

Governing Commons and Natural Resource

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1. Introduction

Land is major economic factor and it is crucial for the development in our Country. Land administration has no any unique definition. The definition varies through time and it also varies based on the defining body. Any scholar defines it differently.

The United Nations Food and Agriculture Organization (FAO) defines land administration as “*the way in which the rules of land tenure are applied and made operational. Land administration, whether formal or informal comprises an extensive range of systems and processes to administer the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party to another through sale, lease, loan, gift or inheritance; and the adjudication of doubts and disputes regarding rights and parcel boundaries; land-use planning and enforcement and the adjudication of land use conflicts; land valuation and taxation; and the adjudication of land valuation and taxation disputes*”(UN FAO 2002). The Oromia Rural Lands Administration and Use Proclamation No. 130/2007 and the Oromia Land Administration and Environmental Bureau Establishment Proclamation No.147/2009, in line with the federal Rural Land Administration and Use Proclamation No. 456/2005, define land administration as “*a process whereby land tenure security is provided; land use planning is implemented; disputes and conflicts on land are resolved; and the rights and obligations of land holders are enforced and controlled; as well as land related data are collected and analyzed to be availed to users.*” (Oromia National Regional State, 2007).

The most commonly accepted definition of land administration is set out in the United Nations Economic Commission for Europe (UNECE) Land Administration Guidelines (1996) “Land administration is the processes of recording and disseminating information about ownership, value, and use of land when implementing land management policies.”¹ It is the process of implementing land related policies and land management strategies to ensure economic, social equity, and environmental protection issues.

Ownership relates to the possession of rights in land; value normally relates to market value; use relates to the rights to use and profit from the land.² Under land tenure or ownership, there are so many activities to be conducted and there should also be a sub institution which can conduct these activities. These activities are formally titling land, transferring land by agreements (buying, selling, leasing), transferring land by social events (death, birth, marriage, divorce, and exclusion and inclusion among the managing group, forming new interests or properties, determining boundaries etc. Even for titling there are detail activities that need to be conducted. Sub-processes include legal identification, adjudication, demarcation, surveying, and registration. It may also require the establishment of geodetic control and the provision of base maps, including rectified aerial photomaps or orthophoto maps, and in all activities the engagement of the community is essential and involves awareness programs this is because the involvement of the community is crucial to get the real information and the participation insures transparency and accountability. This shows that land administration have so many sophisticated and detail activities which needs to have an implementing institution.

¹ Land Administration for Sustainable Development, Ian Williamson, Stig Enemark, Jude Wallace, Abbas Rajabifard, ESRI PRESS ACADEMIC REDLANDS, CALIFORNIA

² LAND ADMINISTRATION IN THE UNECE REGION, Development trends and main principles, UNITED NATIONS, New York and Geneva, 2005

Therefore, land administration is all about the rights, restrictions and responsibilities of the land user, the use of the land and the value of it. In the modern sense it also encompasses the development of the land. In line with all this four functions of land administration there is information management system to which information is analyzed and distributed to land users, policy makers and other interested groups.

Land management, on the other hand, is the process of using land by citizens for their maximum benefit within the prescribed policy and legislative framework set down by the government to ensure that land resources are used in an orderly and sustainable fashion and in ways that the environment is protected.

Ethiopian rangelands, constituting 60% of the land mass and inhabited by approximately 12 million pastoralists (CSA, 2013), support vast amount of livestock and wildlife resources that contribute significantly to the livelihood of pastoralists and the national economy. Approximately 40% of cattle, 75% of goats, 25% of sheep, 20% of equines and 100% of camels of the country are reared by pastoralists (Yacob, 2000). The total direct economic contribution of pastoralism to the Ethiopian economy via milk, meat, skin and hides production is estimated at US\$ 1.53 billion per year, accounting for about 6% of the agricultural GDP (Berhanu and Feyera, 2009).³

2. Significance of the term paper

The term paper is important by identifying the issues that related with governing the commons that are found especially with in the territory of Borena area. It shows the customary land management system and land administration. It is also crucial to know how the customary by laws are effective. It is important for reaserchers, students and the government who needs to know about the communal land management system of Borena. The recommendation will have pivotal role for the government to understand the meanses to alleviate the problems attached with the topic at hand and to take practical and legal solutions.

3. Objectives of the term paper

The objectives of the term paper are as follows:-

- To assesse the indigenous common property grazing land management;
- To show the effectiveness of village by laws in sustainable management of grazing lands;
- The options of cirtifying grazing land holdings in Borena area.
- To scrutinize the effect of population growth in natural resource management; and
- To recommend on the problems that are found in the Borena grazing land management.

³ LAND ADMINISTRATION TO NURTURE DEVELOPMENT (LAND) PROJECT, Securing Pastoralists Land Use Rights in Oromia National Regional State, By Solomon Bekure, Abebe Mulatu, Alehegne Dagneu and Dejene Negassa, 2015

4. Methodology of the term paper

The methods used for the purpose of this term paper are generally relied on primary and secondary data. Specifically it uses laws, reflection of previous work experience and experience sharing of the writer. In the case of Secondary data, relevant official reports, legal documents and research papers were used in the study. They were also gathered from various published journals, reports, books, project reports and related materials

5. Scope of the term paper

The scope of the term paper is limited on the grazing land management and administration of Borena area., how the village by laws are effective, the impact of population growth on the grazing land management, the options of certifying borena area grazing land holdings, and on the problems that are found in the management of Borena grazing land.

6. Limitation of the term paper

Limitations like lack of written materials have faced the writer in the preparation of this term paper. Besides, since the writer is land lawyer in the Ministry of Agriculture and Natural resource, he was devoted his time to his expertise work and as a result, he has faced shortage of time to prepare the term paper.

7. General Overview of the study area

The regional state of Oromia comprises 13 administrative zones, including the Borena Zone, which is located at the southern edge of Ethiopia bordering Somalia and Kenya ((between 3°36 – 6°38' North latitude and 3°43' - 39°30' East longitude⁴). The Borena Zone is made up of 13 district Weredas, divided between two agro-ecological zones – the semi-arid lowlands to the south and the more humid lands at higher altitudes to the north. ⁵ The main annual rainfall across the district varies from 500 and 700 mm, with an overall average of 648 mm. Surface evaporation is high. The mean maximum and minimum temperatures vary from 25.26 to 28.79 and 14.19 to 18.11 degree Celsius respectively. ⁶ The Borena Zone is inhabited by different ethnic groups, including Oromo, Somali, Gedeo, Burji, Konso, Amhara, Worradube, and Bonta. The most significant inhabitants (in terms of number) belongs to the various Oromo and Somali clans. Among the Oromo clans, the Borena and Gabra reside mainly in the semi-arid lowlands, while the Guji and Arsi Oromo clans are settled in humid lands at higher altitude. The Borana Oromo are numerically the dominant ethnic group inhabiting the Borana lowlands. The lowlands are made up of six districts (Liban, Arero, Yaballo, Taltalle, Dirre and Moyale), and extend across the border into northern Kenya.

Yabello is the capital town of the Borana zone and lies 570 km south of Addis Ababa. The zone covers 48,360 km² of which 75% consists of lowland, the zone frequently is exposed to droughts.

⁴ IVM Institute for Environmental Studies, Report on general characteristics of the Borana zone, Ethiopia, R. Lasage, A. Seifu, M. Hoogland, A. de Vries, 2010

⁵ Tache and Irwin, 2003 quoted in the indigenous systems of conflict Resolution in Oromia, Ethiopia, page 149

⁶ Luseno 1998, quoted in indigenous systems of conflict Resolution in Oromia, Ethiopia, page 149

The zone consists of eight districts covering 275 “Gendas” (the lowest administrative unit). There are 19 urban centers, of which 10 have town administration. The zone is inhabited by almost 1 million people.⁷

The land is largely covered with light vegetation of predominantly pod-yielding *Acacia* species of Low forage values. The ecological conditions favor pastoralism more than farming. One researcher has pointed out in his one day presentation, only 5 % of the Borena area could be used for farming the rest area is not suitable for agriculture. So pastoralism is could be said the major optional economic activity for the area.

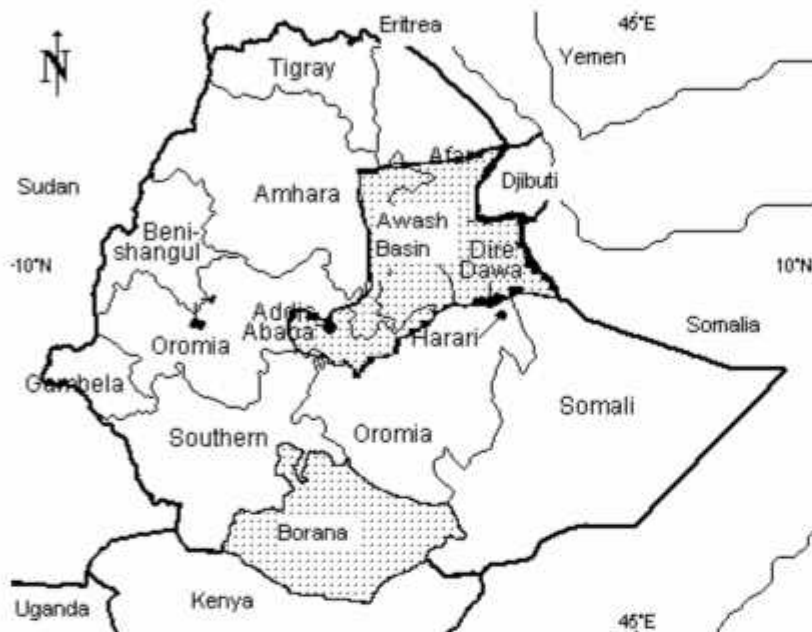


Figure 1. Location map of the study areas

Source: Martins (2004), as quoted in Indigenous systems of conflict resolution in Oromia, Ethiopia Desalegn Chemed Edossa, Mukand Singh Babel, Ashim Das Gupta and Seleshi Bekele Awulachew

8. Indigenous systems of conflict resolution in Oromia

Natural resources-based conflicts are part of the fabric of local communities as individuals compete for scarce resources: social groups perceive themselves as having incompatible interests. Those who depend on a particular resource, but are unable to participate in planning or monitoring its use are marginalized. Conflicts also arise when local traditional practices are no longer viewed as legitimate or consistent with national policies, or when entities external to a community are able to pursue their interests, while ignoring the needs and requirements of local people. In the conflicts that ensue, often between parties of very uneven power, it is not only the environment that suffers but also the whole society.⁸ Conflicts prevailing in the basin take two forms: (a) conflicts within the local community over the use of natural resources and (b) conflicts between the local community and the governmental

⁷ CSA, 2008, quoted in IVM Institute for Environmental Studies, Report on general characteristics of the Borana zone, Ethiopia, R. Lasage, A. Seifu, M. Hoogland, A. de Vries, 2010

⁸ Constantinou, 1999 as quoted in Indigenous systems of conflict resolution in Oromia, Ethiopia Desalegn Chemed Edossa, Mukand Singh Babel, Ashim Das Gupta and Seleshi Bekele Awulachew

and/or nongovernmental organizations due to the expansion of development projects on grazing lands previously held by pastoralist communities. Agricultural and tourism development within the basin has taken place without due consideration for the needs of the local community. This has caused shrinking of the grazing lands of the local pastoralist community and limited access to water resources, which in turn results in competition among the users thereby leading to conflicts. The most common inter-ethnic conflicts are between the Kerreyu and Ittu Oromo communities and the Afar and Issa communities.

Traditionally the area is endemic to conflicts between rival pastoral groups over resources. During the 1990s, the frequency and magnitude of conflicts has increased. For instance, in 2000, three major conflicts occurred between the major pastoral groups (Borena versus Garri, Merehan versus Digodi, Digodi versus Borena). These conflicts in combination with severe drought resulted in the death of hundreds of people and dislocations.⁹

There are serious tensions and sporadic violence between Garri returnees from Kenya, who currently claim to be a Somali clan, and the Borena.¹⁰ Groups that are either allied to or have close associations with the Borena include members of other Oromo groups and the Konso who have settled in the Borena lowlands. Conflicts, although not unknown, tend to be relatively minor and rapidly resolved through traditional conflict resolution mechanisms.

According to a UNDP report, while Borana and Liban zones in Ethiopia are prone to drought, adjacent areas in neighboring Kenya and Somalia are even more likely to suffer from water scarcity.¹¹ During the times of complete failure of rainy seasons in northern Kenya and Southwest Somalia, there are often apparent influxes of pastoralists from those countries into Ethiopia searching for water and pasture. These situations lead to conditions where local people and "guests", often related by trans-border kinship and sharing common languages and cultures, have to compete for the use of the few perennial water resources. Similarly, Watson (2001)¹² provides a thorough account of conflicts between Somali groups and the Borena over the use of natural resources.

It is reported that in both the Awash River Basin and Borana areas elders in the community form a dominant component of the customary mechanisms of conflict management (Desalegn et al., 2004; Watson, 2001; Dejene, 2004).¹³ This is directly related to the socio-political functions of *Gadaa* system, a system of an age grade classes that succeed each other every eight years in assuming economic, political and social responsibilities. A complete *Gadaa* cycle consists of five age-grades. The authority held by the elders is derived from their position in the *Gadaa* system. According to *Gadaa*, those people who have entered the *Luba* grade (individuals in the expected age range of 40-48) are considered to be elders. Therefore, the *Lubas* (elders) settle disputes among groups and individuals and apply the laws dealing with the distribution of resources, criminal fines and punishment, protection of property, theft, etc. Following *Luba*, men automatically retire from *Gadaa* and move into an advisory role known as *Yuba*. By then they receive a great deal of respect, as wise

⁹ Dejene and Abdurahman, 2002, quoted in supra note 8

¹⁰ Tache and Irwin, 2003, quoted in in supra note 8

¹¹ Ahrens and Farah, 1996, quoted in supra note 8

¹² quoted in supra note 8

¹³ quoted in supra note 8

experienced authorities and repositories of law, but their decisions are no longer final as they had been. They turn the bulk of their attention to private family businesses or religious activities while their sons enter *Gadaa*, the public service.

Apart from their political significance, the *Gadaa* leaders play important roles in natural resources management. While the rules and regulations laid down by the *Gadaa* tradition must be respected by all councils of elders, any problem regarding resources use which could not be solved by these elders would be handled by the higher *Gadaa* leaders. Watson (2001¹⁴) describes the role of *abbaa Gadaa* in natural resources conflict resolution as follows: The *abbaa Gadaa* is seen as the figurehead of the whole of Boran, and is often described as the President. As well as performing rituals, matters are referred to him and his council when a decision cannot be reached at a lower level. When conflict breaks out between *ollas* (the smallest unit of settlement consisting of 30 to 100 *warraas* households) or *araddaas* (small group of *ollas*, usually two or three only, who may cooperate together on their grazing pattern), or *maddaas* (area surrounding one water source), then the *abbaa Gadaa* will rule on the case. If there is conflict between ethnic groups, then he will be called in to help make peace. As the *abbaa Gadaa* is responsible for dealing with matters of concern to the Boran, and as matters of concern are often related to access to the resources (water, land, and forests), the *abbaa Gadaa* is the highest level of institution of natural resources management in Borana.¹⁵

Bassi (2003) states that the Borena political/judicial/governance system has never received any formal recognition from modern Ethiopia.¹⁶ But this trend now has been changing. For example the draft rural land administration proclamation has a provision that recognizes the traditional resource management and dispute settlement systems. Under the draft proclamation article 37 it enshrined as “የክልሎች ህጎች ለባህላዊ (customary) ተቋም፣ የመሬት አጠቃቀም እና አያያዝ እና የግጭት አፈታት ሥርዓት እውቅና መስጠት አለባቸው፡፡ ድጋፍና ክትትል ማድረግ አለባቸው፡፡”¹⁷

Tache and Irwin (2003)¹⁸ further argue that the KA officials, youngest community members, alien to the indigenous system and inexperienced in rangeland management, are appointed and given powers of decision making at the local level. Today, the KA officials are linked to the territorial administration of the rangelands. They operate against the advice of the elders, who are delegated clan representatives and responsible for a more flexible organization of the rangelands. This has caused conflicts between generations and disagreements within and among the communities.

9. Indigenous range land management of Borena Community and its effectiveness

Access to land and other natural resources is of course as important to pastoralists as to arable farmers. Pastoralists represent some 10-12% of Ethiopia's population, and approximately 40% of the land area of Ethiopia is considered suitable for pastoral land use only. In strictly legal terms, all pastoral lands are owned by the state on behalf of the peoples of Ethiopia. The 1994 Constitution

¹⁴ quoted in supra note 8

¹⁵ supra note 8

¹⁶ quoted in supra note 8

¹⁷ የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ መንግስት የገጠር መሬት አስተዳደር፣ አጠቃቀም፣ ምዝገባ እና ልኬት አዋጅ፡ ቁጥር -----/2008

¹⁸ quoted in supra note 8

guarantees access to land for all Ethiopians who want to earn a living from farming, but leaves it to subsidiary legislation to specify the terms and conditions under which land is made available to users. Such subsidiary legislation has not yet been promulgated in the Oromiya Regional State which encompasses several pastoral societies, including Borana. The general provisions of the Constitution thus grants the state plenty of leeway to do as it pleases with pastoral lands.¹⁹ But now the Oromia regional state in collaboration with Ministry of Agriculture and Natural resource, and LAND-USAID funded project, is preparing a regulation for the administration of pastoral lands. Committee is established to this effect and this term paper writer is a member in the drafting committee.

Historically, usage and ownership of customary land was regulated by custom. Custom was the source of law that determined how customary land was administered.²⁰ Borana pastoralists have managed their pasture and water resources by using their own knowledge and experiences without any external support and interference for about hundreds of years. As per the term paper writer interview with the Borana community and Dhedaa leaders, Starting from a long years ago, administering natural resources including land was through Dhedaas and Reras. Rera is smaller unit than Dhedaa, which the latter is one administrative unit. Dhedaas and Reras have their administrative unit and have leaders who have their own responsibility. They decide where to reside and graze animals. There is free movement from one Dhedaa to others. Spiritual leaders called Qaloo have no any administrative power over land. In Borana, There 5 Dhedaas (dhedda Gomele, Dire, Wayama, Gobo and Melbe). Even though, it is said that free movement among Dhedaas are allowed, but practically sometimes, it is restricted because of the existence of conflicts among Dhedaas.

Geda---Dhedaa---Rera---Arda---Ola---Rega is the power hierarchy of the natural resource management system from the highest to the lowest.²¹

This indigenous range resource management system is based on interaction between plants, grazing animals and the local communities with non-living elements of rainfall and soil playing a key role. In this system, the role of herders is to manipulate herd's mobility in accordance with available fodder and water resources.²² Watson stated that Borana have strong set of range resources governing indigenous institutions that is said to provide them with a coherent internal governance.²³

Ranch establishment is brought to the Borana rangeland as a result of development interventions. The current rush towards ranching by individuals or a group of businessmen may be viewed a recent development of the last decade. But ranch establishment is not new in Borana and it was through the active engagement of the state that considerably wider tracts of pastureland were alienated from Borana pastoralists.²⁴

The establishment of ranches is one of the major contributing factors to the loss of Borana pastoral land area which is the backbone of Borana economy and 60% of Borana reported that they lost

19 LAND ALIENATION IN BORANA: SOME LAND TENURE ISSUES IN A PASTORAL CONTEXT IN ETHIOPIA, Johan Helland, Chr. Michelsen Institute, Bergen, Norway

20 LEGAL ASPECTS OF CUSTOMARY LAND ADMINISTRATION IN SOLOMON ISLANDS JOSEPH D. FOUKONA

21 Self-interview with Dhedaa leaders of Dhedaa Gomele and Dire

22 Oba 1998:3, quoted in INDIGENOUS PRACTICES OF RANGELAND MANAGEMENT: CONSTRAINTS AND PROSPECTS IN BORANA PASTORALISTS OF SOUTHERN ETHIOPIA, OROMIA REGIONAL STATE BY: JARSO DOYO A THESIS SUBMITTED TO THE DEPARTMENT OF GEOGRAPHY AND ENVIRONMENTAL STUDIES IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ART, 2011

23 Watson, 2003, quoted in supra note 22

24 Keya 1991:82, quoted in supra note 22

substantial portion of their land as a result of ranch establishment.²⁵ Many of the current conflicts over ranches in Borana are therefore actually associated with sites initially expropriated by the state in the name of livestock development.²⁶ There are different ranches still operational in Borana rangeland. They occupy a very vast area of land which accounts for about 33805ha. Some of these ranches such as Dida liban and Surupa ranches are owned by a private company known as ELFORA while Dida tuyura ranch is owned and run by the state. Community access to these ranches, except Sarite community ranch, is denied.²⁷ Oba (1998) reported that one of the most worrying changes in Borana rangeland is expansion ranches for privatization of communal grazing land. This land expropriation is by the people who have relation with administration and urban business community. Alienation of range resources puts the Borana pastoral system under increasing pressure and undermines efforts to improve pastoral production.²⁸

Ranch development in the Borana rangeland has principally pay attention to the benefits of government and individual investors but less attention to the pastoralists' need.²⁹ These ranches lack profitability for their objectives and remain unpopular with Borana pastoralists. Borana, Guji and Gabra population have complained bitterly about the occupation of their good grazing sites and water points by ranch without their consent. Generally, the deterioration of rangelands due to development interventions such as resettlement and ranches has resulted in several adverse impacts in the Borana pastoral area. Borana pastoralists have their own customary rules, though not written, that govern range resources management. Those who break these rules face punishment. If for instance, a given person is seen watering his livestock at a particular water point without informing abba herregaa or without keeping his watering day, abba herregaa present the case to the community and the meeting is held as usual and make decision.

Construction of water points has caused rangeland degradation. That is proliferation of water points in rainy season grazing area impairs seasonal mobility of pastoralists. This in turn, causes simultaneous grazing of rainy and dry seasons pasture. Rangeland degradation in Borana range land is intensified by unsound water development policy which in turn is responsible for breakdown of indigenous pattern of land use.³⁰

Water development was identified as one of the factors that disturb indigenous knowledge based range resource management (Homann et al. 2007). That is Borana pastoralists traditionally use seasonal grazing pattern. Some of the grazing land is used during rainy season, other reserved for dry season grazing. The area that used during dry season is the area around permanent water wells or the area in which surface water is scarce whereas rainy season grazing is in the area with enough surface water. By the time rainy season grazing area is used, the dry season grazing area is left to recover and vice versa. Proliferation of water points at many places in all grazing areas makes both dry and rainy season grazing land to be exploited at the same time and this in turn impairs seasonal grazing pattern. Informants complain that water projects are developed at the expense of traditional ponds and wells. Interventions, instead of strengthening indigenous water management system, have introduced less laborious alternative water points. This makes many users reliant on engine pumped water and depriving the well of the regular maintenance. In the past Borana pastoralists frequently conduct water points maintenance activities which are very laborious and time consuming. Similarly, drawing

25 Skinner 2010, quoted in supra note 22

26 Boku 2000:93, quoted in supra note 22

27 Skinner 2010, quoted in supra note 22

28 Oba 1998b:8, quoted in supra note 22

29 Tadesse 2006, quoted in supra note 22

³⁰ Oba 1998a, quoted in supra note 22

water from deep wells is also very difficult task. Following the expansion of water point's people began to abandon using traditional wells and ponds and their maintenance as well. As a result, many of the traditional wells and ponds are becoming out of use.

The other intervention area is bush clearing activity as a means of improving rangeland Productivity. This activity is initiated and conducted by the government and non-government organizations operating in the area with the aim of improve rangeland condition. But the local community do not believe that bush clearing does not solve the problem of bush encroachment and they work only for the sake of payment and food aid. In practice the bush clearing movement could not solve the expansion of bush because the society uses simple hand tools to clear the bush and the bush encroachment rate is much faster than the clearing one. Re-growth of the bush is another headache. Instead of bush clearing activities by using simple handy tools, the society opts the use of fire for this purpose. The use of fire, based on the knowledge of local elders, is more advantageous than the one they are using now.

10. The impact of population growth in the grazing land management

Fekadu 2004 as quoted in Jarso Doyo 2011, reported that Borana land has been shrinking from the east since mid-seventeenth century. According to Borana oral history, Borana rangeland was very much vaster than its present extent and later on, it gradually began to decrease because of different reasons. Different written sources confirm this view. Bassi and Boku as quoted in Jarso Doyo 2011, argued that "common property and indigenous land rights are not recognized in Ethiopia, Borana territory has been treated as "no man's land"; to be assigned to whoever claimed it". Helland, as quoted in Jarso Doyo 2011, similarly stated that persistent pressure from Somali groups along the eastern border of Borana land and adept political dealing in a confused political situation resulted in the formal recognition of Somali claims to areas historically controlled by the Borana. All informants reported that population pressure from neighboring ethnic groups is the main cause for Borana rangeland shrinkage. Borana land is surrounded by many ethnic groups such as Garri, Gujii, Konso and Arbore. These groups gradually began to occupy Borana territory either through invasion or through peaceful settlement. Many of these ethnic groups are pastoralists and they went in to conflict with Borana pastoralists over scarce resources mainly pasture and water. Expanded occupation of land by competing groups of pastoralists has created greater insecurity is grazing zone of overlap and intensified by political disruption (Gibbs and Bromley, 1989; Hendy and Morton, 2001 as quoted in Jarso Doyo 2011.). The armed conflict between Borana and Garri group is the most f as quoted in Jarso Doyo 2011, requent and serious one than the conflict with other ethnic groups. According to Hogg, Garri is one of the camels herding pastoral group that border Borana land in the east and claim that they are descended from Hawiyya clan of Somali (Hogg, 1997). The conflict between Borana and Garri in its earlier phase was caused by the competition over the scarce range resources. Later on, however, the dispute is changed in to the territorial claim. Resource based inter-ethnic conflict in Borana land is intermittent but was more intensified since 2000 (Watson, 2003). The other factor that contributes to the decrease in rangeland is expansion of farm land that takes place at the expense of grazing land.³¹ In general, population increment is the cause for the introduction of Kaloo (private enclosure of communal land). This private enclosure of communal lands cause conflict between those enclosures and other community members. The population pressure that exists in the communal areas is also a cause for the introduction of farming activities. Borena area was purely pastoralist. But

³¹ supra note 22

now because of the increase in population, inhabitants are finding alternative livelihood activity. From the alternatives, farming activity is becoming the main. Most grazing lands in Borena are now changed in to farming areas. This creates a challenge on the life of pastoralists since that communal land in Borena are not suitable to farming.

11. Options that are available to give land holding certificate to the Borena community

A land use rights certificate is a document given to a landholder or group of landholders as a testament or proof of the rights that are conferred by the federal and regional constitutions and the respective laws passed to implement them. The rights and obligations of the landholder, which can be an individual or household or a group of individuals or households in the case of communal use of land, are specified in the land administration and use proclamations, regulations and guidelines that are issued by the national regional state in conformity of the Federal laws.³²

Pastoralists in the Oromia National Regional State (ONRS) have been requesting the government to secure the pastoral land use rights granted to them under the Federal and regional constitutions as it has been done for farmers in the highlands. The Oromia Bureau of Rural Land and Environmental Protection (OBRLEP) showed its willingness to accede to their request and, in 2013, invited the Land Administration to Nurture Development (LAND) Project to assist in this process. In 2014, regional and zonal pastoral advisory committees were established to provide a sounding board and to render advice on how the activities of LAND and a sister USAID-funded the Pastoralist Resilience and Market Expansion (PRIME) will be coordinated and implemented.³³

An issue that has been debated in meetings of the pastoral advisory committees, and on which agreement has not been reached yet, is the unit area to be demarcated, registered and certified to particular groups of pastoralists as well as in whose names the certificates should be issued. Experts and leaders of pastoralists propose that the boundaries of the rangeland units pastoralists have been using customarily should be used. On the other hand, other people, particularly government officials in OBRLEP and in the zonal and woreda administration offices, argue that the customary rangeland units are too large and kebele or woreda boundaries would be more appropriate for this purpose. Some other people are of the opinion that, may be, a middle ground could be found between the two positions. Non-resolution of this issue has deterred LAND from commencing field work in the Borana Zone.³⁴ But the finding of the assessment was presented to the community during consultation meetings held at different places. Generally consultation meetings was held at Yabello Consultation Meeting on October 16, 2015; Mega Consultation Meeting on October 19, 2015; Moyale Consultation Meeting on October 21, 2015; Bule Hora Consultation Meeting on October 23, 2015; and Negelle Borana Consultation Meeting on October 26, 2015. During the meeting the community opted Dhedaas for the registration of communal lands. The IPAS study also recommended that the dheedaas be used as the unit of pastoral land use right certification.³⁵

³² Supra note 2

³³ A Briefing Note on Community Consultation Meetings in the Borana Zone, October 16-26, 2015 By:Dejene Negassa, Pastoral Land Tenure Specialist and Did Boru, Oromia Regional Coordinator, LAND

³⁴ ibid

³⁵ ibid

The dheeda is an age-old proven system that Borana and Guji pastoralists have been using effectively to sustain their livestock production system and their livelihoods. Its major advantage is that it contains functionally interconnected landscapes with sufficient wet and dry season grazing that allow groups of pastoralists smooth mobility of livestock year round without resorting to negotiate access with other groups.³⁶ The international experience of breaking up the customary rangeland units to smaller units is discouraging. Such actions in Kenya and Mongolia have led to degradation of the range resources and made the livelihoods of the pastoralists worse off (Bruce, J. et al 2014, Li, Y. et al, 2014)³⁷. Allegedly, the disadvantage of the dheeda rangeland units, if it can be considered so, is that they are very large, containing parts of three or four woredas and 7-15 kebeles and difficult for the local government to administer. This should not pose a problem. Some farmers in the highlands have parcels of land in two or more kebeles. They are registered as residents of the kebele where their family resides but move across kebeles to crop and manage their lands. Urban residents also may have property in several kebeles or woredas and work in a kebele or woreda different from where the one they reside in. Similarly, Boran and Guji pastoralists have their homesteads in the warra, the dry season grazing area in which kebele they can be registered, and move to the flora during the wet season to use and manage the range resources there.

I were in Borena, some times before. During my stay there, I have interviewed the communities as well as the Dhedaa and Rera leaders. As per my interview I got the following facts in relation with communal land certification. They are in need of certification. They are questioning the government why land certification is available only in highland areas. Conflicts and the existence of private Kaloos are the cause of absence of land registration and certification as per their idea. They opt Dhedaa system as an entry point for the certification process. Dhedda system is a full system, they added. Dhedda system is a natural system and is not man made. So registering and certifying communal land other than the Dheddaa system means converting communal lands in to private holding, which is equivalent with the abolition of pastoralist system. The boundary of the Dhedaas are clearly known. Every one including youngsters know the boundary.

12. Payment of compensation when communal landholdings are expropriated

The Federal Democratic Republic of Ethiopia (FDRE) Constitution which is the main political and legal document guiding government policies provides, under Article 40 (5), that “*Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law*”. Similar rights are given to sedentary farmers under the Constitution which states, in Article 40 (4), that “*Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law*”. In compliance with this Article, the federal government issued the Rural Lands Administration and Use Proclamation No. 456/2005 whose main objective is strengthening the property rights of farmers.³⁸

It is not uncommon to hear people say that the land being used by pastoralists belongs to the government. They conclude, therefore, land taken from pastoralists should not be compensated. On

³⁶ Comparison of Registering and Certifying Pastoral Land Use Rights in Borana and Guji Zones Using Different Range land Units, By Alehegne Dagnew, Solomon Bekure and Sisay Awgchew, 2015

³⁷ Quoted in supra note 36

³⁸ Supra note 2

the contrary, as mentioned earlier, both federal and the ONRS constitutions stipulate that pastoralists have the right to commensurate compensation when the land they are using is expropriated for public purpose. This constitutional right of pastoralists needs to be protected in accordance with federal and regional rural land expropriation and compensation laws. It seems that this right is not protected adequately as shown in Section 1 above. While regional states have issued guidelines for implementing the Federal Proclamation No 455/2005 and Regulation No. 135/2007 for expropriation of farm lands, this has not been done for pastoral lands. The first attempt at preparing an appropriate pastoral land expropriation, valuation and compensation guideline is currently underway for Afar NRS with the support of the LAND Project.³⁹ Now the Afar expropriation, valuation and payment of compensation guideline is already prepared but is not prepared in line with the communal land administration system. I can say that it is the direct copy of the Amhara region directive. As it is said above registration and certification is mandatory for the communal land holdings. The other advantage of registering communal land holding, besides strengthening tenure security, is for compensation purpose. Now compensation is not paid for communal grazing lands. But it should be. Once registration is conducted, the community can claim compensation if expropriation is took place based on the land holding certificated.

13. Gender issues in Borena area

The use of labor is highly gender specific and women have traditionally played important roles in pastoral resource management. Gender division of labor is sharply marked in pastoralist societies. Accordingly, men are often largely responsible for herding larger stock such as cattle and camels, whereas women engage in handicrafts, food production and processing, small-stock herding (goats, sheep) and the milking of livestock at camps. The role of women in livestock feeding is more vivid in agro-pastoral than in pastoral societies where the cut and carry system is increasingly adopted among the former group than the latter group. The conversion of grazing land into cropland at the expense of livestock production does not only bring tenure change but also contributes to change in gender roles with respect to livestock feeding. Interviews reveal that those relatively having exposure in working with NGOs, young and educated women and girls indicate that customary system is dominated by men who do not take account of women's needs and priorities in their decision-making processes. On the contrary, most of the women involved in the focus group discussions have trust and respect for the customary system. They strongly believe that they are taking part in the decision-making process through their husbands, fathers, brothers, sons and all their male kin where physical absence was not considered as an indication of exclusion and non-representation. They recognize that even the clan heads first discuss an issue with their wives before taking an action. At its face value, this might imply that men will not decide something that harms their wives and children. But one needs to be very careful in making such a conclusion as women's level of awareness affects their understanding and responses to their exclusion.⁴⁰ However, women play a critical role in conflict management over resources such as grazing land. They play a role by serving as messengers since men respect women and none of the conflicting parties takes a revenge on women.

Ethiopia's pastoralists, like pastoralists the world over, remain at the margins of national economic and political life. However pastoral women are 'doubly marginalized' since they experience the

³⁹ ibid

⁴⁰ Assessment of the Customary Land Administration and Natural Resource Management in the Pastoral Areas of the Oromia Regional State, A Revised Research Report, By Fekadu Beyene (PhD), Boku Tache (PhD), Gadissa Tesfaye (LLM.), Jabessa Teshome (MSc.), Medihanit Abebe (MSc.), 2015

discrimination and marginalization of so many types, while also living in remote, under-served areas, leading a lifestyle that is misunderstood by many decision makers.⁴¹

Understanding pastoral women's access and control over livestock - a key financial asset for pastoralists - requires moving beyond the concept of 'ownership' to a more complex set of rights and responsibilities, often overlooked by planners. While in most pastoral societies the final decision to dispose of an animal by sale, gift or slaughter rests with the male head of household, his wives and even his daughters may need to be consulted and can exert a considerable amount of influence over this decision, related to both the origins and status of the individual animal (part of a woman's bride wealth; a key milking cow, etc.) and also to the woman's degree of 'informal power'. Milking is generally carried out by women and girls in most though not all Ethiopian pastoral groups, and the milk once obtained is generally in the exclusive control of the women. Pastoral women also have informal but effective communication networks to share information with each other and within the community. However, their formal public role remains constrained and their political participation is very limited.⁴² Major decisions about the use of key natural resources are generally negotiated through indigenous mechanisms such as the clan or territorially-based institutions. Women's influence over these management decisions is therefore largely on the basis of their informal power as well as the roles that they play within the management mechanisms. Day-to-day, pastoral women play a significant role in natural resource management, through their use of firewood, wild fruits, fodder and water. They also play an important role in managing the forest and its products, including non-timber forest products.⁴³

Significant **changes in natural resource management**, e.g. land demarcation or enclosure, have an impact on gender relations, particularly if women's role in NRM is overlooked. Land registration is underway in Ethiopia but has not yet been applied to most communal pastoral land. Early impact analysis of this process in agricultural areas indicates that the issuing of title deeds to wives as well as their husbands has the potential to increase women's access and control over land, although this needs to be supported with education about rights and a degree of cultural change. But now the GoE in collaboration with USAID-LAND project is studying the options to certify the Borena and other pastoral communities land use right as discussed before. As I have interviewed some members of the Borena community, there is a clear demarcation and separation of responsibilities among male and female members of the community. Females are, most of the time responsible home related works. They are also feeding calves that are living in the house. Youths are also responsible to scout areas that are suitable for grazing. After scouting, they are responsible to report to the elders for decision. During my stay at Borena, I got some points regarding women right. Most of them are similar with the points enshrined above. But the other is that polygamous marriage is rampant in the area. But the number of wives depend on the wealth that the husband have. Based on this, the husband treats all wives a like. So polygamy is not a problem for the wives in Borena as per the interviewee's knowledge. Dissolution of marriage, especially polygamous marriage is very few and can be counted by finger.

⁴¹ Gender Issues and Pastoral Economic Growth and Development in Ethiopia Cathy Watson, Addis Ababa, Ethiopia, January 2010

⁴² *ibid*

⁴³ Oumer 2007 as quoted in *supra* note 41, page 4

14. Problems in the grazing land management of Borena

Indigenous range resources management system is believed to be efficient and environmentally sustainable in many respects. But it has some limitations or drawbacks. There are no formal and written rules and regulations governing range resources management and utilization. The absence of written rules sometimes makes resource management decision controversial and consequently the process of decision making is protracted. Moreover, some influential personalities with political and/or economic power can influence resource management decisions. For instance, some individuals in authority can influence resource management and utilization decision in an unusual way. If, for instance, the decision made by the whole or at least by majority affects their interest they refuse to accept it. And therefore, the decision is delayed or left without being implemented at all. Some individuals occupied a very vast pasture land and monopolize it as their private property (*kaloo*) that others have no access to it. Though many of these enclosures or forage banks are decided by community meeting to be restored as a communal grazing land, the 'owners' keep on monopolizing.⁴⁴ As I have interviewed the Borena community, *Kaloo* is becoming the root cause for conflicts. But now elders are discussing and converting *Kaloos* in to communal range lands.

In the past Borana pastoralists use fire as a tool to control bush encroachment over rangeland. In doing so there was no mechanism of limiting fire to a certain area and consequently fire can undesirably expand³⁰. The range fire can be effective method for intended purpose but it has disadvantages that it destroys different flora and fauna species found in the burnt area. There may also be a danger of causing damage to property and life. But the Borena pastoralists have said that they have an indigenous knowledge to control fire and using fire to control bush encroachment has no any disadvantage. As I have interviewed some residents of the Borena community, in the places like Areyu, Gelcha and others, because of the bush encroachment, animals cannot access the grazing area. As they have said, before 20 and 30 years ago, they were using fire to control bush encroachment. But now fire is prohibited and the government non-government organizations are using simple hand tools to clear the bush. Latter they understand that using these simple hand tools is not effective. Rather they use chemicals to destroy the bush. But because of the side effects that that chemicals have, using it is prohibited. On 2011, the community said that fire was used on 40 hectare grazing land for research purpose. Based on this, the fired land was best in growing grasses. Fire is also the capacity to destroy pesticides like snake. But now because of the prohibition of fire, pesticides like snake are biting and killing animals. Moreover, weeds locally known as, Gurby, Ano, Sbansa, and others are evading the area. The place where these weeds exist cannot grow grass totally. They came with the donated wheat abroad. For example there are 16 types of Gurbis' exist and other 17 unknown types too. One Gurbi (Peritoneum) can produce 10000 seeds at one time. The bushes are now so close to each other. Pastoralists are now praying the government so that using of fire is allowed.

The other problem is that External pressures have weakened the traditional resource use management. But changes in the system are inevitable because of changes in socioeconomic and ecological setting in climate change. As I have interviewed some pastoralist residents of Borena, The Dhedda system is now weakened. The eason for this is the establishment of formal administration institutions like Kebele administration in the area. They have added that, the establishment of formal administration systems are not problematic by themselves, the problem lies on the interference that the formal systems create on the informal one. They are recommending that the Dhedda system is experienced on the management system of natural resources. Other administrative functions is better

⁴⁴ Supra note 22

to devolve to the formal system. So the government should understand this situation and separation of power should be given to the formal and informal systems. Shrinking of rangeland is one of the challenges that Borana pastoralists encountered. The other factor that contributes to the decrease in rangeland is expansion of farm land that takes place at the expense of grazing land. The expansion of farm land negatively affects range land management in different ways. Firstly, it prohibits seasonal mobility of pastoralists between different climatic zones. Secondly, it has been observed that in semi-arid areas farming practice developed along the dry river banks, which is more or less better in moisture availability and preferred for grazing purpose during dry season. Thirdly, it has been observed that those who are involved in crop farming fences extra land in addition to the cultivated land, which in some cases is more than the cultivated land for grazing their calves.⁴⁵ The other problem is privatization of communal grazing lands.

In Borana pastoral area, range resources are believed to be a common property that everyone has equal access to available resources even though there are some restrictions. Borana fence a certain area to reserve it for grazing of calves. Such reserved area is known as *kaloo*. This reserved area may not necessarily be fenced and sometimes demarked by different physical features such as road, mountain, and escarpments and so on. It is in principle, not allowed to establish *kaloo* individually but at the village level or used by a group of adjacent villages known as *ardaa*. Some individuals by disregarding the traditional rule, fence their private *kaloo* or fodder reserve which is even larger than that of the village. These individuals are those who have economic or political power. They fence a very vast area and monopolize it. But some of these enclosures are restored as communal grazing area while some of the “owners” keep on monopolizing the area.⁴⁶

Bush encroachment is one of the mounting problems in Borana rangeland. In addition, bushes grow very close to each other and make the grass inaccessible for livestock. Borana pastoralists used to apply fire as a measure of controlling bush expansion in the past³⁴. Walensu said that pastoralists use fire for different purposes. Firstly, it serves as a means of mitigating bush expansion problem and growth of non-palatable plants. Secondly, using range fire enhances the growth of fresh grass. Thirdly, it eliminates the parasites which are harmful to the animals. Later on, however, fire use was officially banned during the Dergue regime and this intensified the problem of bush expansion. Scarcity of rainfall another and is one of the main challenges in the Borana rangelands. The area receives low annual rainfall which is not sufficient and the problem is increasing from time to time.⁴⁷ Generally, rangeland management is currently facing several challenges partly human induced and partly naturally occurring problems. Consequently, the productivity of Borana range land has been deteriorating from time to time as a result of the combined effect of the above noted challenges. These make range resources management and utilization difficult and put Borana livestock at risk in the long run.

15. Conclusion

Land is major economic factor and it is crucial for the development in our Country. The most commonly accepted definition of land administration is set out in the United Nations Economic Commission for Europe (UNECE) Land Administration Guidelines (1996) “Land administration is the processes of recording and disseminating information about ownership, value, and use of land

⁴⁵ Supra note 22

⁴⁶ Supra note 22

⁴⁷ Supra note 22

when implementing land management policies. Land management, on the other hand, is the process of using land by citizens for their maximum benefit within the prescribed policy and legislative framework set down by the government to ensure that land resources are used in an orderly and sustainable fashion and in ways that the environment is protected. Ethiopian rangelands, constituting 60% of the land mass and inhabited by approximately 12 million pastoralists. But these pastoralists now are facing a number of problems.

Borena pastoralists have an effective traditional dispute settlement mechanisms as far as range land management is concerned. Borana areas elders in the community form a dominant component of the customary mechanisms of conflict management. This is directly related to the socio-political functions of *Gadaa* system. But Borena political/judicial/governance system has never received any formal recognition from modern Ethiopia. As a result it is weakened time to time.

Historically, usage and ownership of customary land was regulated by custom. Custom was the source of law that determined how customary land was administered. Borana pastoralists have managed their pasture and water resources by using their own knowledge and experiences without any external support and interference for about hundreds of years. But now this trend is being changed and the customary range land managing institutions are weakened. As a result, Ranch establishment is brought to the Borana rangeland as a result of development interventions, which is one of the major contributing factors to the loss of Borana pastoral land area.

The other problem facing the Borena rangeland management system is construction of water points which has caused rangeland degradation. The digging of water points disturb the rangeland management system, since the range is divided systematically for the dry and wet season. Following the expansion of water point's people began to abandon using traditional wells and ponds and their maintenance as well. As a result, many of the traditional wells and ponds are becoming out of use. Bush encroachment is the other major treat to the Borena range land. The use of simple hand tools and chemicals are not solutions for the problem. The community had traditional knowledge to clear bush by using fire.

Population increase is the main cause for the degradation of rangeland of Borena community and it is also the main cause for the outbreak of conflicts. On the other way round, population pressure is a cause for the introduction of Kallo (private enclosure of land), which in turn is cause for internal conflicts.

The Borena communities are in need of certification. They are questioning the government why land certification is available only in highland areas. Conflicts and the existence of private Kaloos are the cause of absence of land registration and certification as per their idea. They opt Dhedaa system as an entry point for the certification process. Dhedda system is a full and a natural system and is not man made. So registering and certifying communal land other than the Dheddaa system means converting communal lands in to private holding, which is equivalent with the abolition of pastoralist system. Compensation is not being paid for the Borena pastoralists when their grazing land is expropriated, even though the constitution granted them the right. This is based on the assumption that, land being used by pastoralists belongs to the government and land taken from pastoralists should not be compensated.

16. Recommendations

- The government should strengthen the traditional system of conflict resolution that exist in Borena area and it should give recognition in its formal laws so that it can retain its effectiveness.
- Ranch establishment by government or non- governmental organization should be based solely on a thorough consultation with the Borena community.
- The construction of water points should be made after conducting environmental impact assessment study and after consulting the community. The community know the management of the rangeland and a thing made against this disturbs the whole system. So the government should consult the community before starting any project.
- The community begs the government to use fire for the clearing of bushes. The government should pilot the use of fire for clearing bush encroachment. If it becomes fruitful, it should allow the use of fire for clearing bushes by its formal laws.
- Government should enact pastoral land administration management law. Within this law, traditional rangeland management systems have to be recognized. Private Kallos should be prohibited since they are the root cause of conflict. Besides, alternative employment opportunities have to be created, that can mitigate the population pressure that exists in the range land.
- The government should start registering and certifying the rangeland of Borena as quickly as possible. The registration and certification should be based on the Dhedaa system. Registration and certification based other than the Dhedaa system will disturb the range land management.
- The government should enact expropriation, valuation and payment of compensation laws that best suits pastoralist areas. The enactment of the laws should not be directly coping the laws of the highlanders. We should not follow 'a one fits for all' principle. As a result, pastoralists should be compensated for their communal land.
- Any project implementer should study the specific needs of women in the pastoral area and have to be in line with it, since ignoring women is ignoring more than half of the population in the real case of the pastoral area.
- Rules and regulations governing range resources management should be written by the range users to avoid its subjectivity to the individual interest.

17. List of Acronyms

- ❖ CSA----Central Statics Agency
- ❖ GDP----Gross Domestic Product
- ❖ FAO-----Food and Agricultural Organization
- ❖ FDRE --- Federal Democratic Republic of Ethiopia
- ❖ GoE -----Government of Ethiopia
- ❖ KA -----Kebele Administration
- ❖ LAND---- Land Administration to Nurture Development
- ❖ MOANR--- Ministry of Agriculture and Natural Resource
- ❖ NGO-----Non-governmental Organization
- ❖ OBRLEP----- Oromia Bureau of Rural Land and Environmental Protection
- ❖ ONRS----- Oromia National Regional State
- ❖ PRIME----- Pastoralist Resilience and Market Expansion
- ❖ SNNP --- Southern Nations Nationalities and Peoples
- ❖ UNECE---United Nation Economic Commission for Europe

- ❖ UNDP -----United Nation Development Program
- ❖ NRM -----Natural Resource Management
- ❖ USAID---United States Aid for International Development

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