SHARING EXPERIENCES ON DEVELOPING POLICY AND LEGISLATION FOR PASTORAL AREAS AND THE CHALLENGES OF THEIR IMPLEMENTATION

How best to secure and administer communal lands in pastoral areas is a challenge that the federal and regional governments in southern and eastern Ethiopia are facing. In order to inform and support this process a meeting was organised in Awash, Afar between 11-12 April 2013 by the Ministry of Federal Affairs (MOFA) (Ensuring Equitable and Accelerated Development in Pastoral and Agro-pastoral Regions Directorate), the Afar Region Land Agency and REGLAP (Regional Learning Advocacy Programme for Vulnerable Dryland Communities). Also attended by the Ministry of Agriculture’s Rural Land Administration and Use Directorate (RLAUD) as well as regional land bureau and pastoral commissions, the meeting was an opportunity for the federal and regional governments to share their experiences on developing land policy and legislation for pastoral areas, and their implementation to date.

Settlement and mobility

Ato Shanko Delelegne (MOFA) provided the first presentation of the meeting. He confirmed that the federal government’s pastoral development policy has both medium and long term visions for pastoralists which will ultimately lead to a more settled way of life. It is anticipated that over three years (2003-2005 EC) approximately 350,000 households will be moved into villages (communes). This settlement should be voluntary and he recognises that this is not always the case – it has been noted that some districts are trying to force people into villagisation schemes. Despite settlement being seen as a long-term inevitable process for the majority of dryland communities, the government recognises that in order for communities to remain resilient to such as drought, a degree of mobility of people and their livestock will need to be maintained. This is being supported through the provision of mobile health and education services.

Ato Solomon Abebe from the RLAUD, MOA, also confirmed the importance of mobility in his presentation and said that this needs to be formalised and protected through the setting of directives that classify pastoral routes (corridors) as part of the public domain and under government protection.

Opportunities for communal land holdings

Unlike other countries in East Africa, Ethiopia’s Constitution, land laws and strategies provide an enabling framework for pastoralists and pastoralism – this has resulted in regional governments developing land policies and legislation that encourage pastoralists to maintain their communal land holding system. Ato Solomon also highlighted the importance of good land use planning as the foundation for decision-making and planning.
Compensation

The issue of compensation was also raised by the presenters: the country’s Constitution (Article 40) and Proclamation 456 (2005) state that compensation should be paid to land users if taken by the government for developmental purposes and/or public interest. Yet to date, such compensation has not been paid to pastoralists. It is therefore important for the federal government to provide guidance to the regions on this.

Role of customary institutions

It was generally agreed in the discussion that followed the presentations that customary institutions should continue to play a critical role in decision-making processes related to land and natural resources. There should however be greater integration between customary institutions and government, which will require efforts from both parties. At the same time women’s land rights and the place/role of youth need to be considered.

Participants stressed the importance of developing policy, legislation and implementation strategies with pastoral representatives including regional pastoral councils (two of which were represented at the meeting).

Regional land policies and legislation

The three regional governments present at the meeting (Afar, Somali and Oromia) then presented their land policies and legislation that provided guidance for pastoral areas.

In Afar and Somali regions policies and legislation have been or are being (as in the case of Somali region) developed specifically for pastoral areas. Regional task forces have undertaken this task with consultation of different stakeholders including local leaders and other community groups; pastoral and regional councils; and academics. Land policy in both Afar and Somali region recognise communal land and property. Both processes have received financial and technical support from the USAID funded Ethiopia Land Administration Program (ELAP).

The Afar Proclamation 49/2009 provides for the demarcation of communal holdings and protection from transference into private holdings. It recognises common property resources as resources that are “subject to individual use but not to individual possession” – accordingly the users have equal property rights over resources and for which they have the capacity to fix rules of access and norms of use. Customary law is also recognised – Article 5 states that: “the regional government shall provide the necessary assistance to strengthen the customary natural resource protection and conservation system.” Though Regulation No. 4/2011 states that land for grazing and mobility will be identified and delineated it provides little guidance to how this should be carried out and how communal lands should be administered.

Oromia region does not have land legislation specific to pastoral areas. However, Proclamation No. 130/2007 and Regulation No. 151/2012 highlight some of the special needs and requirements of land tenure, administration and use in pastoral areas.
Regulation Article 15(7) for example states that a Land Holding Certificate for communal land in pastoralist and semi-pastoralist areas for such as grazing land, forests, water points, ponds etc. should be provided and shall be certified by the name of users.

The experiences shared by the Regions highlighted a number of important components of the policy and legislative process:

- The consultations that involved stakeholders in the early stages of policy development were essential to ensure the uniqueness of the pastoral system was incorporated.
- Policy and legislation related to land, need to be developed together with other policy and legislation that impacts how people use and access the land. For example there is still a need for comprehensive land use planning to take place and the development of regulations on registration and surveying of communal land.
- Institutions have been developed to implement, monitor and evaluate the laws.
- Partners such as ELAP played an important part in the drafting of the policies and laws.
- Publication of policy/law and a summary in local language was important.
- Learning from other countries during the formulation of policy and law was useful.

The challenge of communal land holdings

However, though policy and legislation at all levels supports the demarcation and registration of communal land holdings in pastoral areas, there are no clear guidelines either at federal or regional levels as to how this should be done. Where land has been registered to a household in pastoral areas (and this is taking place in both Oromia and Afar regions) this has been on the basis of individual rights to a plot of land for agriculture and not for communal or common property rights. Box 1 provides some of the challenges for developing land tenure and administration of communal lands as discussed in the meeting.

**Box 1: Challenges for developing land tenure for and administration of communal lands in pastoral areas**

*Land tenure*

- Group rights are particularly challenging to secure and manage. For example how should a ‘group’ be defined? How can all stakeholders participate? As a result people may try to individualise the group rights but this can cause more harm than good.
- Group rights are difficult to understand or translate into an understandable ‘simple’ form that can be registered and formalised. Often there are ‘layers’ of rights that demand a ‘nested’ governance system. There will be overlapping, temporary, permanent, primary, secondary and multiple-use rights – all of which need to be recognised and protected.
• Titling or formalising customary rights can change social behaviour. This is likely to cause some conflict or disagreement in the short term – as issues such as ‘boundaries’ may stir up old grievances or latent (sleeping) conflicts. Resolving these can be lengthy and costly.
• Demands multi-sectoral and multi-stakeholder approach – this can be long-winded and expensive.
• Demands an approach that allows certain degree of adaptation and flexibility.
• Communal land tenure must provide for movement to market, grazing, water, etc.
• Considers and where appropriate provides for, changes in land use, and e.g. leasing of land.
• Gives clear instruction for provision of compensation if land is required for national use.
• Land and resource tenure need to be easily enforceable and not too expensive so that implementation is constrained.

Land administration
• Administration needs to address sheer size of the administrative units, the different layers of tenure, the nature of pastoral cultures, high environment variability and the complexities of ecological and social systems.
• Roles and responsibilities need to be clearly defined together with benefit-sharing.
• Land use planning and decision-making is required at a level that can consider all the inter-related connected parts of rangelands as well as at lower levels.
• There needs to be room for the involvement of all stakeholders
• Productivity is relatively low across a completed rangeland so the cost of administration (or management) needs to be as well. At the same time the relationship between the high- and low-potential areas that are functionally independent need to be incorporated.
• A large amount of information generated needs to be stored in an accessible manner

Experiences in securing and managing communal lands

Experiences from other countries were then shared with the participants, as well as a potential model from Ethiopia that could be used for demarcating and managing communal lands.

In Kenya most rangelands are held either as a) Trust Lands (lands held by district/county councils for the benefit of resident communities) or b) Group Ranches (a private tenure system where the land is held and administered by a registered group of members). Over 90% of Group Ranches that were established since 1968 have since divided or individualised. Recent reforms initiated by the new Constitution (2010) and National Land Policy (2009) have created new categories of land namely Public Land, Private Land and Communal Lands (the latter likely incorporating both Trust Lands and remaining Group Ranches). The Community Land Bill currently under development will provide for
the election of Community Land Administration Committees made up of representatives from the community. These Committees will allocate land-use rights, resolve disputes, and make relevant decisions over community lands. Community Land Boards will provide oversight of the Committees including approving allocation of rights, maintaining a register of transactions, and facilitating the recording and issuance of title to community lands.

In Tanzania all land is held by the State for the people. The Village Land Act (1999) provides for the management administration of land within village boundaries. The Act recognises communal land for which the rights of use and access can be given to a ‘group’ as a Certificate of Customary (or Granted) Rights of Occupancy (CCRO). The Grazing Land and Animal Feeds Act (2010) states that the Village Council (VC) (the primary decision making body in a village) should set aside part of communal land for strategic grazing. It suggests a Pastoral Association be set up as the ‘group’ to which the CCRO is registered and who is responsible for managing the grazing land. The Village Land Use Planning Act (2007) grants powers to VCs and other village bodies to prepare and implement village participatory land use plans. There are also provisions for developing use and management plans for resources that are shared by villages – districts should also play a role in facilitating this sharing of resources. The cost of certifying a village boundary is around US$6,000, to which can be added building a village registry and issuing of CCROs resulting in a total of around US$12,000 per village. Conflicts over such as boundaries can increase this cost.

In Ethiopia Participatory Rangeland Management (PRM) (see guidelines by Flintan and Cullis 2010) is proving to be a useful process for managing and securing different sets of rights to communal lands and more specifically rangelands. Based on and learning from the experience of Participatory Forest Management (PFM) which is now being implemented across the country, Participatory Rangeland Management provides clear stages and steps, and roles and responsibilities for local communities, government and facilitating development partners to establish an appropriate management institution, a management plan, and a management agreement between the management institution and the appropriate local government authority. Currently it is being piloted in Bale Zone, Oromia region with the support of local government and communities. But it has potential application in all communally held rangelands. A similar process Participatory Natural Resource Management (PNRM) is being piloted in Borana.
**Conclusions and Lessons Learned**

During the following discussions the participants highlighted the following as important conclusions and lessons learned from the presentations:

To date the issue of administering and managing communal resources has been neglected in formal government processes including in the villagisation (commune) process – this requires appropriate attention and support in the future.

There is a lack of information on the villagisation (commune) process in practice – what is going well, what is going not so well – in order to better improve the process it would be valuable to better understand the process and impacts to date.

Developing a land tenure and administration system for communal (pastoral) land is challenging – it is useful to draw from the experiences of other countries that have large pastoral populations and experience in securing pastoral rights to land and resources.

Communal land tenure and administration systems need to provide space for diversity, flexibility, inclusiveness and evolution of land and resource rights.

The establishment of strong governing and administering institutions is as important as the land tenure and administration system itself. Ethiopia has the advantage of relatively strong customary institutions still in place that should be the starting point for developing such institutions. In some circumstances new institutions or management units may be required in order to deal with new challenges and pressures such as for the inclusion of more stakeholders.

Participatory and consultative processes of developing policies and legislation, together with mechanisms for their implementation, have proved to be a positive element in their success.

The issue of compensation in rangelands needs to be addressed – currently compensation is only given for agricultural lands. The valuation method should be reconsidered and made applicable to pastoral areas. Appropriate compensation for land taken from pastoralists needs to be developed. Strong political will and commitment is imperative to sustain responsible tenure governance.

**Next steps in the Regions**

**Oromia Region**

- Representatives of Oromia Region indicated that one of the challenges that faced them is not having a clear pastoral land law in order to help them implement the land use plan that they have developed for pastoral areas. Therefore, the region is now planning to develop a pastoral land use and management policy/law;
In order to inform this process they will conduct a comprehensive assessment to help them draft a pastoral land law.

The Oromia land use plan will be further studied in detail by lowering the scale from its current 1:50,000 to 1:25,000. This will be helpful in implementing the plan on ground;

**Somali Region**
- Somali Region is currently planning to establish an agency for implementing the land policy and law that has been developed;
- The region also wants to learn from other regions about the processes they followed in establishing a separate agency for land and how it is structured;
- The region is planning to start cadastral survey of lands.
- They require assistance with land use planning including from other regions.

**Afar Region**
- Afar Region has the policy and the laws and are now starting to implement them;
- Afar Region is conducting river basin-based land use planning.

**Further Recommendations**

The participants made the following recommendations:

Land administration needs to be supported by adequate land use planning at different scales. This includes participatory land use planning that incorporates local land use systems and is carried out by local users – this can form the basis for local management plans.

A study should be completed on the experiences to date of the villagisation process so that future implementation can be improved and pastoral communities supported.

The RLAUD, Ministry of Agriculture, should provide technical support including the production of guidelines for certifying, protecting and management communal lands through a consultative process. This will help guide regions in the development of their own region-specific guidelines and implementation of their land policies and legislation.

Regions need to develop mechanisms for identifying, demarcating, registering, certifying, managing and protecting communal lands according to local contexts. This should include facilities for the sharing of resources where appropriate. By-laws can be developed to formalise agreements, arrangements, etc. Appropriate governance systems need to be developed related to these – these should build on the strengths of customary institutions and management practices. Learning from other countries experienced in communal lands and providing land/resource security to pastoralists is important.
Development actors can assist this process by providing resources for piloting of different approaches that build on experiences of such as participatory forest (rangeland) management etc.; and by providing technical and financial support to regional governments in the implementation of their land policies and legislation including the sharing of information through forums such as this.

The mapping and protection of livestock corridors needs to take place at national, regional and local levels so that livestock can access markets, grazing, water, veterinary facilities etc. as appropriate. This can lead to better-planned and facilitated movement.

Capacity building of local government and local land administrators (customary or other) in technical and institutional matters needs to be strengthened and resources made available for effective management (planning, M&E, coordination etc.) of communal lands.

The issue of compensation for land taken out of pastoral production/areas needs to be considered by federal government and guidance (and legislation) provided to regional governments to address the issue appropriately.

The meeting was then closed with commitment to take these recommendations forward. The next meeting will be held in Oromia Region in early June.

Presentations were provided by:

4. Teshome Demissie, Head, Oromia Rural Land and Environmental Protection Bureau – Pastoral Area Rural Land Administration and Use Planning Experience in Oromia.