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**ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
STUDIES**

**PASTORAL LAND TENURE SECURITY: A FOCUS ON LAND
CERTIFICATION AMONG THE BORANA, ETHIOPIA**

BY

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(LL.M) in Business Law**

Approval Sheet by the Board of Examiners

Pastoral Land Tenure Security: A Focus on Land Certification among the Borana, Ethiopia

Approved by Board of Examiners

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DECLARATION

I, Weldemariam Kenennisa, hereby declare that this research paper represents my own original work and has not been presented or submitted before any institution. Further, I have duly acknowledged all sources used and have cited these in the reference.

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Acronyms

AU	African Union
CSA	Central Statistics Agency
FDRE	Federal Democratic Republic of Ethiopia
GDP	Gross Domestic Product
GTP	Growth and Transformation Plan
LADM	Land Administration Domain Model
MoP	Ministry of Peace
MT	Metric Ton
NGOs	Non-Governmental Organizations
NRS	National Regional State
PAP	Pastoral and Agro-pastoralist
SNNPRs	Southern Nation Nationalities and Peoples Regional State
USAID	United States Agency for International Development
WB	World Bank

ABSTRACT

Pastoralists in Ethiopia have suffered due to longstanding land tenure insecurity. One form of remedying this land tenure insecurity is an official guarantee entitling landholders not to lose rights over land unless exceptionally stipulated. This can be achieved through proper legal recognition and land certification process and procedure. The FDRE Constitution recognizes pastoralists' right to free grazing land and guarantees them against eviction from their land. Even if implementation of rural land certification schemes in Ethiopia aimed at securing land tenure has been going on for the last two decades, pastoral lands have not received the required attention in this nationwide land certification program.

This Thesis aims at factors contributing to pastoral land tenure insecurity, highlighting the importance of land certification, indicating possibility of pastoral land certification and exploring pastoral land tenure in Ethiopia with a focus on land certification process among the Borana. To this end, the Thesis builds on policies and laws, interviews and observations, literature review and experiences of other countries. The Thesis finds that land tenure insecurity of pastoral community emanates largely from lack of proper recognition under federal and regional rural land policies and laws as well as absence of pastoral land certification.

Pastoral land certification is not similar with that of private/government holdings certification. Therefore, mechanisms which reflect its peculiarities are needed. The Borana Zone in Oromia NRS is the first ever to start certification of pastoral land by entertaining the uniqueness of pastoral land tenure in Borana pastoralist community. Two years lapse after certification of three “*dheedas*” (grazing areas), even though the certification process does not cover all grazing areas, the majorities of land holdings there are certified. The situations in certified “*dheedas*” are very promising.

Implementation of pastoral land certification program in Borana shows the possibility of certification of pastoral land and its importance to strengthen land tenure security of pastoral community. Accordingly, this Thesis argues that, pastoral land can be certified, even though it has unique features and complex issues need to be settled. Pastoral land certification in Borana can be a good lesson to extend that experience to the rest of pastoral areas in the country and even beyond by contextualizing situations.

Key Words: Certification, Ethiopia, Land tenure security, Pastoral land

Chapter One

Introduction and Overview

1.1. Background of the Study

Pastoralism is an ancient form of land use, well-adapted to the problems of maintaining sustainable and productive livelihoods in dry lands today.¹ It is also one means of livelihood in Ethiopia for 12 % of the population² and pastoral land occupies 61% of the total land mass.³ Land is vital source of generating livelihood income for society.⁴ Specially, for pastoralist the value of community land is not mere economical, it is the base for their way of life (cultural, religious... etc.).

Land tenure systems are diverse and have impacts on land use and determine who can use what land for how long, and under what conditions.⁵ Pastoralism strategically exploits seasonally available pasture and water resources on land hold communally within ecologically difficult environment.⁶ However, pastoralists across the world are suffering from land tenure insecurity due to the myth of Hardin's theory on commons which advocates commons as idle resources.⁷ The idea of this theory has entrenched in policies and laws of Ethiopia. As a result, pastoral communities' livelihood, culture, religion and their very existence is at stake due to land tenure insecurities.⁸

Countering Hardin's theory Ostrom argues that, the fact that a certain property regime is collective or communal does not necessarily lead to the conclusion that it is inefficient.⁹ Later on, to handle land tenure security of pastoralists, which can be secured through proper policy,

¹ Global Dry lands Imperative (2019), *Pastoralism and Mobility in Dry lands Challenge Paper*, pp. 2

² MoP (2019), *Draft FDRE Pastoral Development Policy and Strategy: Final Draft Submitted to GOE for Approval*, pp. 15-16

³ RPLRP (2016), *Policies and Proclamations Relevant to Pastoral Areas Land Management for Ethiopia, Kenya and Uganda*, Review Report, pp. 7

⁴ Girma Kassa Kumsa (2011), *Issues of Expropriation: The Law and the Practice in Oromia*, SGS of AAU, pp.1. (unpublished)

⁵ Ibid.

⁶ Mohammed Abdulahi (2007), "The legal status of communal land holding system in Ethiopia: The case of pastoral communities", International journal on minority and group rights, vol. 14, pp. 87.

⁷ Jetu Edosa Chewaka (2013), *Perspectives on Common Property Regimes in Ethiopia: A Critical Reflection on Communal Land Holding Rights in Borana Oromo Pastoralists Context*, OLJ Vol. 2, No.2, pp. 188

⁸ Fekadu Beyene et al (2016), *Assessment of Customary Land Administration and Natural Resource Management in Pastoral Areas of Oromia Regional State*, USAID Ethiopia, pp. 23

⁹ E. Ostrom (1999), *Private and Common Property Rights*, Encyclopedia of Law and Economics, 2000, p. 339

legal recognition of customary land right and formal certification,¹⁰ different initiations and measures have been taking at the international, regional and national level.

In Ethiopia the 1995 FDRE Constitution recognizes pastoralists' rights to free grazing land and non-eviction from their holding and left the detail to be determined by subordinate laws.¹¹ It is federal government's jurisdiction to enact laws in relation to land and natural resources and administration by contextualize situations in accordance with federal laws is reserved to regional governments.¹²

Land certification is part of land administration and one mechanism to strengthen land tenure security.¹³ To give effect for the provision of the constitution and secure land tenure rights of holders, the right to get certification for rural land holding is stated under federal rural land proclamation¹⁴ and other regional states rural land laws.¹⁵ However, due to peculiarities of the tenure, certification mechanism in private tenure unfit to pastoral areas. Therefore, policies, laws and practices should consider these peculiarities in the certification of pastoral land.

The Borena rangeland is one of the major pastoral area in the Oromia NRS and various research praise Borana communities' pastoral production system. Therefore, this study tries to explain concept of pastoral land tenure and assess pastoral land tenure security with emphasizing on land certification among the Borana.

1.2. Statement of the Problem

In Ethiopia in general and Oromia regional state in particular, presently development, investments and urbanization are expanding with obvious land requirements for such ventures. There are policies which in advance tended to change the land use, expand investment and settlement on the pastoral land.¹⁶ Practically, in pastoral areas there are massive expropriation of

¹⁰ UN-Habitat (2018), *SDG Indicator 1.4.2 Training Module: Secure Tenure Rights to Land*, Nairobi, pp. 5

¹¹ FDRE Constitution, Art-40 (4,5 and 6)

¹² Id, Art-51(5) and 52 (2, D)

¹³ Frank Byamugisha (2016), *Securing Land Tenure and Easing Access to Land*, ACET and JICA-RI, pp. 3.

¹⁴ Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005, Art- 6(3) (Here in after called Federal Rural Land Proclamation).

¹⁵ Look for instance Oromia Rural Land Use and Administration Proclamation No. 130/12007, Art-15(16). (Here in after called Oromia Rural Land Proclamation).

¹⁶ Look for instance Preamble of Afar Rural Land Administration and Use Proclamation No. 49/2009 and National Planning Commission (2016), *FDRE Growth and Transformation Plan II* (GTP II), Volume I, pp. 127

prime grazing areas, recurrent conflicts between pastoralist groups and rapid land encroachments by non-members of the community for crop production.¹⁷ These have been creating serious land tenure insecurity on pastoralists and put future pastoralism and pastoral communities' livelihood, culture, religion and way of life at risk.

FDRE Constitution recognizes right to free grazing and non-eviction from their land to pastoralists and left the details to subordinate laws.¹⁸ In addition, the same is stipulated both under the federal and regional rural land laws.¹⁹ To this end, right to get certificate for their land holding is incorporated in those laws as one mechanism to secure land tenure.²⁰ However, when some lacks clarity and inapplicable, others do not include pastoral land certification at all.²¹

Since the late 1990s Ethiopia has awarded certificates for more than 25 million parcels in the rural areas of country at a scale, pace, and cost-effectiveness that is impressive.²² Oromia reports data collected for 2.5 Million households out of an expected 4.1 Million.²³ However, the certification is only limited to non-pastoral areas. This is because policies and laws in relation to pastoralism and pastoral lands are inconsistent with each other and the constitution. They are framed focusing predominantly on governing individual landholding system, i.e. sedentary land use system.²⁴

The Borana is one of the major pastoralist groups who belong to the large ethnic group of Oromo society. Relatively large population of Borana pastoralists now dwell in the Borena Zone.²⁵ The community is home to the Oromo cultural heritages and their system of production was considered as one of the few remaining productive pastoral systems in East Africa until the early 1980s. Since then there has been evidence that the system is experiencing a decline in productivity.

¹⁷ Tigist Kebede Feyissa (2014), *Conflicts among Pastoralists in the Borana Area of Southern Ethiopia: The case of Borana and Garri*, FHSSE, University of Tromsø.

¹⁸ FDRE Constitution, Art-40 (5)

¹⁹ Federal Rural Land Proclamation, Art-5 and 7(1) and Oromia Rural Land Proclamation, Art-6 and 15(6) which recognize **lifetime** land rights of pastoralists.

²⁰ Look for instance, Federal Rural Land Law Art-6 (1 & 3) and Oromia Rural Land Proclamation, Art-15 (4)

²¹ Daniel Ayalew Alic (2006), *Assessing the Certification Process of Ethiopia's rural Lands*, Colloque international at the frontier of land issues, Montpellier, pp. 4. For instance, Benishangul Gumuz Rural Land Administration and Use Proclamation excluded pastoralists from the ambit of certification.

²² Ibid.

²³ Ibid.

²⁴ Fekadu Beyene et al (2016), note 8, PP. 7.

²⁵ Tigist Kebede Feyissa (2014), note 17, pp. 34.

The major insecurities in Borana pastoral lands are alienation of pastoral land to other uses even they are inefficient, massive expropriation without alternative means,²⁶ land based conflicts, environmental degradation and rapid and serious bush encroachment. The serious conflict between Borana-Oromo and Garri-Somali in recent years is typical example.²⁷ They are the result of land tenure insecurity and inappropriate policies. Insecurity on the land which fragments communal grazing land is resulting loose customary institutions which expose the communities' livelihood and culture at risk. According to Helland, if these insecurities continue, pastoralism in Borana will face severe problems or may be impossible.²⁸ Similar problems also exist in other pastoral areas of the country.

An underlying Africa's land tenure insecurity problem is lack of certification of land rights.²⁹ Therefore, certification of land contribute decisive role in tackling land tenure security problems. Land certification has a lot of role in land administration of pastoral land too by reducing conflicts, arbitrary massive evictions, land degradation... etc.³⁰ However, since the system has its own peculiarities, it needs different certification process and mechanism from non-pastoral areas.

Therefore, this study critically examines policies, laws as well as practices with specific reference to pastoral land tenure security and land certification with emphasis on land certification among the Borena.

1.3. Research Questions

This research has strived to answer the following questions:

- i. What is the status pastoral land tenure security under the Ethiopian legal system in general and Oromia Regional State in particular?
- ii. What are land tenure insecurities confronting pastoralists in Ethiopia in general and Borena pastoralist in particular which calls land certification?

²⁶ Solomon Bekure et al (2014), *Safeguarding Pastoral Land Use Rights in Ethiopia*, Conference on Land Policy in Africa, Addis Ababa, pp. 1

²⁷ Tigist Kebede Feyissa (2014), note 17, pp. 5.

²⁸ Johan Helland (2002), *Land Allienation in Borana: Some Land Tenure Issues in A Pastoral Context in Ethiopia*, in Mustafa Babiker's (ed), *Resource Alienation, Militarization and Development Case Studies from East African Drylands* (OSRESA), p. 64

²⁹ Frank Byamugisha (2016), note 13, pp. 3.

³⁰ Daniel Ayalew Alic (2006), note 21 pp. 3

- iii. What are peculiarities in the certification of pastoral land and benefits of certification to a member and the community?
- iv. How are Borana pastoral lands certified and issues arising out of the peculiarities of pastoral land holdings entertained in the course of such certification?
- v. What are positive effects of Borana pastoral land certification program and what lessons may be drawn from it?

1.4. Literature Review

Currently, many pastoralists have chosen to whilst others have been forced to change their livelihood system away from livestock production and towards a more diverse system, which are commonly in an unfavorable environment. A key factor in these changes has been the lack of security that pastoralists have over their land and resources.³¹

It is obvious to expect various literature addressing issues of tenure security in pastoral land in Ethiopia in general and Oromia in particular. For instance, in relation to the current legal regime, the constitutional accommodation of communal landholding, Mohammed Abdulahi argues that, it is clearly recognized if we look Art- 40 of FDRE Constitution with other provisions.³² However, other subordinate legislations have problems. Fekadu Beyene et al strengthened this idea and examined that, the existing land laws of the state fall short of practical implementation and positive impacts in pastoral communities.³³ They are direct copy of federal laws.

The general policy statement of the Federal Government in the short and medium term is to reduce pastoralist mobility, and in the long-term to sedentarize pastoralists, which is contrary to the customary rangeland management system. The land use proclamations of the regional governments is, in most cases, a direct copy of the Federal laws and fails to contextualize pastoral issues.³⁴

³¹ Fiona Flintan (2011), *The Political Economy of Land Reform in Pastoral Areas: Lessons from Africa, Implications for Ethiopia*, FAFIC, pp. 2

³² Mohammed Abdulahi (2007), note 6.

³³ Fekadu Beyene et al (2016), note 8.

³⁴ RPLRP (2016), *Policies and Proclamations Relevant to Pastoral Areas Land Management for Ethiopia, Kenya and Uganda*.

Due to insecure land tenure the rights of pastoralist do not considered. Helland examined and concluded that, the eastern border with the Somali Regional State has been changed without any consideration, consultation and hearing of claims of Borana land users. In the near future pastoralism in Borana will face serious risk or unattainable.³⁵

Monica Lengoiboni et al examined mechanisms to be employed in order to accommodate the temporary migration and grazing rights exercised by pastoralists as they move from place to place in search of seasonal pastures and elaborate how these temporary rights could be included in a cadastral system. The paper investigated the spatial and temporal attributes of pastoralists in northern Kenya. The outcome is a LADM that illustrates how pastoralists' spatiotemporal land rights could be accommodated in the Land Administration domain.³⁶

Assefa Belay examined and reached on the conclusion that, rural land certification has strong positive impact in securing land rights of holders; serve as an incentive to improve land, protect vulnerable groups including women's right, contributes for reduction of land disputes...etc.³⁷

Moshe Schwartz³⁸, Peter Little³⁹ and Miftah Mohammed⁴⁰ argue how tenure insecurities on pastoral land seriously affecting pastoral production, the unproductiveness of the remaining land if the prime grazing areas encroached and the rationality and necessity of mobility in pastoral production respectively. Moreover, James Mac Gregor argues pastoralism is more efficient than agriculture in dry land areas.⁴¹

Despite the contributions these studies made to the concept of pastoral land tenure system, insecurities and level of accommodation under Ethiopian legal system, pastoral land certification in Ethiopia in general and regional states in particular, certain questions still remain unanswered.

³⁵ Johan Helland (2002), note 28, p. 63

³⁶ Monica Lengoiboni et al (2010), *The Netherlands, Pastoralism within Land Administration: Accommodating spatiotemporal land rights in the Land Administration Domain Model (LADM)*, Development of Land Tenure Systems in Developing Countries, FIG Congress.

³⁷ Assefa Belay (2010), *The Effects of Rural Land Certification in Securing Land Rights: A Case of Amhara Region, Ethiopia*, IIGSEOE, The Netherlands.

³⁸ Moshe Schwartz et al (2015), *Effects of Family Size and Wealth on Size of Land Cultivated by Borana Pastoralists in Southern Ethiopia*, PFE, IIRR and DF, pp. 83

³⁹ Peter D. Little et al (2010), *Future Scenarios for Pastoral Development in Ethiopia, 2010-2025, Pastoral Economic Growth and Development Policy Assessment, Ethiopia*, Report No 2, pp. 4

⁴⁰ Miftah Mohammed (2014), *The Effect of Climate Change on Pastoralism in Ethiopia: The Case of Awash*, AAU College of Development Studies Institute of Regional and Local Development Studies, pp. 10

⁴¹ James Mac Gregor and Ced Hesse (2013), *Pastoralism: Africa's invisible economic powerhouse?* World Economics Vol. 14 No. 1, pp. 37-38

For instance, the rights of pastoralists and how pastoral land certification under Ethiopian legal system in general and Oromia regional state in particular look like? What are insecurities facing pastoralists in general and Borana pastoralist in particular which necessitates land certification? What are benefits of being certified and peculiarities of certification of pastoral land from that of arable land? Who are a members and who are not of a pastoral community? How land rights of a member in a pastoral community secured by the certification of pastoral land? How issues due to peculiarities of certification of pastoral land can be entertained? These and related issues are not properly answered. In addition, there is time gaps after the above research conducted which may result variation some of laws.

Therefore, I have faith that the research is unique and fill the gaps in the aforementioned issues and issues other previous researches cannot address due to their incapability to reflect the current reality and specifically on matters related with certification of pastoral land among the Borana community.

1.5. Objectives of the Study

1.5.1. General Objectives

The basic objective of this research is to assess the federal and Oromia rural land laws in connection with security of pastoral land in general and land certification in particular. Borana Zone is an effective pastoral area in East Africa. Although pastoralism in Borana is very efficient and effective, it has been facing serious land tenure insecurity. There are some steps and issues need to be addressed to certify and solve problem on pastoral land. In a nutshell, the research aimed at assessing whether there are adequate legal rules to handle potential issues of certification of pastoral land in Oromia, specifically Borana community and conduct a case study by examining the practice on the Borana community.

1.5.2. Specific Objectives

The study also aims to:

- Analyze pertinent laws in relation to accommodation of pastoral land tenure security under Ethiopian legal system in general and Oromia regional state in particular,

- Examine insecurities faced by pastoralists in general and Borana pastoralist in particular which necessitates land certification,
- Analyze the benefits of being certified and peculiarities of certification of pastoral land from that of arable land,
- Examine how pastoral lands are certified and issues due to peculiarities entertained in Borana,
- Observe and scrutinize effect of certification and lessons to other pastoral areas and
- Suggest possible recommendations for the problems based on finding of the study.

1.6. Scope of the study

Borana pastoralists live outside the Borana Zone. However, most of the Borana community lives in Borana Zone. Therefore, the study limits itself to land certification of pastoral land among Borana in Borana Zone. Thus the data have been collected accordingly.

1.7. Significance of the Study

I have strong faith that the study will contribute to the effort of strengthening and expanding effective implementation of pastoral land certification in Borana itself and the rest pastoral areas of the country by revealing the finding, the potential gaps within the legal framework and practice how land certification is carried out among the Borana community. Moreover, it will also be a base for potential researchers. It will contribute for pastoral communities by showing the problems, providing insights how certification is carried out and issues are solved.

1.8 Methodology

The research used qualitative primary and secondary data and they have been collected in the following methods:

1. 8.1 Methods

1. 8.1.1 Primary Data: Interviews and personal observations were conducted as a primary source so as to find out how the legal rules stipulated are implementing.

1. 8.1.1.1 Interviews: The research employed face to face interview with elders and community leaders, women, youth and adult pastoralists, Zonal and “Woreda” rural land administration officers in order to get adequate and in-depth information regarding the existing facts. Slightly semi-structured and non-directional interview employed for further investigation. Systematic sampling is employed as a sampling technique due to homogeneity of population and low risk of unrepresentativeness.

Ethical considerations

The study sought informed consent of interviewees and disclosed the purpose of interview.

❖ **Translator:** since the community language in the study area is Oromiffa, the researcher used an expert translator.

1.8.1.1.2 Documents: primary documentary sources including the FDRE Constitution, Federal Rural Land Administration and Use Proclamation No.456/2005, Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 1161/2019, Oromia Rural Land Use and Administration Proclamation No. 130/2007 and its regulation No. 152/2012, Borena Zone Dheeda Communal Land Holding Registration and Certification Directive No. 02/2009 and other relevant federal and regional rural substantive and procedural laws have been analyzed. Documents which can signify landholding certificate of pastoralists were examined.

1.8.1.2 Secondary data: Relevant literature materials books, articles and journals were used to conceptualize and analyze issues as secondary sources. The other countries experience including Niger which has better involvement in documentation of communal pastoral land was examined.

1.8.2 Data Analysis: As a qualitative research the collected data were analyzed using narration, description and logical reasoning approaches.

1.9 Limitations of the Study

Understanding the local language was the first constraint. However, it was resolved by using a translator. Lack of cooperation among some pastoralists to give interview was the other limitation and clarification of objectives and significance of the research to the community used

as a solution. Financial limitation and internet access constraints due to the ongoing pandemic were not simple limitations.

1.10 Organization of the Study

The study, the first chapter, provides general introduction about the study including introduction, background of the study, statement of the problem, research questions, objectives of the study, scope of the study, research methodology, significance, limitation and organization of the study.

The second chapter deals with the notions of land tenure, arguments on commons, communal land tenure under international law, pastoral land tenure, land tenure security and mechanism of securing land rights and pastoral land certification.

The third chapter is dedicated on appraisal of pastoral land tenure security under Ethiopian legal framework, land tenure insecurities in pastoral areas particularly in Borana Zone and principally land certification among the Borana; the factors which led to certification, the process, issues faced and entertained in the process, the status, potential fears of future certification and effects of certification. Lastly, lesson to other pastoral areas is incorporated.

The last chapter includes general conclusions and possible recommendations based on the findings of the research.

Chapter Two

Concepts and Approaches Involved in Pastoral Land and Tenure Security

2.1 Introduction

Farmers, herders, agro industries and logging operations all need land for their activities, while businesses need it for their workshops, offices and factories.⁴² It is the base for people's culture and identity; especially for rural residents of most developing countries, land is the primary means of livelihood.⁴³ The way land tenure is defined and recognized has a direct impact on land tenure security. People who have extensive and secure rights to land are generally more able to enjoy a sustainable livelihood than those who have only limited rights to land.⁴⁴ This is more true to pastoral community whose way of life strongly linked with communal rangeland resources. Hence, land tenure security is indispensable for pastoral way of life. To address the issues, this chapter deals with the concept of land tenure, land tenure security, approaches on communal land tenure, pastoral land tenure, mechanism of securing land tenure including pastoral land certification.

2.2 The Concept of Land Tenure and Tenure Security

The types and security of land tenure affect persons whose livelihood and way of life depend on land.⁴⁵ "Land tenure" is defined as, the relationship, ***whether legally or customarily*** defined, among people, ***as individuals or groups***, with respect to land. It also means an institution, which rules invented by societies to regulate behavior regarding on how land is accessed and used.⁴⁶ It determines who owns, can use what land, for how long and under what conditions.⁴⁷

Land tenures are various in types like, state, private and communal. All kinds of land tenure need tenure security to be more efficient, productive, avoid conflicts, sustainable land use...etc.

⁴² White Paper FDC (2009), *Land Governance and Security of Tenure in Developing Countries, Technical Committee on "Land Tenure and Development*, pp. 18

⁴³ Girma Kassa Kumsa (2011), note 4, pp. 11.

⁴⁴ Available at <<http://www.fao.org/3/y4307e/y4307e04.htm#TopOfPage>> retrieved on 10/30/2019

⁴⁵ Ibid.

⁴⁶ FAO Corporate Document Repository, *Land Tenure and Rural Development*, Rome (2002), pp.7

⁴⁷ Girma Kassa Kumsa (2011), note 4, pp.11.

“Security of land tenure” is a situation where the land rights held, whatever they may be, are not challenged without reason, and are reaffirmed if they are contested without due cause.⁴⁸

2.3 Communal Land Tenure

Dichotomy of land tenure only as state versus private is criticized by different scholars. Advocators of commons argue that there is the third type of land tenure, communal land tenure, which is different from open access resources. Commons mean, natural resources such as grazing land and forests held and used for a variety of purpose **by members of a given community** and sometimes even by members of several adjacent communities.⁴⁹ Bruce in relation with communal tenure argues that, it is characterized by the ownership/holding of land in common by the community which may be a family or lineage group, a village or a tribal group.⁵⁰

Common property theory addresses five kinds of rights; namely access, withdrawal, management, exclusion and alienation.⁵¹ However, many “de jure” state lands are not managed according to the law and rules. They are left without management and turn into open access areas and exclude no one. Such resources are often highly degraded.⁵²

The state can acknowledge the existing communal tenure systems through formalization of existing rules and rights.⁵³ In customary communal tenure, rules are endorsed by village norms, which neighboring villages generally know and comply with.⁵⁴ Whereas when the state endorses communal tenure, the tenure rights are enshrined in a regulatory framework such as land law.⁵⁵

2.3.1 Approaches on the Communal Tenure

There is controversy between “tragedies of commons” advocators and the supports of commons. The former also called the “Old thinking” which is articulated by Hardin and his followers

⁴⁸ White Paper: FDC (2009), note 42, pp. 47

⁴⁹ Srur Muradu (2013), *Rural Commons and the Ethiopian State*, LGD Journal, pp. 5.

⁵⁰ Don Nnaemeka Ike (1977), *A Comparison of Communal, Freehold and Leasehold Land Tenure: A Preliminary Study in Ibadan and Ife, Western Nigeria*, AJES, Vol. 36, No. 2, pp. 188.

⁵¹ Kirsten Ewers Andersen (2011), *Communal tenure and the governance of common property resources in Asia, lessons from experiences in selected countries*, FAO Land Tenure Working Paper 20, pp.3

⁵² Ibid

⁵³ Id, pp. 1

⁵⁴ Ibid

⁵⁵ Ibid

whereas the latter is developed by Ostrom and her followers.⁵⁶ Advocators of “*old thinking*” argue that the commons which include grazing land belong to everyone and thus ultimately to no one, which, to them, definitely invites desecration of these resources. For them commons are open for everyone and consider as thing without master. A better policy option to avoid the disaster is changing to private property.⁵⁷

The second perspective called the “*new thinking*” popularized by Elinor Ostrom believes that, Communal land and other associated natural resources are ultimately controlled by the concerned community to the exclusion of non-members.⁵⁸ That means land tenure is not only private versus public rather it is communal too. Stefan Pertalow further argues against the solution raised by the advocators of “*old thinking*” that, privatization is not always an efficient way of land tenure. Rights of access and exclusion enables to avoid overexploitation and thus permit sustainability, rights of use motivate investments to make the resource more productive.⁵⁹

Recent scholarships on common property disprove the theory of the tragedy of the commons and confirm the prospect for prudent use of natural resources communally.⁶⁰ The mere privatization and “one fits all” policy is not assessed from perspective of sustainability as well.⁶¹ Ciriacy Wantrup and Bishop criticized Hardin for his failure to distinguish the concept of open access and that of common property. According to these writers unlike open access resource, “common property” is not “everybody's property” rather exclude non-members.⁶²

2.3.2 Communal land Tenure and pastoralism under International Law

The well-known international convention in relation with indigenous communities which has importance for the protection of rights of pastoral communities is “*The 1989 ILO Convention on Indigenous and Tribal Peoples No. 169*”. It is adopted in consultation with UN, UNESCO, FAO, WHO and other international organizations. It obliges states (parties) to protect the rights of

⁵⁶ Srur, M, “*Rural Commons and the Ethiopian State*”, 2013(1), LGD, pp. 6. (Recommended citation).

⁵⁷ Id, pp. 7.

⁵⁸ Muradu Abdo Srur (2014), *State Policy and Law in Relation to Land Alienation in Ethiopia*, PhD Dissertation, University of Warwick, pp. 200-201.

⁵⁹ Stephen Perz et al (2014), *Private and communal lands: The ramifications of tenure ambiguity and regional integration for tenure formalization and its consequences in northern Bolivia*, IJC, Vol. 8, No. 1, pp. 182

⁶⁰ Muradu Abdo Srur (2014), note 58, pp. 203.

⁶¹ Ibid.

⁶² Jetu Edosa Chewaka (2013), note 7, pp. 715.

indigenous community, to accommodate and consider their custom, religion and way of life in their policies and laws. In addition, it obligates states to consult them during developmental activities which potentially affect their rights. Art-14, 15 and 16 of the Convention stipulates that, customary land rights of pastoral communities shall be recognized and all necessary steps shall be taken to secure their land rights.

UN passed different declarations which have “de-facto” binding effect. From these the “2007 United Nations Declaration on the rights of indigenous Peoples” is the prominent. The rationales for passing this declaration are stipulated under the annex (preamble). Among them:

*“Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and **dispossession of their lands, territories and resources**, thus preventing them from exercising, in particular, their **right to development in accordance with their own needs and interests**”,*

*“Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, **especially their rights to their lands, territories and resources**”.* Are the main and have some influences on communal land tenure. From provisions of the declaration Article 8 states that, indigenous communities have the right to continue their livelihood on their communal land and sustain their culture and states have the duty to give effect for realization of these rights.

The declaration reflects indigenous peoples’ economic and cultural dependence on ancestral lands.⁶³ Mohammud Abdulahi supports this idea and argues that “indigenous communities” according to international law, and as such, they have unique relations to their land and their rights to communal landholding should be recognized and respected. Pastoral lands are communal and the communities are usually indigenous. Therefore, this declaration has importance to protect their right to land.

In addition, there are voluntary initiatives like The 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National

⁶³ Kirsten Ewers Andersen (2011), note 51, pp. 14. We can mention here the Borana Oromo community who reserves the Gada Oromo culture and leading their livelihood by pastoralism on their communal land.

Food Security (VGLT) which is working on ensuring the rights on commons. AU adopted “Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities” in 2010 to improve the livelihood of pastoralists. It recognizes mobility as a basis for efficient use and protection of rangelands. Ethiopia is also a signatory of these principles, so, should adhere to the principles.⁶⁴ There are also multi-lateral and bilateral arrangements to solve cross-border transhumant issues. For instance, an agreement between ECOWAS member states is a good example.

2.4. Pastoral Land Tenure

In pastoral communities communal land holding have embedded in their culture and daily life that local residents regard it as indigenous and believe its efficacy to regulate their access to land and to adjudicate social conflicts.⁶⁵ Pastoralists hold land in common reserving ownership of livestock.⁶⁶ They may have historical claims over lands that are large distances apart, or which they only use in certain years.⁶⁷

Rangeland ecosystems have largely evolved in places of climate extremes and high climatic uncertainty.⁶⁸ Mobility in pastoralism is highly suited to the management of rangeland and provides both economic and environmental benefits.⁶⁹ Therefore, pastoral land tenure is the relationship (rights and duties) of pastoralists with their rangelands and its management.

2.5. Mechanisms of Securing Land Tenure

Achieving security of tenure requires mechanisms for land governance and administration that allow locally agreed rights to be formally recognized.⁷⁰ Legal systems manage how land rights

⁶⁴ USAID (2012), Pastoral Development in Ethiopia: Study Visits and National Workshop, Adama, pp. 40-41

⁶⁵ Yasin Abdalla Eltayeb Elhadary (2010), *Challenges facing land tenure system in relation to pastoral livelihood security in Gedarif State, Eastern Sudan*, pp. 208

⁶⁶ Mohammed Abdulahi (2007), note 6, pp. 90

⁶⁶ Muradu Abdo Srur (2014), note 58, pp. 202

⁶⁷ Jonathan Davies et al (2016), *Improving governance of pastoral lands: Implementing the VGLT*, FAO, pp. 4

⁶⁸ Id, pp. 12.

⁶⁹ Id, pp. 15.

⁷⁰ White Paper: FDC (2009), note 42, pp. 48.

are administered and enforced and how the rules that make land tenure secure are applied. How the relevant legal system acknowledges one's land rights is the basis for land tenure security.⁷¹

Some take private land tenure as a solution to secure land rights. However, Security of tenure should not be confused and attached with private tenure. Clear land use right can provide security of tenure. Conversely, it is possible to have a land title but be unable to exercise one's rights if there are competing claims to the plot, or if neighbors view the title as illegitimate.

Land tenure can be secured through proper recognition of property rights over land with sufficient laws, registration and certification and proper conflict resolution mechanisms. In addition, they must be complemented by pro-poor policies.

2.6. Pastoral Land Tenure Security

Community and private tenure are both forms of holding exclusive rights to land.⁷² Property rights with exclusion are held to be a solution to the problem of open access, which resulted in overexploitation of resources and inefficiency.⁷³ Pastoralists use land and related resources communally and efficiently by excluding non-members.

However, evidence shows that the value of pastoralism and rangelands in most countries is greatly undervalued and their land considered as “*res nullius*” which results conversion of rangeland resources to other inefficient uses and rapid massive encroachments. This resulted debilitation of rangelands, conflicts, threat on livelihood, culture and religion of communities. At the same time, it has been observed that where mobility and customary institutions for local governance remain effective, rangeland degradation is scarce.⁷⁴

Encroachment of prime grazing area reduces the effectiveness of wet season grazing areas.⁷⁵ Generally, governments grant large land concessions with the intent of fuelling national economic growth. However, there is a risk that such land concessions are dispossessing or

⁷¹ Rachael S. Knight, (2010), *Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation*, FAO, Legislative Study 105, pp. 20.

⁷² Liz Alden Wily (2018), *Collective Land Ownership in the 21st Century: Overview of Global Trends*, Van Vollenhoven Institute, PP. 15.

⁷³ Stephen Perz et al (2014), note 59, pp. 182.

⁷⁴ Jonathan Davies et al (2016) note 67, pp. 13

⁷⁵ Ibid.

hemming in pastoral communities and depriving them of access to resources vital to their food security, culture and religion.

“One fits all” policies without contextualizing situations in different areas are usually unsuccessful.⁷⁶ Common shortfall in providing recognition for pastoral lands is “giving weak legal protection”.⁷⁷ Pastoral communal landholding is not given the same legal support as that of private holdings. Communities are unable to register collective properties and main laws have failed to be followed up with essential regulations enabling application.

Pastoral communities are usually marginalized from power. This powerlessness is often intensified by the fact that pastoralist communities often operate under customary law and have no formal legal title to their lands or documentation of their claims.⁷⁸ Only 22% of African Constitutions stipulate compensation must be paid for pastoralists who do not hold evidential deeds of their rights. This is also true in Asian constitutions.⁷⁹

Refusal to recognize the strength and validity of customary land rights has resulted in widespread land tenure insecurity on pastoral community. Grappling with this, lawmakers have sought to integrate the two systems by elevating local customary land tenure up into the national legal system.⁸⁰ A land law that seeks to recognize customary land rights must accommodate custom to be free to continue to successfully address the changing land-related needs of community members, and yet also include protections against those customary practices that perpetuate discrimination and inequity.⁸¹

Recognizing and certifying communal grazing land not only protects the right of pastoral communities but it helps to be productive, minimize conflicts, sustainable use and prevent land degradation.⁸²

⁷⁶ White Paper: FDC (2009), note 42, pp. 18.

⁷⁷ Id, pp. 54

⁷⁸ Rachael S. Knight, (2010), note 71.

⁷⁹ Liz Alden Wily (2018), note 72, PP. 18.

⁸⁰ Rachael S. Knight, (2010),note 71, pp. 5

⁸¹ Id, pp. 7

⁸² Mulugeta Getu Sisay et al (2018), *Institutional Paradox and Tenure Insecurity in Ethiopian Pastoral Land Administration*, Journal of Land and Rural Studies 6(2), pp. 112.

2.7. Pastoral Land Certification

Pastoral land tenure systems need secure land tenure and infrastructure for mobility while maintaining flexibility in their use. This tension between security and flexibility imposed by mobile patterns makes the allocation of land rights a complex task. Surveying and certifying and legal protection of pastoral land and infrastructure may often be necessary, but it also may affect mobility unless it secures seasonal land rights. Mobility is threatened by numerous factors, including access to services. Securing governance for effective tenure of pastoral lands sometimes has to address a wide range of interrelated challenges if it is to achieve success.⁸³

Pastoralists are vulnerable to agricultural land expansion and intrusive logging and mining activities. They are left with neither compensation nor the means of earning a livelihood, as resources that were previously shared are taken over by private interests. Occupants without title also run the risk of eviction by private entrepreneurs that have bought rights to the land from the administration.⁸⁴

The WB changed its previous position and accepts the productivity and need of certification of customary communal land tenure.⁸⁵ The “*technical guide on improving the governance of pastoral land*” of VGGT provides advice and examples of how to strengthen governance and administration of land tenure in a pastoral context. It builds on a number of initiatives and studies from recent years that have highlighted pastoral governance and land tenure, revealing the inherent challenges pastoralists face, the shortcomings of governments in securing pastoral tenure, and possibility of securing pastoral lands.⁸⁶

2.8 Other Countries Experiences

Even though many African countries have recently changed their land legislation or institutional setup with the goal of being able to recognize land rights and provide security of tenure to land holders, still the process to actually obtain the communal tenure title deed is very cumbersome

⁸³ Jonathan Davies et al (2016), note 67, pp. 16.

⁸⁴ White Paper: FDC (2009), note 42, pp. 18.

⁸⁵ Gudeta Seifu (2008), *Revisiting Tenure Security Under The Oromia National Regional State Rural Land law*, AAU, PP. 17-18

⁸⁶ Jonathan Davies et al (2016), note 67.

and communities need support to advance their claim.⁸⁷ Local communities find the communal land registration and certification process difficult because of insufficient stipulations which take in to account their need, the complicated legal language, the required interaction with government officers and the need to complete all the formalities and steps of registration.⁸⁸

Securing land rights in pastoral societies is inter-linked with promoting customary institutions and effective formalized communal land tenure. It is critical that communal land tenure is afforded equal recognition in law like other forms of tenure, so that pastoralists' tenure is truly secure. At the same time, it is crucial that issues of inequity that exist in many customary institutions are addressed, such as the rights of women to access land.⁸⁹

When we look experiences of some countries, for instance in Niger there is separate pastoral code which takes mobility as fundamental rights of pastoralists and only limit in exceptional situations. Anything which impedes mobility is not tolerable. Even, it allows pasture after collection of harvest on the agricultural land.⁹⁰ Niger's water resource code prohibits privatization of water points in pastoral areas.⁹¹ In Niger and Mali there is communal pastoral land certification to secure their tenure and compensation during expropriation for public purpose.⁹²

Recent research findings from Niger demonstrate how animals reared under mobile systems are generally more productive than those raised under sedentary conditions.⁹³ A three-country research, Mozambique, Liberia and Uganda, program on protection of community land rights concludes that, community land documentation may be a more efficient method of land protection than individual and family titling.⁹⁴

⁸⁷ Daniel Ayalew Alic (2006), note 21, pp. 4.

⁸⁸ Kirsten Ewers Andersen (2011), note 51 above, pp. 7.

⁸⁹ WISP (2008), *Policies That Work for Pastoral Environments A Six-country Review of Positive Policy Impacts on Pastoral Environments*, pp. 19

⁹⁰ USAID (2012), note 64, pp. 34-35

⁹¹ Id, pp. 54

⁹² Id, pp. 24-25

⁹³ James Mac Gregor and Ced Hesse (2013) note 41, pp. 55

⁹⁴ John W. Bruce et al (2013) *Land Administration to Nurture Development: Protection of Pastoralists' Land Rights: Lessons from the International Experience*, USAID, pp. 55

The possibility of eviction by the state of rural communities without title is very high.⁹⁵ Land certification gives land holders formal rights and increases their tenure security. In fact, pastoral land certification is not as easily registrable as for homesteads. There are some notable unique features and difficulties in order to certifying pastoral land. However, even if it has its own unique features there should be mechanism for certifying pastoral lands.

Although it is not sufficient, there are some encouraging beginnings in other countries.⁹⁶ Similarly, there is movement to certify pastoral lands in Ethiopia. For instance Oromia NRS is exploring ways to achieve this for the vast rangelands of pastoral communities, with promising progress.⁹⁷

3. Chapter Summary

Land has special importance for rural and indigenous community; it is the base for their livelihood, culture, religion and identity. The way a state defines land tenure, which is the set of relationships among people concerning the use of land may affect the livelihood and culture of society. To avoid these effects and use land efficiently all types of tenure need land tenure security.

Security of land tenure is the right of individuals or groups of people to effective protection against forcible evictions. Communal land tenure among types of tenure refers to situations where groups or communities have well defined, exclusive rights to jointly own and/or manage particular areas of land and related resources. Hardin's theory tries to associate commons including communal land with "*res nullius*" which leads to tragedy of commons. However, a lot of researches disprove this theory and communal land tenure is getting attentions by various international and regional laws, initiatives and bilateral and multilateral agreements.

Communal lands situated in arid and semi-arid areas are the home of millions of pastoralists and the latter use land and related resources efficiently by taking in to account seasonal water and fodder fluctuation. Although it is the solution for arid and semi-arid areas, evidence shows that

⁹⁵ White Paper: FDC (2009), note 42, pp. 23.

⁹⁶ For instance, Zimbabwe is certifying communal lands including pastoral land.

⁹⁷ Liz Alden Wily (2018), note 72, PP. 8.

the value of pastoralism and rangelands in most countries is greatly undervalued and they are facing the challenge of land tenure insecurity.

Policies should support the enactment of land laws that recognize pastoral mobility and protect pastoral access to the natural resources that sustain mobility. Land certification is one mechanism of securing land tenure. Though the trend is very low and has its own peculiarities, there are experiences which show the possibility and effectiveness of certification of pastoral lands in others countries. The next chapter deals with pastoral land tenure security in Ethiopia with particular emphasis on certification of pastoral land among the Borana.

Chapter Three

Pastoral Land Tenure Security in Ethiopia: A Focus on Land Certification among the Borana

3.1 Introduction

In Ethiopia, livestock production in pastoral areas plays a great role. It contributes 19% of the GDP, 16–19 % of the foreign exchange earnings and 35% of agricultural GDP. The pastoral production is useful for both rural and urban populations by providing products at lower prices.⁹⁸

Even though, Ethiopia has large livestock population in Africa⁹⁹ and pastoralism is still promising and viable, policies, laws and practices that are neither consistent with needs nor responsive to the uniqueness of the pastoral system are challenging the livelihood of pastoralists.¹⁰⁰ Problems on land tenure security is the core problem and ensuring security of land tenure is a constitutional obligation of the state, rights of pastoralists and indispensable to increase and sustain productivity of pastoralism.

Therefore, this chapter deals with the status of pastoral land tenure security in Ethiopia in general and Borana, Oromia NRS in particular. Principally, it assesses the pastoral land certification process, issues entertained, its current status, potential fears and effects of certification in Borena Zone. The chapter also observes the roles played by the government, NGO's, customary institutions and regular courts in the process of certification. Finally, the chapter considers lessons to be drawn from the Borana land certification experience and its potential to be emulated by other pastoral areas.

3.2 Policies and Laws Related with Pastoral Land Tenure in Ethiopia

The misconception embedded in Hardin's theory that common property regime including communal grazing land causes inappropriate land use and administration has not gone away. Though it becomes old-fashioned, governments still justify their intervention in communal

⁹⁸ National Bank of Ethiopia, Governor's Note 2017/18 Annual Report, pp. 7

⁹⁹ Ministry of Livestock and Fishery (2017), *Ethiopia livestock sector analysis*, pp. xviii

¹⁰⁰ Humanitarian Policy Group (2009), *Pastoralism, policies and practice in the Horn and East Africa: A review of current trends*, Synthesis Paper, pp. 1

property regime under the guise of such obsolete theory. For African countries including Ethiopia, the theory rather becomes a gospel from which they derive the force of scientific validity for policy and legal intervention in dismantling pastoralists' communal land holding rights.¹⁰¹

The role of communal property system in resource management among indigenous peoples is gaining wide support from ecologists, political scientists and human rights scholars, although problems on land tenure security are yet visible and have been seriously affecting the livelihood of pastoralists.¹⁰² To solve the problems countries have been changing defective and problematic land policies and laws. Hence, the following portions appraise Ethiopian pastoral land related policies and laws from past to present.

3.2.1 History of Pastoral Land Tenure in Ethiopia

A. Prior 1975

Prior to 1975, the main forms of land tenure were communal “Rist/Risti” system in the north Amhara and Tigray respectively and a largely private feudal system that encouraged absentee landlordism in the south. Rist was a land use right and access to land involving all individual member of a particular community of their ancestor to which those individual belonged. It was rentable and inheritable. However, no user of land could sell or mortgage his/her share outside the family since land belonged to the descent group or the community.¹⁰³

When the imperial government conquered the south, south west and eastern parts of the country, all unsettled lands were declared state property and given to officials and loyalists of the crown. This constituted what was called the *gabar* system and deprived the land rights of local indigenous.¹⁰⁴ It was vast both in area and population coverage. Unlike Rist the chief features of this tenure were high concentration of private ownership (included rights to lease, sale and mortgage) and high rate of tenancy. Access to land was largely contingent on landlord-tenant

¹⁰¹ Jetu Edosa Chewaka (2013), note 7, pp. 188

¹⁰² Id, pp. 190

¹⁰³ Berhanu Adugna (2009), *The Effect of Rural Land Certification on Land Tenure Security: A Case Study in Libo-kemkem Woreda, Amhara Region*, AAU SGS, pp. 19 (unpublished)

¹⁰⁴ Belay Zerga (2016), *Land Resource, Uses, and Ownership in Ethiopia: Past, Present and Future*, IJSRET, Vol. 2, Issue 1, pp. 19

agreements. Failure to meet these conditions could subject tenants to eviction without compensation.¹⁰⁵

The introduction of *gabar* tenure in south eroded the traditional customary communal land tenure systems. Most of Ethiopian pastoralists have been living mainly in these south, south east and south western parts and they were “*gabar*”.¹⁰⁶ Considerable insecurity of tenure prevailed in all the tenure systems but mainly in private tenures of pastoral areas. Insecurity of tenure among the tenants was related to unenforceable oral undertakings, threat of eviction, lengthy and costly litigations and absence of due process of law. These landlords opposed initiation for the registration of land.¹⁰⁷

Muradu Abdo strengthened this and notes,

The pre-1975 land tenure systems was characterized by exploitative rural tenancy, tenure insecurity and evictions of pastoralists as a result of initiation of commercial agriculture by the state and private investors especially in late 1960s and early 1970s.¹⁰⁸

In nutshell, the transformation of landholding system from principally communal to substantially state and private tenure led to negative changes in the status and dignity of the majority pastoralists in the south and caused economic and political marginalization.¹⁰⁹

B. During the Derg Regime

Peoples revolted against the oppressive rule of emperor which followed the collapse of the emperor’s regime and it replaced by the Derg. To solve the problem Derg nationalized all rural land through the rural land proclamation no. 31/1975. Since then land is under the ownership of the state (public).¹¹⁰ On the one hand, it clearly recognized possessory rights of “nomads” on the

¹⁰⁵ Tesfaye Teklu (2005), *Land Scarcity, Tenure Change and Public Policy in The African case of Ethiopia: Evidence on Efficacy and Unmet Demands for Land Rights*, pp. 5

¹⁰⁶ Art-26 of the proclamation annulled any obligation dues to balabat (landlords) by nomads (pastoralists).

¹⁰⁷ Berhanu Adugna (2009), note 103, pp. 19

¹⁰⁸ Daniel Behailu Gebreammanuel et al (2018), *Res Nullius vs. Res Communis in Matters of Communal Lands of Smallholder Farmers in Ethiopia*, Mizan Law Review, Vol. 12, No.1, pp. 103

¹⁰⁹ Hussien Jemma (2004), *The Politics of Land Tenure in Ethiopian History: Experience From the South*, CIEDS, AUN, pp. 6.

¹¹⁰ Rural land proclamation no. 31/1975, Art-2(3) dictated that “No person or business organization or any other organization shall hold rural land in private ownership”.

land they have been using.¹¹¹ On the other, it showed the government had intentions to expand large scale farms.¹¹²

There was no public purpose requirement (with definition) and compensation for those who could be expelled from their land. Formation of associations was required and different services including the right to access to land become conditioned on being a member of these associations.¹¹³ The Kebele administrations empowered for land reallocation and resolving land related conflicts.¹¹⁴ This further debilitated customary institutions role. Unsuccessful forced “villagization”, “cooperativization”, intensive steady encroachments and recurrent redistribution weakened tenure security in pastoral land.¹¹⁵

3.2.2 Current pastoral Land Tenure in Ethiopia (Post 1995)

A. Under 1995 FDRE Constitution

According to Elisabeth Wickeri and Anil Kalhan, tenure security in land in the form of formal legal, customary or religious rights, can provide more predictability and secure access to fundamental rights.¹¹⁶ It is also indispensable for exercise of right to self-determination.¹¹⁷

The 1995 FDRE Constitution has sustained the land policy inherited (state ownership of land) from its predecessor. Thus, discourse on the need for property rights in land is still underway.¹¹⁸ The constitution with the aim to answer the questions of different peoples and community guarantees different rights. From these it recognizes “...*the right to engage freely in economic activity and to pursue a livelihood of his choice...*” and “...*the right to choose his or her means of livelihood, occupation and profession...*”.¹¹⁹ Further it recognizes for pastoralists “...*the right to free grazing land and not to be displaced from their holding*”.¹²⁰ It left the detail to be

¹¹¹ Rural land proclamation no. 31/1975, Art-24

¹¹² Id, Art-7

¹¹³ Id, Art-26

¹¹⁴ Gebeyehu Belay Shibeshi (2016), *Background Report on Land Governance Assessment Framework Analysis for Public Provision of Land Information: Registry and Cadastre in Ethiopia*, WB, PP. 7

¹¹⁵ Daniel Behailu Gebreamanuel et al (2018), note 108, pp. 104

¹¹⁶ Id, pp. 115

¹¹⁷ Husen Ahmed Tura (2018), *Land rights and land grabbing in Oromia, Ethiopia, Journal of Land Use Policy Vol. 70*, pp. 348 and available at <<https://sur.conectas.org/en/land-rights-human-rights/>> retrieved on 3/28/2020

¹¹⁸ Daniel Behailu Gebreamanuel et al (2018), note 108, pp. 104

¹¹⁹ FDRE Constitution, Art-41 (1 &2)

¹²⁰ FDRE Constitution, Art-40 (5)

determined by law.¹²¹ In addition, it imposes an obligation on the state that “*The State has the responsibility to protect and preserve historical and cultural legacies.....*”.¹²² Peoples’ right to self-determination which is pillar in the federation and has link with land is recognized.¹²³ Getting constitutional recognition is the first step in realization of people’s rights. Secured right to land is a condition precedent for realization of rights.

B. Policies

Although there are many policies on land tenure in Ethiopia, the issue of communal land particularly pastoral land tenure is not coherently articulated.¹²⁴ The government set policies and strategies to direct development efforts in the pastoral areas of Ethiopia. But, these nationally developed policies conflict with one another. When one encourages the others discourage pastoralism. The mandate of pastoral (livestock) policies is still in confusion to which ministry it belongs.¹²⁵

In Ethiopia policies and statutes have been adopted and enacted which appear to derogate from the guarantees contained in the constitution. In spite of significant role being played by pastoral areas in national economy, very little consideration is given to pastoral development and policy makers often neglect them. Though tenure security is a precondition for reaping benefits that accrue from pastoral lands, the problem in this regard has not yet been rectified.¹²⁶ Different reasons can be mentioned for pastoralists’ vulnerability like climate change and recurrent droughts. However, no other reason is more central to the problem than the persistent cycle of inappropriate policy and practice.¹²⁷

There is no policy which specifically deals with pastoralism and pastoral lands in Ethiopia. It exists scattered in other policies. Therefore, it is better to look at the main government policy, GTP. Before the coming of GTP-II, in the GTP-I period there were arbitrary mass evictions and resettlements. The policy directly led to the displacement of herders and their animals from

¹²¹ Ibid.

¹²² FDRE Constitution, Art-49 (9)

¹²³ Art-39 of FDRE Constitution

¹²⁴ Daniel Behailu Gebreamanuel et al (2018), note 108.

¹²⁵ Abduselam Abdulahi Mohamed (2019), *Pastoralism and Development Policy in Ethiopia: A Review Study*, BIRCI-Journal Vol. 2, No 4, pp. 4

¹²⁶ Id pp. 105

¹²⁷ Humanitarian Policy Group (2009), note 100, pp. 1

prime grazing and water points. Some of which were involuntary resettlements and objected by Human Rights Watch in 2012 ¹²⁸

In 2011 on annual pastoralists' day the late Prime Minister Meles Zenawi said,

Even though poverty and backwardness are a concern for the whole country, it is worse for pastoralists... the pastoralists' life is nomadic and relies on raising cattle; because of this it was difficult to provide quality education and healthcare.¹²⁹

This and other thoughts of the Prime Minister and actions taken by his government against pastoralists reveal how deep-seated was their antipathy towards the lives and needs of livestock herders and misconceived mobility in pastoralism.¹³⁰

To appraise the recent policy GTP-II, it is active and the main government policy. In the policy there is plan to secure rural land rights through registration and certification.¹³¹ It intended to survey, map and register a total of 28.6 million parcels, holdings of 7.2 million rural households, which covers 359 Woredas.

However, there is no clear plan in the policy to certify communal pastoral lands. In addition, there are negative strategies which have adverse effect on the pastoralism like expansion of huge commercial agriculture, irrigation and settlements in pastoralist area.¹³² This is even in moisture stressed areas through water harvesting.¹³³ The plan is a continuation of GTP-I which was blind to pastoralism.

Recognizing adverse effects of non-existence of specific pastoral policy, government under Ministry of Peace prepared draft pastoral policy and referred to the Council of Ministers for approval. The draft states,

¹²⁸ Illiot Fratkan (2014), *Ethiopia's Pastoralist Policies: Development, Displacement and Resettlement*, Nomadic Peoples 18, pp. 99

¹²⁹ Id, pp. 94

¹³⁰ Id, pp. 110

¹³¹ National Planning Commission (2016), note 16, 124

¹³² Id, pp. 124-126

¹³³ Id, pp. 127

Under the previous regimes pastoral areas in Ethiopia are adversely affected which have brought about serious economic and social underdevelopment relatively than peoples in other places due to problematic pastoral policies and strategies.¹³⁴

It recognizes customary land tenure and importance of mobility: takes in to consideration the unique features of pastoralism and pastoral areas. In relation with land tenure security, it intended to certify pastoral lands to enhance sense of ownership.¹³⁵ Yet the policy is still in draft, though with good intentions.

C. Land Laws

Since the power to enact law on matters related to land and natural resources is the federal government,¹³⁶ it enacted “Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No, 456/2005”. It defines communal land as “a land allocated by government to local residents for common grazing, forestry and other social services”.¹³⁷ But, such free grazing land to rural communities does not clearly show whether it refers to rural areas of land cultivators, agro-pastoralists' or pastoralists separately as defined user groups.¹³⁸ In addition, it is allocated by the government than recognized.

Communal lands are subject to change to private holdings or other commercial or non-commercial purposes as found it appropriate because government is the owner of land.¹³⁹ This paves way for arbitrary eviction by government. However, the FDRE Constitution only gives government agent status to hold land on behalf of the people.¹⁴⁰ Agent is not principal owner. In Ethiopia most of communal lands are pastoral lands. Thus, the status of communal land is insecure compared to private holding which is largely registered and certified. The state does not give due attention to communal land and it often considers it as “*res nullius*”, thereby rendering it susceptible to distribution as private landholding at the discretion of the government.¹⁴¹ Similar

¹³⁴ MoP (2019), note 2, pp. 15-16

¹³⁵ Id, pp. 26

¹³⁶ FDRE Constitution, Art-55(2, a)

¹³⁷ Federal Rural Land Proclamation, Art-2(12)

¹³⁸ Jetu Edosa Chewaka (2013), note 7, pp. 230

¹³⁹ Federal Rural Land Proclamation, Art-5 (3)

¹⁴⁰ FDRE Constitution, Art-80

¹⁴¹ Daniel Behailu Gebreamanuel et al (2018), note 108, pp. 112

provisions also exist in regional states rural land laws.¹⁴² Furthermore, there are no sufficient legal rules addressing their unique features to secure their rights.

Another crucial issue is compensation for use right during expropriation. Compensation during expropriation is alternative mechanism of securing land tenure since expropriation is inherent power of government. Compensation is for improvement on the land.¹⁴³ Although the Constitution states nothing expressly about compensation for use right, Art- 44(2) of the Constitution obliges state to compensate displaced persons due to government programs, which includes expropriated persons.

Pastoralists face challenge due to a perception that they usually do not improve lands rather they use the gift of nature from the land. But this is erroneous. They protect their land, improve water sources and avoid different shrubs. Compensation in Ethiopia upon expropriation is nominal. And, in the case communal land, even such nominal compensation is not available owing to lack of certification.¹⁴⁴

Land use rights are not considered as property in Ethiopia; the law confirms that it belongs to the public. Tenure insecurity is graver in communal lands because such lands have no formally defined owner. This gap is mainly attributable to the land laws (at federal and regional state levels) that are vague and confusing with regard to legal titling thereby confirming lack of defined/identified owner for the purpose of compensable interest. Experience of various countries such as Ghana, Tanzania and Botswana indicates communal holdings are compensable.¹⁴⁵

New expropriation proclamation puts obligation on land holders to provide documents as precondition to claim compensation and rights on land.¹⁴⁶ This raises issue that what will be the fate of holders who have no land holding documents. It creates insecurity and does not take in to account facts in the pastoral areas which are undocumented and uncertified.

¹⁴² Look for instance, Oromia Rural Land Proclamation, Art-6(1)

¹⁴³ FDRE Constitution, Art-40 (7) & (8).

¹⁴⁴ Daniel Behailu Gebreamanuel et al (2018), note 108, pp. 117

¹⁴⁵ Id, pp. 116

¹⁴⁶ Expropriation of Land Holding for Public Purposes, Payment of Compensation and Resettlement Proclamation No. 1161/2019, Art-8 (1) (c) & (d) and (2)

Generally, rural land laws do not properly recognize and take in to account pastoral land tenure deliberately or inattentively. They do not address how pastoral lands should be secured via certification considering unique features. Therefore, national land laws do not sufficiently address and accommodate pastoral land tenure. The same is true in regional states laws.

3.3 Pastoral Areas and Land Tenure Insecurity in Ethiopia

More than 60% of land mass of the country is lowland and home for PAPs. The major pastoral areas include Afar, Somali, Oromia, SNNPR and Gambella regions. Small numbers of pastoral and agro-pastoralists (PAPs) also reside in Benishangul-Gumuz Region and Dire Dawa. Pastoralists in Ethiopia use their land communally and administer pastoral lands by local tradition and customs. Although common climatic, social, and economic features are shared by most of the pastoral areas of Ethiopia, they are not homogenous.¹⁴⁷

Factors for insecurities on pastoral lands are several. They can be classified as internal and external factors. Internally, private enclosure for cropping and ranches is the first factor. Private enclosure is motivated by competition over land by individuals who seek to establish private ownership; pastoralists are forced to encroach upon their own rangelands.¹⁴⁸ Withdrawal of land from common access by fencing it off and claiming exclusive rights to the land is becoming increasingly common.¹⁴⁹

Conflict among pastoralist group, between pastoralist groups, neighboring farming communities as well as between pastoralists groups and the states due to reduction rangeland due to encroachment by outsiders is the other factor. Easy movement and access to grazing land is constrained by recurrent conflicts. Large parts of areas along the Ethiopia-Kenya and Ethi-Somalia borderlands have effectively become “no-go” areas.¹⁵⁰

Externally, government intrusions include appropriation to development projects and land allocation for different purposes that subsequently exclude pastoralists. Rangelands have been given over to national parks, crop farming projects and to government resettlement schemes. Due

¹⁴⁷ Id, pp. 4

¹⁴⁸ Moshe Schwartz et al (2015), note 38, pp. 78

¹⁴⁹ Mustefa Babiker (2002), *Resource Alienation, Militarisation and Development Case Studies from East African Drylands*, OSSREA, pp. 60

¹⁵⁰ USAID (2012), note 64, pp. 30

to this Afar region has lost over 50,000 hectares of dry season grazing areas. Kereyu pastoralists in Oromia region have lost about 22,000 hectares of their grazing lands. Similarly, Somali pastoralists lost over 22,000. 50,000 hectares have been taken away in Gambella and 60,000 hectares in SNNPR. Recently, more than 300,000ha of pastoral land has been appropriated in SNNPRs along the Omo Rivers.¹⁵¹ The encroachment is very rapid. 75% of the 5.5m hectares of land demarcated for wildlife reserves are in pastoral regions.¹⁵²

Pastoralists usually do not pay tax for the rangeland use, making it easier for the state to ignore their communal land use and offer the land for the growing of crops which is seen as more ‘legitimate’, and for which tax is paid.¹⁵³ Absence of surveying, registration and certification of lands has contributed to pastoral land tenure insecurity.¹⁵⁴ Formalization theorists contend that titling via certification could bring land tenure security, if it goes beyond mere records of landholding. Pastoral lands should be mapped: this will be a significant step towards addressing encroachment and differentiating their land. Once pastoral land is mapped, the process of certification can be considered in consultation with the community.

3.4 Land Administration and Rural Land Certification in Ethiopia

When federal government has the power to enact policies and laws related to land, administration in accordance with federal law is reserved to the states.¹⁵⁵ Following this power setup, the federal government enacted urban and rural land laws. From these, the Federal Rural Land Administration and Use Proclamation No. 456/2005 is the prominent one. Similarly, there are also laws enacted by regional parliaments.¹⁵⁶

Land administration involves a regulatory framework, institutional arrangement, adjudication of rights in land, organization of land information concerning holding rights, land value or land use and above all the updating of records.¹⁵⁷ It includes the determination and conditions of approved

¹⁵¹ Moshe Schwartz et al (2015), note 38, pp. 74

¹⁵² Izzy Birch (2008), *Securing Pastoralism in East and West Africa: Protecting and Promoting Livestock Mobility*, Somaliland/Somali Region Desk Review, pp. 13

¹⁵³ Fekadu Beyene et al (2016), note 8. **Note**; there is difference between agricultural income tax and land tax.

¹⁵⁴ Afar National Regional State (2008), *Rural Land Use and Administration Policy*, Semera, pp. 11

¹⁵⁵ Cumulative reading of Art-51(5) and 52 (2d) of FDRE Constitution

¹⁵⁶ Tigray Proc. No.... 133/2006, Amhara proc.... 133/2006, Benishangul-Gumuz....85/2010, Afar... 49/2010, Oromia ...130/2007, SNNPR...110/2007, Somali... 128/2013, Gambela....185/2011.

¹⁵⁷ Berhanu Adugna (2009), note 103, pp. 10

use of land, the adjudication of rights and their registration via titling and the recording of land transaction. It is application of land laws and includes surveying and their detailed documentation.¹⁵⁸

Land certification as a part of land administration is a process of registering land under holding and issuing the certificate as evidence that such rights in land are legally secured. Land certification (titling) is the strongest legal form that registration of land rights can take, with titles usually guaranteed by the state. It is expensive form of registration to carry out, requiring formal surveys and checking and settling of all rival claims.¹⁵⁹

In relation with land registration and certification the federal rural land law dictates, rural lands to be measured, registered, mapped and certificate issued.¹⁶⁰ The same also exists in regional rural land laws.¹⁶¹ This includes communal pastoral lands.¹⁶² Thus, on the one hand landholders have the right their holding to be registered and get certification, on the other, government has the duty to register and certify holders' land. It enhances the ability to rely on the law to defend one's land rights.¹⁶³

Ethiopia has been certifying rural land since the late 1990s.¹⁶⁴ However, certification process limited itself only on private and government holdings. The land administration effort in the form of land certification has not been strong enough to secure and protect pastoral lands.¹⁶⁵ The need for protecting pastoralists' culture and practice of mobility is underlined in order ensure effective use of the dispersed dry land resources through giving legal backing to their lands and customary institutions.¹⁶⁶

¹⁵⁸ <http://www.fao.org/in-action/herramienta-administracion-tierras/introduction/concept-land-administration/en/>, retrieved on 12/6/2019

¹⁵⁹ Berhanu Adugna (2009), note 103, pp. 13

¹⁶⁰ Federal Rural Land Proclamation, Art-6

¹⁶¹ For instance look at Art-15 of Oromia rural land proclamation, Art-6 of SNNPR Rural Land Proclamation

¹⁶² Federal Rural Land proclamation, Art-6 (3), Arts. 5(1) and 16(5) of Afar, Arts. 5(1) and 15(5) of Somali and Oromia Rural Land Proclamations respectively... etc.

¹⁶³ A. Patrick Behrer et al. (2019), *Securing Property Rights*, pp. 15

¹⁶⁴ Logan Cochrane and Sebsib Hadis (2019), *Functionality of the Land Certification Program in Ethiopia: Exploratory Evaluation of the Processes of Updating Certificates*, Land 8, 149, Pp. 1

¹⁶⁵ Berhanu Adugna (2009), note 103, pp. 22

¹⁶⁶ Eyasu Elias (2014), *Environmental rights and Pastoral livelihoods: The case of Borena and Kaarrayu pastoralists in Ethiopia*, *Journal of Environment and Earth Science*, Vol.4, No.21, pp. 146

There are two opposing views on certification of pastoralists' land in Ethiopia. Some believe that pastoral land certification will guarantee tenure security; whereas others are concerned that such a system might further restrict mobility or become a source of conflict. They believe that mapping pastoral land is enough. There are also particular concerns about which individuals would hold the certificate.¹⁶⁷ However, what opponents of certification failed to note is that, they could not clearly differentiate the root causes of conflicts between pastoralists. Conflicts exist currently without the existence of certifications and they are caused by the encroachments and loss of productive dry season pastures by external bodies. Therefore, protecting and securing these resources will resolve these and related problem from the root. Secondly, pastoral lands are required to be certified in the name of the community and the certificate needs to be deposited in the hands of community leaders and authority office without privilege for the leaders.

Moshe puts importance and his fear on the certification of pastoral land as,

Certificates may help pastoralists to better manage their resources and increase production. However, there are some concerns among pastoralists themselves about how the method would be applied. Certification in pastoralist lands needs to consider communal systems and how they work. It is important that consultation with pastoralists themselves is incorporated in the design of certification programs.¹⁶⁸

Certification shall not be in the same way like that of highland farmers. Hence, there should be different mechanism which can accommodate unique features of pastoral areas and pastoralism.¹⁶⁹

The followings are key issues; since pastoral land tenure is communal/community based, what does a community mean? Is it clan, tribe? Who would be community leaders? Who manage the resource? How? How issues of seasonal mobility would be entertained? Does the certification include dry and wet season grazing lands and movement corridors? Who is a member of a pastoral community? How the rights of a member in the community and non-members would be respected? Do traditional institutions have the capacity to manage the land more effectively? If not, is there a way to form and develop new community institutions for this purpose, or to

¹⁶⁷ Moshe Schwartz (2010), note 38, pp. 46

¹⁶⁸ Id, pp. 30

¹⁶⁹ A. Patrick Behrer et al. (2019), note 163, pp. 15

provide supports that will enable them to perform their management roles more effectively? Is it to deal with a few key resources or extend its reach to the whole of the network of resources and relations over resources of migratory pastoralists? These and related issues should be settled. The applications of the laws require innovative approaches to adapt to the requirements of pastoralism.¹⁷⁰

3.5 Pastoral Land Certification in Borana

The Borana is one of the major pastoralist groups who belong to the large ethnic group of Oromo society. The majority of the Borana are residents in Oromia Region of Ethiopia and others live in northern Kenya. The Ethiopian Borana pastoralists now dwell in the Guji and Borena zones of Oromia NRS with a relatively large population in the Borena zone. Other ethnic groups such as Guji, Konso, Burji, Garba, Garri...etc. are also found in the Zone.

The Borana zone in southern Oromia, home of the *Boran* cattle breed, hosts the largest PAP group in the region.¹⁷¹ Its capital city, Yabello is found at a distance of 575 km South of Addis Ababa. The zone is bordered in the south by Kenya, in the west and north by the SNNPRs, in the south-east by Somali Region and in the east by Guji Zone. There are pure pastoralists like Dillo and Dhas and agro-pastoralists in the Zone. Even within agro-pastoral areas there are pure pastoralists. The rainfall pattern of the zone is bimodal. The main rainy season is locally called “*Ganna*” from March to May and small rain season is “*Hagaya*” from September to November.¹⁷² It has arid and semi-arid climate condition.

Borana has pastoralist area in which model and efficient indigenous community based resource management exists. The community is also home for Oromo cultural heritage “*Gadda System*”. This area represents not only a "cattle corridor" but also a "cultural corridor" that calls for serious attention.¹⁷³ Borana pastoralists consider land and pasture as the communal property of all of the

¹⁷⁰ Steven Jonckheere et al (2017), *Pastoralism and Land Tenure Security: Lessons From IFAD-Supported Projects*, “WB Conference on Land and Poverty”, pp. 7

¹⁷¹ Ministry of Livestock and fishery (2017), note 99, pp. 6

¹⁷² Abarufa Jatani Wario (2011), *Climate Change and Variability and Its Impact on the Livelihood of Pastoralists: Case Study in Dire Woreda of Borana Zone, Oromia Region*, AAU, SGS, pp. 27

¹⁷³ Jetu Edosa Chewaka (2013), note 7, pp. 188

members of their group. The use of existing grazing lands and water resources, and mobility of people and livestock is governed by the “*Gada System*”.¹⁷⁴

3.5.1 Factors for Introduction of Certification

Borana rangeland is an area known by scarce water resource, variable and unreliable rainfall.¹⁷⁵ Relatively it is not efficient for crop cultivation. But, social structure provides a framework within which scarce resources (water and pasture) management is carried out in pastoralism.¹⁷⁶ However, taking note all factors for land tenure insecurities stated above, Borana community in particular was suffering from land tenure insecurities which caused for the introduction of pastoral land certification.

The Borana area came under Ethiopian state administration in 1897 and became the fief (ristegult) of Fitawrari Habtegiorgis until 1924 and later was given to Ras Desta Damtew until the end of the Italian occupation in 1941.¹⁷⁷ In the early days of the conquest, the central government brought new settlers and soldiers in the most fertile parts of the dry-season grazing lands of the Borana area.¹⁷⁸ As stated above, like other pastoralists the Derg changed land tenure and made Borana pastoralists possessor of their land. However, later matters changed and actions which endangered pastoral lands and livelihood were taken. They lost most of prime grazing rangeland due to the establishment of state and private ranches. Most often, the areas allocated to private or group ranches were the best parts of the rangelands. The remaining areas were either too degraded or infested with encroaching weeds as a consequence of the forest fire prohibition.¹⁷⁹

Problems continued after the fall of Derg, expansion of crop cultivation which is equally contingent on reliable rainfall in Borana fragmented grazing lands. It undermines drought coping

¹⁷⁴ Tigist Kebede Feyissa (2014), note 17, pp. 35. They do not make any distinction even between Borana other ethnic groups.

¹⁷⁵ Abduselam Abdulahi Mohamed (2019), note 125, pp. 7

¹⁷⁶ Id, pp. 6

¹⁷⁷ Id, pp. 39

¹⁷⁸ Id, pp. 40

¹⁷⁹ Eyasu Elias and Feyera Abdi (2010), *Putting Pastoralists on the Policy Agenda: Land Alienation in Southern Ethiopia*, gatekeeper, pp. 11

strategies by encroaching dry season grazing areas and creates competition for land.¹⁸⁰ The continuing enclosure of pastureland in the form of “*kaloo*” among Borana pastoralists is causing frequent conflicts and obstructs movement even among members of the Borana pastoral communities.¹⁸¹

Shrinking of rangeland has been creating competition and recurrent conflict with other pastoral groups. Borana and Garri’s conflict is typical example. In addition, about 60-70% of the Borana rangeland is encroached and degraded with bushes due to loss of hope as the result of insecurity and prohibition of customary shrubs control mechanisms.¹⁸² The ecological condition is changing. Research shows these pressures are unlikely to slow down in the next 15 years.¹⁸³ If this encroachment continues, efficient and productive pastoral areas of Borana cannot sustain and contribute to the livelihood of the society and national economy. Therefore, increasing tenure security through proper recognition and certification is the main solution.

Oromia NRS Regional Council issued Rural Land Regulation¹⁸⁴ which deals about registration and certification preparation in part three. It recognizes lifetime land rights to pastoralists and their land to be registered and certified.¹⁸⁵ It has similar conditions with federal rural land proclamation about pastoral land certification which are certification to be in the name of the community, related common resources like water points such as spring, well, ponds and...etc. need to be registered, certification to be kept in the hands of community leaders and authority and all individual pastoralist will have equal use right.¹⁸⁶ However, nothing detail stated about how pastoral land holdings should be surveyed registered and certified.

Though the regulation stipulates some provision for the protection of pastoral land, yet there are provisions which potentially expose pastoral lands to insecurity. For instance, it states

¹⁸⁰ Boku Tache and Gufu Oba (2010), *Is Poverty Driving Borana Herders in Southern Ethiopia to Crop Cultivation?*, Human Ecology Vol. 38 No. 5, pp. 647

¹⁸¹ Jetu Edosa Chewaka (2013), note 7, pp. 229

¹⁸² Interview with Ato Wogene Taddesse, Borena zone Land Administration and Use office Rangeland and Land Certification expert on 26/6/2012 E.C and Dr. Bula Mengesha, exper in Borana Zone Livestock Agency.

¹⁸³ Peter D. Little et al (2010), note 39, pp. 3

¹⁸⁴ Oromia Rural Land Administration and Use Regulation No.151/2012 (here in after, Oromia Rural Land Regulation)

¹⁸⁵ Oromia Rural Land Proclamation, Art-6 (1) and 15

¹⁸⁶ Oromia Rural Land Regulation, Art-15 (7 & 8)

pastoralists' land may be distributed for irrigation purpose.¹⁸⁷ On the other hand, the land of those who cultivate by irrigating any water sources (even by using spring, ponds, stream... etc.) will not be redistributed.¹⁸⁸ Therefore, to escape from the redistribution, land holders need to engage in irrigation by using any kind of water sources. This shows that governments encourage crop cultivation in any areas of pastoralists whether the irrigation is sufficient (successful) or not. This affects water sources of pastoralists by encouraging people to settle in small available water sources of pastoralists.

From the plan to certify 4.1 million households in the region, more than 90% of farming households received their land certificates.¹⁸⁹ However, it was limited at household (private/state tenure) level only and did not include communal pastoral areas. In order to implement the provisions of rural land proclamation and regulation about certification of communal pastoral lands, Oromia Rural Land Use and Administration Bureau issued a directive to certify pastoral lands in Borena Zone.¹⁹⁰ It is the first ever in Ethiopia and based on the claim of community and help of USAID.

3.5.2 Rangeland Certification Process and Potential Issues

3.5.2.1 Certification Process

Although there are land and environmental degradation, loss of productivity due to lack of proper policy and land tenure insecurity, management of pastoral land and water as a common property resource in Borana remains relatively intact up to today. Taking these in to consideration USAID Ethiopia has been partnering with the Government of Ethiopia on land tenure and property issues for years to lay the groundwork for the certification of pastoral land. Borana rangelands selected as a pilot project because of the reason that Borana community is well known for their efficient pastoralism and their communal resource use system. Struggles started to conduct registration and certification of pastoral land. The certification process was

¹⁸⁷ Id, Art-4(3)

¹⁸⁸ Id, Art-4(4)

¹⁸⁹ Sosina Bezu and Stein Holden (2014), *Demand for second-stage land certification in Ethiopia: Evidence from household panel data*, Land Use Policy 41, pp. 195

¹⁹⁰ Borena Zone Dheeda Communal Land Holding (Pilot Project) Registration and Certification Directive No. 02/2009 (Here in after called Directive)

preceded by intensive discussion among communities and government authorities.¹⁹¹ It has taken years of discussion due to insistence on the part of the government. The major disagreement was on the scale of rangeland to be certified. When the government proposed to certify at local “*kebele*” level, the community claimed at “*dheeda*” level which covers minimum of two “*woredas*” and reach up to a million hectare. Bureau’s reason was certification beyond kebele level is not suitable for administration. Whereas, the community justify the certification at kebele level would affect and destruct the customary management structure. Certifying at the *dheeda* level includes both the wet and dry season grazing areas including movement corridors.¹⁹²

Advisory Committee composed of all stakeholders, government, NGOs, community representatives and Gada leaders have worked for long to reconcile interests. Subsequently, government revised its earlier position and the regional cabinet has agreed to issue certificate on “*Dheeda*” level. In fact, there is no maximum holding provision in ONRS rural land laws. The threat is when there is maximum holding limit.¹⁹³

The later step was preparing a directive for implementation. The Bureau enacted directive.¹⁹⁴ Recognizing the existence of tenure insecurities, the preamble of the directive states that, because of the reason that previous surveying, registration and certification process didn’t include pastoral areas, the community started to claim their pastoral land to be surveyed, registered and certified. Then the directive is issued to strengthen the land tenure securities of pastoralists in Borana Zone.

After five years of hard work, Borena pastoralists received the first ever communal land holding titles in the history of Ethiopia. In total, three pastoral communities covering over 255,000 people now have the title to collectively use 2.7 million hectares of land an area larger than Rwanda.

3.5.2.2 Potential Issues Entertained

A. Scale of Certification

¹⁹¹ Daniel Behailu Gebreamanuel et al (2018), note 108, pp. 117

¹⁹² Interview with Ato Abebe Mulatu, property law expert in USAID LAND on Jan 17, 2020 at Addis Ababa

¹⁹³ Mulugeta Getu Sisay et al (2018), note 82, pp. 112

¹⁹⁴ Directive, note 190.

It is stated above scale of certification was an issue during pastoral land certification. However, as has been stated after lengthy discussions, agreement reached the scale of certification to be at dheeda level which is suitable for customary grazing management. The Borana community's criteria to classify grazing areas (dheedas) are presented as follows:-

Usually traditional community knowledge and practices are important in responding to ecosystem dynamics, managing environmental variability and to secure a flow of biological resources.¹⁹⁵ Failure to realize the indigenous knowledge in resource management and lack of sound policy in rangeland development further contributed to pastoral areas degradation and insecurity.¹⁹⁶ Borana rangeland presents an exceptionally efficient and well managed dry land areas due to the indigenous knowledge of Borana, richness of natural resources, the wealth of Borana institutions and their capacity to regulate access to resources. The strong interaction among multiple institutions, effective channel of communication, check and balance and transparency within *gada system* is the secret achievement within the centuries.¹⁹⁷

For Borana natural resources are common property in spite of specific provisions based on the principles of exclusion/inclusion for the assurance of balanced and sustainable use of natural resources called “the law of pasture and water”; *Seera Marraa Bisaanii*.¹⁹⁸ Therefore, based on indigenous knowledge grazing areas in Borana are classified in to five major grazing areas called “*dheedas*”. These are: - Woyama (Red soil), Gomole (better or moderate) Golbo (lower area or relatively lowland), Dirre (plain area), Malbe (rich in variety of species). Accordingly the criteria are:-

1. **Soil type:** - There are differences in soil types within the Borana rangeland. The soil has effect on related resources like pasture and water. A grazing area called “Woyama” meaning “Red soil” is named because the type of soil in that rangeland is red.
2. **Landscape:** - Landscape is visible features of an area of land which contains up and downs. Consequently, the community classified grazing areas considering the land scape

¹⁹⁵ Derara Ketema Teressa (2015), *Beyond The Commonality and Expression of Oromo Civilization: The Mediating Role of Gada System for Commons Management of Natural Resources*, IJCR Vol. 7 Issue 9, pp. 20227

¹⁹⁶ Oromia Land and Environmental Protection Bureau (2010), *Borana Land Use Study: Laga wata/Laga Sure Sub-basin Rangeland Suitability Evaluation*, pp. 2 & 3

¹⁹⁷ Derara Ketema Teressa (2015), note 195, pp. 20224

¹⁹⁸ Id, pp. 20228

of grazing areas. *Golbo* and *Dirre dheedas* which have meaning of lower and plain areas respectively are typical examples. The main part of “*Golbo dheeda*” exists in Kenya.

3. **Species distribution:** - pastoralism bases itself especially on the availability of plant species. Recognizing this Borana community used plant species distribution as criteria for the classification. For instance, “*Malbe dheeda*” is rich in plant species and some species that exist in it do not exist in the other grazing areas.
4. **Ecology:** - this is based on the ecological condition and suitability of grazing area like animal health. *Gomole* is a grazing area ecologically suitable for cattle. Note; each grazing area has its own advantage.

B. Rights of Pastoralists and Impairments

Pastoralists have rights stipulated under FDRE Constitution and rural land laws.¹⁹⁹ Accordingly, they have the right to access, use, rent, work jointly with developers and others like to be secured from eviction and get compensation for the property situated on the land during expropriation for public purpose.

Since it is communal land, pastoralists can rent their communal land up on agreement of majority pastoralists within the community up to fifteen years.²⁰⁰ Any person who is allowed using land for private purpose in the community land for whatever purpose cannot rent that land. Additionally, he/she cannot mortgage the land for his own undertaking or contribution for joint venture. However, the regulation stipulates contrary to this and allows a pastoralist to rent his private holding.²⁰¹ This shows yet there are lacunae in recognizing pastoral land as communal.

The second issue is transfer of one's right through donation. How the right to transfer portion of one's land right can be exercised in pastoral community? This is due to the reason that the amount of an individual share in the community is unknown. Thirdly, during expropriation assessment of compensation for farmers the amount of annual product multiplies by three years has been used as displacement compensation.²⁰² Primarily, there is no evidence about the very

¹⁹⁹ FDRE Constitution, Art-40 (5) and (8), Federal Rural Land Proclamation, Art-5 (1), Oromia Rural Land Proclamation, Art-10 and Dheeda Administrative Directive Art-11

²⁰⁰ Directive, note 190, Art-12-17

²⁰¹ Oromia Rural Land Regulation, Art-7 (10)

²⁰² Expropriation Proclamation No. 1161/2019, Art-13 (1, b)

existence of the right to pastoralists. In addition, the parameter is not suitable for pastoralists since the product is not year round. Therefore, another mechanism should be prepared.

C. Surveying, Registration and Certification²⁰³

To conduct surveying and demarcation there has been “ad hoc committee of community pastoral land demarcation” empowered. The Committee has included *aba gada* and elders from each “Dheedas” with professionals.²⁰⁴ Their functions and responsibilities are; - providing facts about customary usage of dheedas (grazing lands, corridors, private holdings within communal land... etc) to the committee and follow up the process of surveying and demarcation. They inform to the community and bureau during errors. The bureau has been investigating and correcting errors immediately to make the process transparent and entertain community’s claim. Contentions have solved through customary institutions involvement. Surveying and registration conducted by competent professionals. USAID and Zonal office created awareness to the pastoral communities about the need of registration and certification of pastoral land.²⁰⁵

After surveying and registration but before certification in the name of each *dheeda*, announcements made through posting notice in public places to entertain claim, if any. Later on, the certificates kept in the hands of each three “*Abba Dheedas*” (Grazing areas chief managers), *abba rerras* and in office. Those properties of governmental institutions exists within the “dheeda” (like schools, health centers), religious institutions (churches and mosques) and similar institutions given their own certificate.

N.B, The rights on certification will have effects until the pilot project is in force and it may be extended by other decision.²⁰⁶ The issue here is, there is deviance from Oromia rural land proclamation which states that, “Any rural land holder shall be given a life time certificate of holding”.²⁰⁷ Once the certificate is issued legally, its effect should be for lifetime unless the holder’s land legally taken over.

D. Management of Pastoral Land

²⁰³ Directive, note 190, Art-19-26

²⁰⁴ Id, Art-20

²⁰⁵ Interview with Ato Aden Abdo, Head of Borana Zone Land Administration and Use Office, on March 4, 2020 at Yabello

²⁰⁶ Directive, note 190, Art-26

²⁰⁷ Oromia Rural Land Proclamation, Art-15 (6)

As above stated, the other issue which needs to be addressed is who shall manage and how; whether new managing body should be established or it's better to recognize and support the existing customary management system? The Directive addressed this issue including mechanism of dispute resolution. It empowers *Aba gada*, *Aba rerra*, *Aba olla* and *Aba herrega* hierarchically to manage resources and resolve disputes based on gada system and custom of the community.²⁰⁸ The directive imposes responsibility on the local administrative units to work in collaboration with customary management bodies.²⁰⁹

E. Member of a pastoral community and grazing rights of non-members

The directive defines the term “pastoral community” as “*a community whose livelihood is mainly depends on rearing animals and gets certificate as per the provisions of the Directive, and includes one or more clans inside it*”²¹⁰ (interpretation mine). Oromia rural land proclamation defines “a pastoralist” as “*a member of rural community whose livelihood depends on livestock ...*”. The proclamation passes it simply saying “*a member of rural community...*” without defining who is a member. However, the draft guideline defines it as “*a member is a person who is known by being a resident in that “dheedaa” and using the available resources*”. In addition, he shall obey the decision of pastoral land management bodies and customary rules of the community.²¹¹ Hence, a member shall be a resident within the community. Here again, who is a resident and who is not is the other concern.²¹² If a person is not a resident, he will not be a member and will not have the rights.

On the other hand, the relationship of non-members with the community will be determined by customs, norms and agreements to be reached with the community.²¹³ There will not be free grazing. In principle no one can hinder mobility. However, using others' pastoral community land resources should be based on agreement. When we look other African countries, multiple resource use in pastoral Africa is traditionally regulated by informal or formal rules based on the priority claimed by different user groups: ‘primary users’ have highest priorities within their

²⁰⁸ Directive, note 190, Art-27 & 28

²⁰⁹ Id, Art-29 & 30

²¹⁰ Id, Art-2 (1)

²¹¹ Borana Zone Draft Dheeda Administration Guidelines, Art-1 (1, A) (here in after called Guidelines)

²¹² Civil Code of the Empire of Ethiopia, 1960, Art-174 states, “*a residence of a person is the place he normally resides*”.

²¹³ Guidelines, note 211, Art-1 (1, D)

home territory, ‘secondary users’ have seasonal access, and ‘tertiary users’ have infrequent access in times of need, such as drought years.²¹⁴

F. Enclosures and Private Holdings within Pastoral Land

Illegal private farms and enclosures like “*kallos*”²¹⁵ have increased over times which are obstructing pastoralism and mobility. Solving this issue is critical to sustain the communal land use system. The directive answered this issue stating “*Those private holdings exist within the community pastoral land shall be included and changed to community pastoral land*”.²¹⁶ The process and mechanism of changing of these “*kallos*” are left to be determined by community land use guidelines.²¹⁷ The same is also stated in the draft guidelines with penalty for violators.²¹⁸ Cultivators may cultivate by leasing from the community.

G. Mobility and Certification

The issue whether the certification included either areas or both is answered by incorporating both since they are indispensable. Dry season areas cannot be successful and sustainable without using the wet season pasture and vice-versa. It also includes water resources and corridors. This was the major inconvenience of certification. *Dheeda* in Borana includes both dry and wet season areas. Mobility is recognized and obstructions for the mobility are outlawed.

3.5.3 The Status of Certification and Potential Fears

The directive states, certification in the three *dheedas* is pilot program to identify problems and issued to be used as a guideline for the implementation of project in the selected “*dheedas*” namely, *Dirree*, *Golboo* and *Malbe*.²¹⁹

Currently, all the three “*dheedas*” got certificate. However, there are five *dheedas* in Borana Zone and two of them, *Gomole* and *Woyama* remains. There are two main reasons for the failure of certifying the two remaining *dheedas*. The first one was opposition on the ruling regime in the region repeatedly before the current reform which created instability and obstruct the process.

²¹⁴ John W. Bruce et al (2013), note 94, pp. 7

²¹⁵ It is an enclosed area from communal grazing land for one’s own use only.

²¹⁶ Directive, note 190, Art-18

²¹⁷ Id, Art-31

²¹⁸ Guideline, note 211, Art-12

²¹⁹ Directive, note 190, Art-3

The second is jurisdictional issue, which is beyond the power of Borana Zone Land Administration and Use office. One of the remaining “*dheeda*” called “*woyama*” is found within the administrative boundary between Somali NRS and Oromia NRS. The boundary between these regions is not settled yet. This has been causing recurrent conflicts between the Somali and Borana pastoralists.²²⁰ Therefore, solving of the issue by the initiation of regional states themselves or by intervention of federal government is required.²²¹ Disputes in the area have been taking the lives of many pastoralists and causing insecurities. Unless it is resolved, the area will be no-go area.

Land Certificates of the three *dheedas*:-



Certificate 1. Diree *Dheeda* Certificate 2. Golboo *Dheeda* Certificate 3. Malbee *Dheeda*

After discussing the issue with Oromia Regional Bureau, Zonal office is preparing to certify the two remaining “*dheedas*”.²²² In this regard, I (researcher) believe issues must be solved in advance to attain sustainable peace and answer the communities’ question. Now, two years counted after certification. It is very promising and can be a good answer for opponents of certification and lesson for other pastoral areas. Advocators of this idea fail to understand the root cause of the recurrent conflicts in the areas. Therefore, proper recognition and certification of pastoral land solves their major problem, insecurity.

²²⁰ Interview with Ato Aden Abdo, note, 205

²²¹ FDRE Constitution, Art-48

²²² Interview with Ato Aden Abdo, note 205

3.5.4 The Role of Government, Courts and NGOs in the Certification

Though government has obligation, the certification process could not reached at this level without government collaboration (from regional to local levels). Compromising interests on the scale of certification was the pillar for the process success. Authority has participated in different awareness creation and dispute settlement venues. However, the roles of courts were minimal since the Borana community is culturally endowed with settling disputes through *gada system*. In addition, there were no serious disputes during demarcation and surveying. When we see the role played by NGO especially USAID, it has played vital role; it has funded lots of financial support necessary for the completion of the process and conducted researches to take good experiences.

3.5.5 Effects of Certification

A. Strengthened sense of ownership: - The demarcation and certification of grazing land helps pastoralists to manage their land with a greater sense of ownership, incentivizes them to make investments and manage resources sustainably over the long-term.²²³ It is the mentality that stimulates and causes enthusiasm among the members of a group. It improves governance at the local level by providing communities with decision-making rights over their most valuable natural assets: land and other related resources.²²⁴

B. Strong Land Tenure Security: - The certification formally recognized both dry and wet season grazing areas, movement corridors and water points. Plus, recognize mobility and outlaw encroachments. Therefore, it strengthens land tenure security of pastoral community and helps to avoid conflicts. Here, there must be proper policy support and implementation of laws.

C. Recognized Custom, Customary institutions and Mobility: - The directive also empowered customary institutions to manage pastoral land and related resources which enable to preserve community's culture and rangeland ecology by applying indigenous knowledge. It recognize mobility and neighboring communities' access to grazing areas, water points and

²²³ Interview with pastoralist Ato Sahar Malise, Malicha Duba, Konso Ali from the three certified dheedas on 26/6/2012 E.C and interview with Ato Aden Abdo, note 205.

²²⁴ <https://www.land-links.org/2018/09/pastoral-communities-receive-2-7-million-hectares-of-land-in-ethiopia/>, retrieved on 12/1/19 at 9:44 AM

travel corridors per agreement and traditional customs which is an important step in mitigating tensions over land access and use.²²⁵

3.5.6 Lessons for Other Pastoral Areas

The beginning of pastoral land certification in Borana Zone is the first-ever in Ethiopia. Although the certification process is yet not completed, the situation in the areas which already got certification is promising. Pastoralists are feeling secured and conducting environmental protections.²²⁶ There are no conflicts and massive expropriation of pastoral land in the Zone after certification. Custom and customary institutions are recognized and empowered. Indeed, the rules in the directive have not fully implemented, like enclosure of private “*kallos*” yet not eradicated.

As indicated above, land tenure insecurity in the rest of Oromia and other Regions pastoral areas is severe. Proper recognition is the first step and required from these regional states. However, this is not true. For instance, Afar Rural Land Proclamation dictates, communal land holdings can be redistributed and given to individual holders who have small size of land holding.²²⁷ Moreover, it excludes pastoralist and agro-pastoralists from the ambit of certification.²²⁸ Benishangul Gumuz’s rural land proclamation prescribes change of communal land in to private holdings.²²⁹ It does not recognize certification of pastoral land on the one hand and outlaw using of rural land without holding certificates.²³⁰ Similar problems exist in other regional states. Practically also as has been stated above, pastoralists in these areas are suffering from land tenure insecurities.

Therefore, certifying these lands taking and contextualizing experiences of certification of pastoral land in Borana Zone possibly solve the problems. Nevertheless, there is no completely homogenous pastoralist society in Ethiopia and elsewhere.²³¹ Strict application of the Borana’s experience may not be suitable. In some cases communal land holding recognition and

²²⁵ <https://www.land-links.org/2018/09/pastoral-communities-receive-2-7-million-hectares-of-land-in-ethiopia/>, retrieved on 12/1/19 at 9:44 AM

²²⁶ Focus Group Discussion with pastoralists on the market day on March 3, 2020, at Yabello

²²⁷ Afar NRS Rural Land Administration and Use Proclamation no 49/2009, Art-12 (6).

²²⁸ Id, Art-17.

²²⁹ Benishangul Gumuz NRS Rural Land Administration and Use Proclamation No 85/2010, Art-29 (1&2).

²³⁰ Id, Art-27(7)

²³¹ Ministry of Livestock and fishery (2017), note 99, pp. 4

certification may be at village but in other case large land scape may be hold communally depending on the community peculiar context. For instance, “*Dheedas*” in Borena and the context of Afar can be taken. In the former, governance is still possible at large scale but not in the latter case. However, since they are managing rangeland through custom, the experience of Tanzania shows it is possible also in relatively small scale.²³² What matter is, recognizing mobility and reciprocity.

An argument raised by some opponents of pastoral land certification does not hold water. The pastoral way of life does not suitable for this because, it is known that most pastoral communities have their own principal pastoral land and they have been practicing culture of reciprocity since time immemorial during dry season and drought. Keeping out certification cannot be a solution. The country should face the facts. Unless, we cannot attain what we are intending to reach marginalizing pastoralists and their land which is more than half country’s total land mass.

4. Chapter Summary

Post 1995 reform brings some changes and pastoralists’ right to have free grazing land and not to be evicted from their holding is recognized under FDRE Constitution (Art-40 (5)). It left the detail to be determined by laws. Policies and subordinate laws at federal and regional level try to recognize pastoral land tenure. However, reserving the idea of Hardin’s theory, they do not give proper recognition to protect the tenure system: they are inconsistent with the constitution and contradictory with one another.

Land certification which plays crucial role in securing land right exists under land administration process, which is implementing land laws. The power to administer land is given to regional states to administer contextualizing and taking in to account their specific condition (Art-52 /2 d/ and Federal Rural Land Proclamation, Art-17). However, pastoralists’ problems stated above exist under regional states rural land laws even in pastoral concentrated regions. Pastoralists have lost large areas of prime grazing lands without consultation and compensation.

Despite these legal lacunas, a breakthrough and first ever pastoral land certification process has started in Borana Zone, Oromia NRS in order to increase land tenure security of pastoralists.

²³² USAID (2012), note 64, pp. 66-67

However, to certify pastoral land, the parameter is different from private holding, since pastoral land tenure has its own peculiarities. Issue like scale of certification, membership in the community, management, mobility... etc. need to be addressed. The certification process has tried to address these issues and certified three grazing areas. Though certification yet not covered total rangelands, findings from certified grazing areas are very promising. Other pastoral regions should take it as typical lesson and certify pastoral lands in their region by contextualizing matters.

In order to replicate successfully, first there shall be discussion with and awareness creation to the community about importance of certification. Government officials should accept efficiency of pastoralism in dry lands. Then after, consensus should be reached on the scale of certification and manner of management of pastoral land. Conducting study about respective customary institutions' strengths and flaws, preparing laws necessary for the implementation of certification program which shall answer potential issues discussed so far, settling administrative boundary issues with neighboring regions, legalizing intra and inter regional mobility (facilitating inter-country mobility also) and finding financial sources to finance the process are vital.

Chapter Four

Conclusions and Recommendations

4.1 Conclusions

Pastoralists' ways of life and livelihoods are intrinsically attached to their land. They use available pasture and water efficiently to rear their herds on the land they hold/own and manage communally in arid and semi-arid areas. However, misconceptions about commons have allowed governments and investors to undervalue pastoralism and affirm communal pastoral land as unutilized. This has been creating land tenure insecurities. Later on, to some extent this misunderstanding has been disproved and movements have started to recognize pastoral land tenure and increase their land tenure security.

Land certification is one vital mechanism to secure rights over land. For instance, legally obtained title deed serves as an evidence to prove ownership of a car. It secures the owner from competing claims unless otherwise proved. Similarly, certification increases the negotiating power of land holders and serves as evidence during contestation or to claim any rights based on the land. Therefore, it increases land tenure security.

Due to peculiarities of pastoralism and pastoral areas that first need to be addressed, the way we certify non-pastoral areas cannot fit for pastoral land certification. Therefore, the laws and process shall consider these peculiarities. There are also countries such as Niger which have certified pastoral lands successfully accommodating the peculiarities.

In Ethiopia the 1995 FDRE Constitution recognizes pastoralists' right to free grazing land and non-eviction from their holding. Subordinate laws have also incorporated lifetime grazing rights of pastoralists and right to get certificate for their holding to strength land tenure security. Accordingly, the government has started rural land certification. However, it is limited to non-pastoral areas, though certification not necessarily tied to individual land tenure. This has resulted pastoralists' vulnerability to serious land tenure insecurities.

The land tenure insecurities challenging pastoralists are problem of loss of prime grazing lands due to massive expropriation without consultation and compensation, recurrent bloody conflicts between pastoral communities due to competing claims, encroachment by non-members of the

community...etc. These decrease the contribution of pastoralism in the national economy and put the very existence of pastoralists' livelihood, culture and way of life at stake.

Therefore, proper recognition of pastoral land tenure and certification is necessary to secure pastoral lands. It has also vital importance to the national economy. Nonetheless, since pastoral land tenure has its own unique features, mechanism should address and accommodate issues emanating from peculiarities of pastoral land tenure.

This research tried to appraise pastoral land tenure security in general with special emphasis on pastoral land certification among the Borana, Oromia NRS which is a breakthrough in pastoral land certification history of the country. In doing so, the research analyzed how issues attendant to the unique features of pastoral land tenure have been accommodated and addressed under land laws and land certification processes.

The followings are some of potential issues that need to be addressed: the scale of certification since landholding is communal; issue of mobility since mobility is vital to mitigate risks; management of communal land and criteria for membership within a pastoral community since exclusion is the base to avoid competing claims and over exploitation; the rights of non-members, the fate of private enclosures which exists within communal lands and in whose name certification shall be issued and in whose hand it shall be deposited.

Some are opposed certification of pastoral land claiming that it will escalate conflict between pastoralists. However, this is erroneous because, even without the existence of certification recurrent bloody conflicts are trends in pastoral areas. The root causes are loss of vast productive pastoral land and competing claims over the same remaining lands. The problems mentioned cannot be avoided by prohibition of certification and in fact lack of certification exacerbates the problems. These conflicts need to be solved in sustainable manner which is through recognizing and securing their land tenure. In this regard certification plays a vital role.

The Borana pastoral land certification tries to address the above issues. Firstly, regarding the scale of certification which was the major issue in the process, traditional grazing areas classification mechanism has been chosen which is certifying at *dheeda* level. This includes both dry and wet season areas and helps to manage the resource by customary institutions and sustain mobility. Sub-grazing areas (*rerras*) which exist within *dheedas* have also been certified.

Secondly, in relation with surveying and demarcation, a Directive has been issued which has empowered “*adhoc committee of community pastoral land demarcation*” which is composed of *aba gada* and representative elders from each “Dheedas” including professionals. Dissatisfactions and claims on the process have been raised are communicated to members of *adhoc* committee, made public and entertained transparently. Finally, certifications have been issued and handed over to representative of each *deheeda*, *rerraa* and reserved at the office. However, the land certification is not life time which contradicts with Oromia Rural Land Proclamation.

Thirdly, customary institutions are empowered to manage rangelands as per custom and mandatory laws. This helps to strengthen and protect the culture of community and sustainability of pastoralism on the one hand, and try to curb problems of customary practices which contradict with justice and principal laws.

Fourthly, the certification excludes non-members, although provisions lack clarity on the issue who is a member of a given certified pastoral community. The cumulative reading of Art-2 (14) of Oromia rural land proclamation, Art-26 of the directive, Art-1 (1, A) of draft *dheeda* administration guidelines and Art-174 of civil code however help to reach the conclusion that a member is a person who normally resides within certified pastoral community. Therefore, the right of non-residents is determined by agreements to be reached between customary leaders of pastoral communities which help to avoid conflict due to rivalry.

Fifthly, private holdings exist within the communal lands are dictated to be changed to communal land upon payment of compensation. They have created serious problems for the mobility. Hence, solving this problem is crucial for the success of pastoralism and secure pastoralists’ access rights. Although there are no further enclosures after certification, the conversion is not conducted. Last but not least, the issue of mobility which is fundamental for viability of pastoralism and rangeland ecosystem is recognized and any activity which hinders it is outlawed.

The majority of grazing areas have been certified and but the process has been interrupted due to extraneous factor. The certification has enhanced sense of ownership of pastoralists, strengthened tenure security, secured mobility, recognized customs and customary institutions of

pastoral community. There have been no further enclosures and illegal expropriation, conflicts between pastoralists within two years after certification. This shows possibility of pastoral land certification if the mechanism considers peculiar context.

Pastoral land certification among the Borana community can be a typical lesson for other pastoral areas within the region itself and to other pastoral areas of the country; even beyond. This will be possible because: firstly, within Oromia most of pastoral areas use *gada* system of communal land management, though they are debilitated by the improper policies. The same has been also true in Borana community. However, these institutions are still surviving even if their degree of strength has been weakened over the years. The institutions can revive, if they are backed by legal frameworks and endowed with enforceable powers.

Second, like Borana, pastoral lands in the rest of Ethiopia are communally held and managed by customary leaders and institutions. For instance, pastoral lands in Afar and Somali, in which majority of the population is pastoralists, are managed by customary institutions. At the same time, similar or even sever problem of land tenure insecurities exist in these areas. Therefore, by recognizing their pastoral land tenure and customary institutions, certification can be conducted taking in to account specific situations.

One may ask how Borana experience can be extend to other areas since there are differences in context. In this regard, the major issue would be the scale of certification and management of pastoral lands. Certification at *dheeda* level is selected in Borana to manage rangeland customarily respecting mandatory laws which helps to exploit best indigenous knowledge. Sub-grazing areas, “*rerras*” (below *dheeda*), have also certified. This shows the important point that land held communally can be made convenient for management.

Gada is not the only customary institution. Pastoral communities in different areas have their own custom and customary institutions which survive till today, though they have differences in organization and success. Therefore, giving legal backing to these institution and certifying the lands considering specific facts is imperative to protect pastoral land rights, culture and livelihood. If everyone secures its primary grazing area and the remaining will be determined by agreements. What a certification does is just recognizing property right over communally specified land to a specific community which already exists in practice.

4.2 Recommendations

The researcher, based on the discussions so far, recommends the following measures to be taken and the concerned organs should take them seriously:

4.2.1 Policy Measures

There are various anti-pastoralism policies which are founded on misconceptions of pastoralism and realities in pastoral areas contributing for land tenure insecurities of pastoralists. Hence, they should be amended taking in to account the realities and needs of pastoral areas and pastoral production system. Although there is a draft pastoral policy with its own flaws, it cannot be successful by itself unless other policies complement it.

4.2.2 Legislative Measures

Although the FDRE Constitution recognizes pastoralists right to free grazing land and non-eviction from their holding, there are some laws, as have been stated, which lack clarity and contradict with the constitution and one another with regard to pastoral land rights. The existence of such contradictory pieces of legislation inevitably will contribute to intensification of land tenure insecurity among pastoralist. Therefore, they should be amended in conformity with the Constitution and to strengthen secure land rights of pastoralists.

4.2.3 Enforcement and Implementation Measures

The executive organs of government have obligation to implement what is stated in the laws. They are also delegated to enact subordinate laws for the proper implementation of superior laws. For instance, both federal and regional state rural land laws dictate land certification to be given to pastoralists and empowered the respective organs to issue regulations and directives for the proper implementation of the law. Therefore, these organs have to issue necessary laws to implement what has been stated in superior laws taking into account the contexts and needs.

4.2.4 Reconsideration Measures

Certifying the remaining *dheedas* need settlement of administrative boundary in advance, which is beyond the jurisdiction of the Borana Zone. Rushing to certify before settling the issues will not bring sustainable security for pastoralists and cause waste of resources. Therefore, Borana

Zone Land Administration and Use Office shall reconsider its plan because certifications after settling issues bear greater success.

4.2.5 Extension of Borana Pastoral Land Certification Experience

As stated in the conclusion, certification of pastoral land among the Borana can be typical example for the rest of the region itself and other pastoral areas by contextualizing realities. Thus, the government and concerned organs should extend the Borana land certification initiative to other pastoral areas which are suffering from severe land tenure insecurity problems.

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4. Interviews:

Ato Abebe Mulau, property law expert in USAID Ethiopia LAND Project, on Jan 17 2020,
at Addis Ababa

Ato Aden Abdo, Head of Borana Zone Land Administration and Use office on March 4,
2020 at Yabello

Ato Amanuel Teshome, Rangeland management expert at Yabello Zuria Woreda Livestock
Resource Office on March 4, 2020, at Yabello

Dr. Bula Mengesha, Borana Zone Livestock Agency expert on March 3, 2020, at Yabello

Ato Kedir Usman, official at Pastoral Affairs department of Ministry of Peace on Jan 20,
2020 at Addis Ababa

Ato Sahar Malise, Malicha Duba, Konso Ali, pastoralists from the three certified deedha on
March 5, 2020 at Yabello

Ato Sahira Jirmo, community elder and pastoralist as well as run medium business, on March
3, 2020 at Yabello

Ato Wegene Tadese, rangeland and land certification expert in Borana Zone Land
Administration and Use office, March 5, 2020 at Yabello

Focus Group Discussion

Focus Group Discussions were conducted with various pastoralists at Restaurants on market day (March 3, 2020).

Annex-I: Interview Guides:

Interview Questions for Government Officials

1. Is there pastoral land certification in your Zone/ Wereda? If so, what is its status?
2. What factors led to the introduction of certification in your Zone/wereda (dheedaa)?
3. What problems arose in the course of the land certification program? Do pastoralists shift during dry season? If yes, does the certification process include only the current possession or/and seasonal land rights? Or does it include movement corridors as well?
4. Were there contentions during demarcation and surveying of the lands? If yes, how have you solve them?
5. Do you think that the land certification program has solved the problems which were factors for the certification? Like insecurity of tenure, land degradation, loss of productivity, payment of compensation during expropriation...etc.
6. Have you faced problems of internal difference due to clan diversity? If so, how have you solved that?
7. How have you solved issues related to the grazing rights of non-member community?
8. How did you try to solve issues of “Kallos” (private holdings exist within the communal tenure)?
9. What has been the role of local government administration in the land certification process? What about the government courts in the area? Also the role of international donor organizations? Local elders?
10. Any other remarks you would like to make concerning certification of pastoral landholdings?

Interview Questions for Pastoralists, Elders and Aba Gadas

1. Have you got certification for your *dheeda* (pastoral land)?
2. What were the problems you faced in your *dheeda* before the certification?

3. What are the changes after certification of *dheedas*?
4. What are problems yet not solved after the certification? If any?
5. Can pastoralism be productive if better protection is given than crop production?