia. In fact, farmers often insist on paying the land tax if it for some reason is not collected (as happened for a period before the current government was properly established in the rural areas).

In the pastoral areas the payment of land tax was never a practicable proposition, so from an early stage pastoralists paid an animal tax, differentiated by species. As a mechanism for taxation the animal tax was only moderately successful, but most importantly, it was never equated with the agricultural land tax in legal terms. The animal tax did not confer legal protection with regard to pastoral user rights the way that the agricultural land tax offered security of tenure in agriculture (cf. Yacob Arsano, op.cit.).

### **The context for pastoral land tenure in Ethiopia**

The distribution of land rights has been of central political and economic importance in the history of the agricultural societies of Northern and Central Ethiopia and all subsequent land tenure legislation and practical tenurial arrangements of the Ethiopian state have inevitably been strongly influenced by this background.

An understanding of land tenure patterns in Ethiopia depends on clear differentiation between the northern parts of the country, which is home to the ancient state formation and the southern parts, which were incorporated into the expanding Ethiopian empire of Menelik II through various military campaigns during the colonial scramble for Africa at the end of the 19th century. The northern ‘core’

of Ethiopia for all practical purposes continued to dominate the peoples and the lands of the South, in a system of political centralisation and unequal access to the power and authority of the state, at least up to recently.

In the North, systems of community-based land tenure generally called '*rist*' were common. Rights to '*rist*' lands were distributed through inheritance to the descendants of the 'first settlers', who could neither sell nor mortgage the land, but who could lease it out and pass it on to children as inheritance. Descent was traced in both male and female lines and gave both men and women potentially extensive claims to land. Only a small portion of these claims could actually be realised, however, in competition with other claimants. Rich and influential people were successful in defending and expanding their land holdings through assertion of rights and vigorous litigation, fending off and subduing other dormant claims to the land.

Overlying the '*rist*' lands were various systems of rights to raise taxes and levies. For the sake of simplicity, these taxation rights may collectively be referred to as '*gult*' rights, some of which were heritable within the feudal aristocracy, some of which belonged to the Crown and were granted as feudal fiefs on a temporary basis ('*maderia*' lands), and some of which were granted to the Church on a permanent basis. General '*gult*' rights, both within the Church (where they were known as '*semon*') and within the secular feudal system were subdivided into a bewildering array of permanent, semi-permanent and temporary rights that were granted to a wide range of feudal retainers and public servants. There were, for instance, 16 classes of people attached to the Church who qualified for allocation of '*semon*' land, and 53 classes of public servants/soldiers who were granted temporary '*maderia*' rights as a source of income.

In the South the majority of farming households became sharecropping tenants on their own land after it had been distributed to the feudal elite and their retainers after the conquest. The people of the South therefore often had to pay rent and provide other services in highly exploitative sharecropping contracts to gain access to land at all. The main contrast to the northern '*rist*' system concerned security of tenure, where the fundamental descent-based system of land rights was underwritten by the systems of taxation. In the South, however, sharecropping contracts and land rent offered no security of tenure, as reflected in terminology: Peasants in the North were known as '*gabbar*' (those who pay '*gibr*' – tax), the tenants of the South were known as '*chisegna*' (those whose rights were like '*chis*' – smoke).

Ownership/disposal rights and administrative/political taxation rights were kept separate also in the South, but as the feudal Ethiopian state was replaced by the bureaucratic structures of modernisation, (basically after the reinstatement of Haile Selassie I in 1941) feudal fiefs were gradually transformed

to freehold property. One aspect of modernisation was the gradual introduction of freehold ownership, conceptually distinct from feudal privilege, with the payment of land tax as a main criterion for secure tenure. It should be noted that this concerned land tax paid to the state, not land rent paid by tenants to the landlord. With the introduction of mechanised farming in the middle of the 20th century the need for larger holdings grew and tenant evictions became common. Overall, the South was characterised by highly inequitable patterns of land distribution and great inequalities with regard to status and security. This situation was the backdrop as well as the main impetus behind the Ethiopian Revolution of 1974 and the sweeping Land Reform of 1975.

### **The feudal administration of pastoral lands**

At the time of incorporation of the outlying regions into the Ethiopian empire, also the pastoral lands were granted as fiefs to the feudal retainers of Menelik II, in reward for their service to the Crown, to ensure their loyalty and secure them a source of income.

Initially the main difference between the pastoral and the agricultural areas of the south was that feudal privileges in the pastoral areas they depended on the system of '*qutre gabbar*', which literally means 'counting of tenants'. This distinction laid down the basis for major differences in the way land rights in southern Ethiopia evolved. The feudal privileges in the pastoral areas were based on numbers of people (or 'taxpayers') and were not based on the distribution of productive assets, such as land,

More importantly, however, when the feudal privileges were withdrawn and a modern bureaucratic administration was introduced in these pastoral areas, there were no residual ownership rights involved. In other parts of Ethiopia temporary feudal privileges over time blurred into semi-permanent and inheritable users rights and later, ownership rights. In the pastoral areas, however, the former feudal retainers were not able to claim ownership rights, since the basis of the feudal levy had been people rather than land.

It is important to note that the large regional differences in tenure arrangements mostly concerned the central agricultural areas of Ethiopia. On the fringes of the empire, and in the lowlands, small 'tribal' groups and pastoral communities continued to use land, pasture and other resources according to local or indigenous arrangements. The potential for modern irrigation agriculture along rivers in the lowlands from the 1950s onwards became the most significant points of conflict between the indigenous land tenure systems and the state<sup>4</sup>. These were conflicts that the local users under the indigenous system invariably lost, even if the new opportunities of irrigation agriculture made some pastoralists very rich. Similar conflicts have arisen over the appropriation of user rights in the creation

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<sup>4</sup> The Awash Valley is the most well-known example of this. See e.g. Ali Said, 1992, or Getachew Kassa, 2001

of national parks, with pastoralists putting up a much more tenacious resistance (Ayalew Gebre, 2000).

Land ownership in the hot and arid lowlands was actually of limited interest to the Ethiopian feudal elite and the soldiers-settlers alike. One should note that the Ethiopian state, which transferred rights to the most important capital asset in arable agriculture (land) to the *neftegna* (or rifleman) settlers, did not attempt to confiscate and transfer control of the equivalent capital asset in pastoralism, viz. animals. There seems to have been remarkably few examples of soldier-settlers trying to establish themselves in pastoral production as an economic enterprise. Conceptually one could, for example, think of *neftegna* ranching, on the basis of confiscated cattle and tenant labour, which would have been parallel to agricultural share-cropping. Such enterprises are well-known in other colonial contexts. There were obviously economic linkages between the *neftegna* and the pastoralists (trade, credit and sometimes contract herding) but the soldier-settlers never became integrated in the pastoral economy of the Ethiopian lowlands. A *neftegna* style of pastoralism did not develop.

Hence, the less favourable ecological conditions in the pastoral areas, perhaps combined with a clear agricultural bias in the economic outlook of soldiers-settlers, seems to have protected the pastoralists from the harsh economic exploitation experienced by the sharecroppers in the arable areas of Southern Ethiopia

One result of this situation is the paradox that Ethiopian pastoralists, who inhabit the poorest parts of the country as far as natural resources and productivity is concerned, probably enjoyed a better standard of living, in terms of health and nutrition, as well as access to natural resources and economic assets, than neighbouring agricultural communities living on much more productive land. This seems to be changing.

### **THE CHANGING SITUATION OF PASTORALISM**

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. Why this should be so is not at all clear. Most analysts have now left the formerly widely accepted explanations that the pastoral communities themselves somehow were responsible for their own troubles because of mismanagement of the natural resources. Although climatic variation remains a constant threat, the vulnerability of pastoral communities must be explained with reference to a much broader set of issues. Poorly conceived interventions from the state, but also features like market penetration, failed development projects, the negative effects of famine relief, population growth, increasing reliance on trade and highly unstable terms of trade, etc., have combined to engender rapid transformations of pastoralism. The situation of Ethiopia's

pastoralists is now increasingly characterised by poverty, poor food security and increasing environmental risk as well as political, economic and social marginalisation (Hogg, 1997). Changes in the resource tenure systems are fundamentally interrelated to many of these changes.

### **Pastoral resource tenure**

Surprisingly little has been written about the tenure regimes in the pastoral areas of Ethiopia. (see for instance Dessalegn Rahmato, 1994) This should not detract from the central importance of tenure regimes with regard to the fortune of pastoral societies. While agricultural tenure systems attach specific rights over specific parcels of land to specific individuals over long periods of time, pastoral tenure may be a matter of more vaguely defined rights over large tracts of land vested in a widely defined group. Tenure rights may, for instance, not be attached to the ephemeral pastures, but to the more stable and crucially important water resources, or to more limited areas containing strategic key resources. Clearly defined usufruct rights to specific groves of pod-producing trees<sup>5</sup>, for instance, are commonly found in many pastoral societies across Africa. The tenure regimes may also differentiate between distant and unreliable pastures accessible only in the wet season and the more stable and predictable resources required to carry a herd through the dry season.

There may thus be considerable empirical variation in the types of resources available, the ways devised to secure an orderly use of them and the way indigenous tenure regimes now articulate with new policies and national legislation. Some areas may invite more acute conflict than others, because of the resources they contain or for other reasons to do with e.g. political relationships. Some of the indigenous resource tenure regimes may be more precarious than others, for instance, because 'owner' groups are socially marginalised and unable to defend their rights. None the less, pastoral land and resource tenure regimes are central to at least two particular concerns that continue to dominate the public agenda as far as pastoral societies in Ethiopia are concerned, viz. resource management and equity.

### **Resource management**

A number of issues combine to obscure the existence of tenure regimes in the pastoral areas, leading to the assumption that these basically were '*res nullius*' - or no-man's land. The distribution of resources in the arid lowlands is often such that pastoralists use particular patches of land only part of the time, and on a highly irregular basis. The pastoralists' right of access is none the less crucial, if and when these patches of land received enough rainfall, were free of diseases or were otherwise secure. The assumption that pastoral lands do not belong to anybody has been central to one of the most enduring generalisations about pastoralism, viz. the Tragedy of the Commons theorem (Hardin, 1968). This

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<sup>5</sup> For numerous examples, see Barrow, 1996

theorem has been central in the explanation of events taking place in a number of pastoral societies, particularly with respect to land use and the putative ecological consequences of pastoralism.

Evidence is now available from many parts of Africa that pastoral lands rather should be regarded as *'res communes'*- or communal lands in the proper sense, with various ownership rights vested in specific collectives of people. Whatever ecological destruction has been detected must be related to the weakening and destruction of the communal land tenure regimes in place. Many of the problems now detected are believed to occur as communal tenure arrangements are weakened or replaced by tenure regimes that are inferior to the indigenous systems or less suited to the land use patterns and the resources in question.<sup>6</sup>

It may not be possible, or even desirable to restore the former resource tenure systems in the pastoral areas. These were often based on conditions that are no longer applicable or acceptable. There is also increasing sophistication with regard to the need for management interventions. The rangelands in Eastern Africa are now understood as non-equilibrium systems where pasture production and range condition depend much more on the major drive variable of rainfall than on grazing patterns and utilisation pressure. (Ellis & Swift, 1988). Still, any attempt to restore the capacity of pastoralists to utilise the drylands in a sustainable way seems to demand a restructuring of the resource tenure systems as they appear today. It is assumed that the indigenous resource tenure arrangements were much more in line with the local situation, including local livestock management patterns and the characteristics of the physical resources of these areas. Present tenure arrangements, as codified in unitary national land tenure legislation, are based on different considerations, and they often turn out to be spectacularly inappropriate to the situation at hand.

### **Equity**

Changes in the resource tenure arrangements are likely to produce changes with regard to equity, both within the groups that traditionally have held user rights to the resources, as well as in the balance between traditional users and their competitors.

Changes in resource tenure may originate from a number of different sources. The authority structure of pastoral societies is often undermined and weakened as these societies are incorporated into large state formations. This provides opportunities for individuals to seek new ways of exploiting available resources. The most commonly reported instances seem to involve the creation of private reserves of various kinds, within the commons. The construction of water tanks and the erection of fences to exclude others resources have been reported from a number of different pastoral contexts in Ethiopia

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<sup>6</sup> The extent of ecological destruction in areas under pastoral land use is a matter of much debate, see for instance Behnke, Scoones & Kerven, 1993

and Eastern Africa. The most well-known cases involve the construction of water tanks (known as 'birkad') in the Somali areas, and the rapid expansion of large-scale enclosures to create holding grounds for the livestock trade. Since these investments often require considerable financial outlay, these new initiatives in fact exclude the poor from the common resources on which they depend. The investments in water tanks is usually recovered by sale of water, which contributes further to the commercialisation of the pastoral economy.

Furthermore, privatisation of resources may also be tied into other processes, such as the extension of trading networks into the rangelands, or processes of political mobilisation and entrepreneurship and the creation of new alliances. One particular strategem for privatizing common resources that has been reported from several places in Southern Ethiopia is to start farming in the rangelands and then seek protection in the national courts by paying agricultural land tax for the plots under putative cultivation. (Getachew Kassa, 2000; Helland, 1999)

Equitable access to vital resources like pasture and water has been a central feature of pastoral societies in this part of the world but now seem to come under challenge. The exact nature of the challenge is likely to vary with local conditions, including the nature of the resources in question. It seems possible to generalise, however, that restrictions may be placed on common access either through processes that are internal to the pastoral society in question, for instance rapid stratification or arising from the integration of pastoral society into the Ethiopian state. In the latter case, ethnic competition over land resources may be strongly influenced in favour of groups with the best relations to the state (Yacob Arsano, 1997), or the state may appropriate pastoral land rights for its own use.

In all cases, pastoral societies have lost access to large tracts of land, some of it containing vital key resources, without which even larger areas become inaccessible. As far as national legislation is concerned, this appropriation of land has been perfectly regular. In terms of the local resource tenure regimes the story is of course completely different.

## CONCLUSIONS

The best-known examples of large-scale appropriation of pastoral lands in Ethiopia are found in the Awash Valley, involving the development of large-scale irrigation farms and the establishment of a national park within the grazing territories of the 'Afar and Kerreuy pastoralists respectively (see Muderis Abdulahi Mohammed, 1998, Buli Ejeta, 2002, Ayalew Gebre, 2001) . There are less well-known but equally conflict-ridden examples also in the Omo River Valley Melesse Getu, 1997), involving both irrigation works and wildlife management, as well as in the river valleys of the Somali region. A brief review of the situation in the Awash Valley is instructive with regard to the resource tenure challenges that await the pastoralists of Ethiopia.

The case of the Awash Valley brings together most of the issues involved in the transformation of pastoral land rights. Important preconditions for the events that have unfolded in the valley over the past 50 years involve

- The irrigation potential of the areas along the river, that were crucially important to the 'Afar pastoralists as dry-season pastures
- The proximity of this irrigation potential to the national and commercial capital of Addis Ababa
- The relatively well-developed infrastructure of the area, which included Ethiopia's first large dam and the road link to the Red Sea.

The irrigation potential of the Awash River attracted attention from the Ethiopian state as well as from commercial interests from the 1950s. The 1955 Constitution of Ethiopia formalized the situation that had in fact evolved since the incorporation of the lowlands into the Ethiopian state, by clearly stating that *'all property not held and possessed in the name of any person, natural or judicial, including .... all grazing lands... are State Domain.'*

On the basis of the 1955 Constitution, the Government started to grant formal fixed-term concessions for the development of commercial agriculture (mostly cash crops like sugar and cotton) in the Awash Valley. The need of the 'Afar for access to vital dry-season grazing areas along the river were neither understood by the policy-makers, nor properly articulated by the 'Afar. They complained, through their traditional authorities and the Sultan of Aussa, to the central government and the Emperor, that land was taken away from them without proper compensation, but when this was referred to the courts, the 'Afar lost, in large part because of poor legal representation. Furthermore, rather than pursuing this as a vitally important public matter the Sultan and his family exploited the opportunities

presented by the new legal framework by claiming private tenure to large tracts of land in the Lower Awash<sup>7</sup>.

The Land Reform of 1975 of course nationalised the lands of the Sultan and all other commercial concession holders in the valley, but the land was not returned to the 'Afar pastoralists. The irrigation farms were put under various forms of government management, as government-owned commercial enterprises or as state farms. Although the 1975 Land Reform in principle granted pastoralists rights to grazing lands, the primacy of government claims to land for various purposes was not in doubt. The pastoral communities stood no chance of promoting their interests against the modernizing interests of the state. In practical terms the 'Afar pastoralists were still excluded from some of the most important resources of the Awash Valley.

The 1994 Constitution also guarantees that the pastoralists have rights to free land for grazing and cultivation, *'as well as a right not to be displaced from their own lands'*. With the creation of the 'Afar National Regional State in the mid-1990s, large tracts of land, including a number of former state farms, have been returned to the 'Afar. Traditionally, before agricultural concessions were granted, the 'Afar clans had exclusive rights to pasture and water within quite clearly demarcated tracts of land along the river, and these traditional rights have been revived. But the administrative capacity of the regional state is weak, including capacity for land administration along the river. There is no public policy to secure access for the pastoralists to water or grazing along the river. Former state farms are redeveloped by commercial investors who obtain temporary land rights from the representatives of the clans with land rights. These lease agreements are more or less clandestine (e.g. they are not registered in a court of law) and clan members have little control over what goes on. In particular, it seems, they have little control over the income generated by the land leases.

The commercial opportunities of the Awash Valley, both in phase of commercial concessions, and in the current phase of restoration of traditional rights, has generated three important features of the situation of pastoralists in the Awash Valley:

- Commercially more valuable forms of land use has driven the pastoralist away from the river, denying them access to vital dry-season pastures and making them highly vulnerable to climatic variation, drought and famine. The inherent contradictions between the land rights guaranteed by the Constitution and the implications of the regional investment codes have not been resolved, and pastoralists are regularly displaced by various investment projects.
- With the river frontage more or less closed off, the 'Afar pastoralist need to utilize even larger tracts of the open rangelands, which has exacerbated the competition over resources with the

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<sup>7</sup> Harbeson & Teffera-worq estimated that as much as 65% of the riverine lands in the Lower Awash were claimed by the Sultan and his family

Somali Issa clans to the east. The borderlands between the ‘Afar and the Issa are now among the most volatile and insecure areas of the Ethiopian lowlands.

- The high value of land along the river has created a situation of social stratification involving a relatively small number of ‘Afar clans (and in particular a small number of ‘Afar clan representatives) who have land rights along the river and the large number of ‘Afar without such rights. Commercial opportunities and the lack transparency in land administration has put great strains on intra-clan solidarity and polarized the interests of clan members. Members of clans with land rights are often denied access to the income generated by it, and are denied access to the pasture resources as well..

The situation of the ‘Afar pastoralists in the Awash Valley is not unique. Similar situations are found scattered about the pastoral areas of Ethiopia, wherever there are investment opportunities. The basic lesson is that pastoral land use and pastoralism as a way of life has very little legitimacy in Ethiopian public discourse and little protection in Ethiopian public policy. Pastoral production still remains the only sensible and sustainable way of exploiting close to 50% of the land resources of the nation, but this adaptation is denied all merit. The inability of the central government to offer the pastoralists the land rights they need for continued survival is ominous for the future of pastoralism in Ethiopia. The relationship between the state and the pastoralists is likely to follow the trajectory of development in well-known cases like the Awash Valley.

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