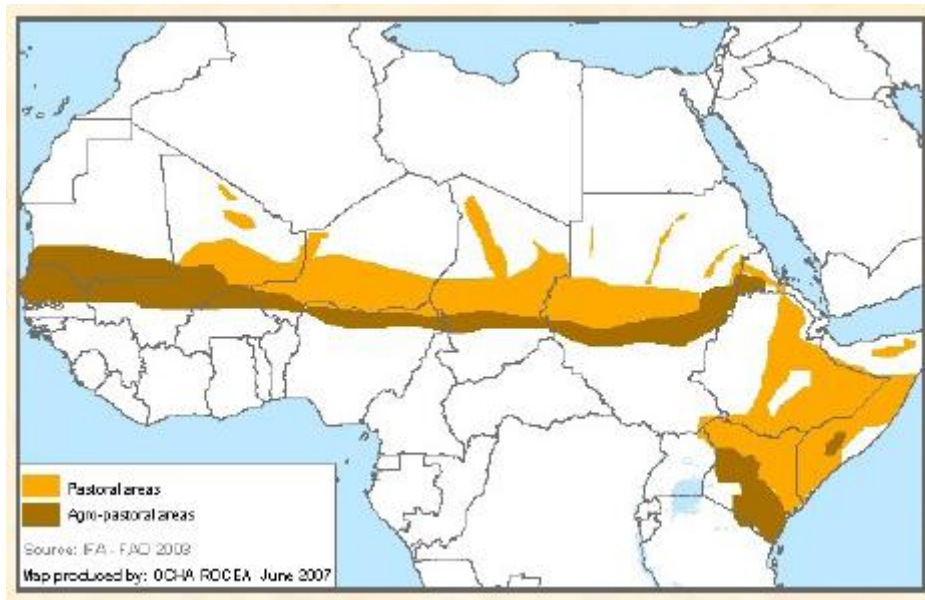


Securing Pastoralism in East and West Africa: Protecting and Promoting Livestock Mobility

Review of the legislative and institutional environment governing
livestock mobility in East and West Africa



Map of Pastoral and Agro-pastoral zones in the Sahel
Source: *Pastoral Voices* (Nov 2007), Vol. 1, Issue 1, UN OCHA RO-CEA

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This is one of a series of desk reviews produced as part of the project ‘Securing Pastoralism in East and West Africa: Protecting and Promoting Livestock Mobility’. It summaries the legislative and institutional environment governing livestock mobility East and West Africa, at the local, national, regional and continental levels, with a specific focus on nine countries (Chad, Ethiopia, Niger, Nigeria, Somaliland, Sudan, Burkina Faso, Mali and Mauritania).

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1. Introduction

This section offers a very brief introduction to the context of pastoralism in East and West Africa. It defines some key terms, briefly considers land use in the pastoral system, looks at the state of the literature and sets out the structure of the study.

1.1 The context of pastoralism in the Sahel

Pastoralists are, “a human and social group that is historically and socially characterised by its mobility, and whose principal activity is rearing livestock”.¹ A more technical, but widely used definition is from Swift (1998). He defines pastoral production systems as those “in which at least 50% of the gross incomes from households (i.e. the value of market production and the estimated value of subsistence production consumed by households) comes from pastoralism or its related activities, or else, where more than 15% of household's food energy consumption involves the milk or dairy products they produce”. This study focuses on the state, or statutory, legislation and institutional frameworks that govern livestock mobility in nine countries of the Sahel region of East and West Africa.

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been used by most
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pastoral land.”
.....

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Charles Lane, 1998
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The alienation of pastoralists from their land, and the restriction of their mobility is one aspect of a larger crisis affecting pastoralism in Africa. Livestock mobility is the means by which pastoralists access poor and unevenly distributed resources in dryland areas, while ensuring their livestock graze off the most nutritious pastures available. However, the legislative environment governing pastoralism has historically been anti-pastoralist in seeking to restrict mobility and valuing other forms of land use (such as agriculture) more highly than grazing of animals. As Charles Lane (1998) writes: “Legislative instruments have been used by most independent African states to legitimise alienation of pastoral land.”

This marginalisation of pastoralists was supported by an orthodoxy that held that pastoralism was an anarchic exploitation of natural resources that lead to environmental degradation. Scientists and social scientists have challenged this narrative in recent years arguing that the ‘pastoral system’ is a rational adaptation to a highly variable environment. The significant economic, social and environmental benefits of the pastoral system have been revaluated, leading to a “legitimation of transhumance” and a focus on how livestock mobility can be managed (Niamir-Fuller, 1999).

In addition to its cultural value, pastoralism provides a viable livelihood to millions of Africans in rural areas. However, pastoralist welfare is reliant on mobility and access to land in order to water and feed their animals.

1.2 Land use in the pastoral system

There is not sufficient space here to detail the different types of land use of pastoral groups in East and West Africa. However, in general, the system can be described as extensive and seasonal use of diverse natural resources such as water points, grazing areas and wetlands, which are often held in common. Many pastoral groups have

¹ Décret no. 97-007/PRN/MAG/EL du 10 janvier 1997 fixant le statut des terroirs d’attache des pasteurs, Niger

home areas (*terroirs d'attache* in francophone West Africa) where they return after periods of transhumance and pass a substantial part of the year. Pastoralists often use livestock corridors, or stock routes, in order to access natural resources or man-made resources such as markets and animal vaccination centres. In addition, in many parts of Africa, transhumant pastoralists and sedentary farmers have engaged in symbiotic relationship whereby farmers allow livestock access to their fields after the harvest to graze on crop residues and to manure the farmers' land. However, there have also been conflicts between these groups due to agricultural encroachment of grazing areas, blocking of livestock corridors, and damage to crops.

1.3 Previous literature

This paper builds on previous studies of the legislative environment governing livestock mobility such as Ouédraogo (1995) and Bary (1997). These excellent studies were written when a new wave of pastoral legislation in West Africa was in formation, and hence a reappraisal of the legislative gains (and losses) of the last ten years is timely. Another noteworthy study is Charles Lane's 1998 *Custodians of the Commons*, which considered pastoral land tenure in East and West Africa, but is now also outdated. More recent studies such as Hesse (2000) and Hesse and Thébaud (2006) have drawn on this new wave of legislation, but focused exclusively on West Africa.

This study aims to bring together literature from East and West Africa on the legislation and institutional environment governing livestock mobility, and bring the other studies up to date with developments in Pastoral Codes or Charters and decentralisation. The primary focus is on legislation concerning pastoralists land use and ownership rights, and pastoral mobility. Legislation governing forest, water and conservation areas has been included where possible, but a thorough treatment of these areas is outside the scope of the present study.

1.4 Structure

The study is divided into two main sections. The first, and largest, section is an analysis of the legislative and institutional framework in nine countries of the region. For each country a table displays the key laws and decrees with relevance to pastoral mobility. In general, a brief sketch of historic land tenure patterns is followed by a fuller treatment of current land legislation and institutional structure. The second section considers cross-border transhumance, and focuses on relevant bilateral, regional and continental agreements, and emerging international norms as regards land rights of minority groups. Finally, a conclusion brings the analysis together.

2. Overview

This section brings together the analysis of the legislative and institutional environmental governing livestock mobility in East and West Africa. It is structured in three parts. First, the context of the present study is set out. Second, some common elements across the case studies are brought out and explored. Finally, a few lessons emerging from recent experience of legislating livestock mobility are explored.

Context

This study is written in context of a ‘legitimisation of transhumance’, as expressed by Niamir-Fuller (1999). The study is underpinned by a belief that livestock mobility is an efficient use of dryland resources and that lack of protection for pastoral land rights and access leads to a range of negative consequences including: political marginalisation of pastoralists, encroachment of grazing land by agriculture, and obstruction of livestock corridors. These in turn can lead to land conflicts, declining pastoralist welfare and environmental degradation. In addition, against the background of a rural exodus to cities (and Northern countries), pastoralism provides livelihoods for millions of Africans in rural areas.

“Among material resources, the greatest, unquestionably is land. Study how a society uses its land, and you can come to pretty reliable conclusions as to what its future will be.”

(E.F. Schumacher, *Small is Beautiful*, 1973: 84)

Overview

There is great diversity in the national legislative systems and pastoral societies in East and West Africa. The legislative systems of countries of the region are largely based on those of the former colonial power, either Britain or France. The French legal code is in general a more top-down model that attempts to define laws for every case whilst the British legal code relies on more flexible, common law (Hesse, 2000). Moreover, in the fifty or so years since many of the states became independent they have experienced diverse social and political changes, conflict and development projects altering the national landscape. Again, despite similarities of variable rainfall the climatic conditions are markedly different between northern Chad and northern Nigeria, for example. In addition, there is much diversity in the practices of pastoral and agro-pastoral peoples across the region.

With this diversity in mind, this section brings out the similarities and differences between countries in the region on six areas related to the legislative environment governing livestock mobility: pastoral land rights, sectoral and contradictory legislation, legal dualism, government capacity and implementation, decentralisation, and cross-border mobility.

This brief summary shows that there is great diversity but also space for learning and information and know-how exchange between countries of the Sahel. Countries without legal protection for pastoralists may learn from the novel legal concepts such as *terroirs d’attache* common in West Africa. Countries without a history of livestock corridors (such as Ethiopia) may learn from others with this experience (for example Sudan).

Pastoral land rights

Historically governments in East and West Africa have used legislation to legalise the alienation of pastoralists from their land (Lane, 1998). The current situation is still very mixed with legal recognition of pastoralism and livestock mobility in some countries, and restrictive ‘anti-pastoralists’ laws in others. In the first group are francophone West African countries that have enacted Pastoral Laws, Charters or similar legislation since the 1990s (Niger, Burkina Faso, Mali, Mauritania). In Chad, Ethiopia and Sudan, by contrast, there is no formal recognition of pastoral land use or protection of pastoral land access and rights.

The Code Rural in Niger includes some innovative legal concepts with relation to pastoralists. These include, “priority rights of use” that allow pastoralist to manage access to strategic resources in a traditional way, and “*terroirs d’attache*” or legally protected home areas for pastoralists within which land uses other than pastoralism are prohibited. However, much of the legislation includes productive land use clauses (*mise en valeur* in francophone West Africa), which tend to value agricultural land uses higher than livestock rearing, or actively promote agricultural expansion in pastoral areas (in Ethiopia, for example).

Sectoral and contradictory legislation

Virtually all of the countries demonstrate sectoral and contradictory legislation in rural areas, or a lack of “joined up thinking”. Therefore, a variety of pieces of legislation govern access to natural resources each focused on a particular sector, for example water, forests, mineral resources, agriculture. This results in overlaps and contradictory provisions. For example, in Niger the Rural Code gives pastoralists rights to access water through negotiation, but the subsequent Water Code does not take livestock mobility into account (Hesse and Thébaud, 2006), other examples come from Mali. In many countries of the region (including Chad, Niger) water governance is set up on a village basis with no acknowledgement of mobile herds.

The multiplicity of legislation governing access to natural resources in many countries also makes it more difficult for pastoralists to understand and comply with policy governing livestock mobility.

Legal Dualism

Legal dualism, the existence of two incompatible legal codes operating side-by-side, is widespread across the region. The situation is further complicated in some countries (for example Sudan, Mauritania, Mali) with the added influence of religious law, leading to legal pluralism. Legal dualism can be thought of as a ‘gap’ between customary regulations and state legislation. A particularly stark example is Burkina Faso, where land reforms in 1984 officially abolished customary regulations. Despite this, virtually all actors including government officials refer to customary regulations, and court rulings that refer to statutory legislation are often not implemented as they are seen as “illegal”. In other countries, customary practices have been officially recognised (Niger, Mali for example). However, customary systems are, in the main, decaying and can no longer adequately govern new forces driving land accumulation.

In addition, the relationship between customary law and pastoralists differs between regions. In areas where pastoralists have been resident for many centuries the customary laws incorporate pastoralists and pastoral land use (Sudan, Somaliland for example), in other areas where pastoralists have a shorter history customary

governance is mainly based on settled, agricultural systems (for example Burkina Faso).

Government capacity and implementation

Most of the governments in the Sahel lack adequate administrative or financial capital to implement or enforce legislation. This constraint is even more acute for local governments. At the national level, Livestock Ministries are often politically marginalised and under-funded. In Somaliland for example, enacted legislation prohibits the enclosure or fencing of pastoral areas, however, the government cannot enforce the rules and the practice is widespread. In Niger, village land commissions have only been established in regions that have received external donor funding due to lack of governmental financial resources.

Another factor slowing implementation has been the gap of several years or more between the passing of a guideline law giving pastoralists certain rights, and the detailed decrees laying out the modalities of use (for example in Mali).

Decentralisation

The countries included in this survey vary greatly as regards the level of decentralisation. In some there is no practical decentralisation despite legislation to that effect (Chad) or the decentralised bodies in pastoral areas are too weak to pursue an independent policy (Ethiopia). In the francophone West African countries (Niger, Burkina Faso, Mali, Mauritania) decentralisation is more advanced. In these cases, the crucial issues revolve around the level at which decentralised structures operate (district level, village level etc.), the powers given to them by central government and their relationship to traditional governance structures. As discussed below, an appreciation of the double-sided nature of decentralisation for pastoralists is becoming evident.

Cross-border mobility

In addition to the national legislative frameworks considered so far, there have been advances in bilateral and regional agreements to govern livestock mobility (especially in West Africa). There is also a regional scheme in Central Africa involving Chad, but no such agreements in East Africa. At the international level, a growing number of 'soft' international laws seek to protect indigenous peoples' and pastoralists' land rights.

Having completed an overview of the legislation governing livestock mobility in East and West Africa, nine more in depth country studies follow.

3. Country studies

3.1 Chad

Legislation with relevance to pastoral mobility

1959	Loi N° 4 du 31 octobre 1959 portant réglementation du nomadisme
1967	Loi N° 23, 24, 25 of July 22, 1967 on the status of social assets, the land ownership and customary laws and limitations to entitlements to land
1999	Loi N° 016/PR/99 of August 18, 1999 portant Code de l'Eau.
2002	Loi N° 007/PR/2002 of June 5, 2002 on the status of rural communities
Draft	Code Pastoral

Legal alienation of pastoral rights to land and water

Pastoralism provides a livelihood for a significant proportion of Chad's population as well as boosting exports. However, the pastoral system is under threat from other land users, not least through conflict with farmers over the expansion of lucrative Arabic gum cultivation, which has encouraged land privatisation (SWAC, 2006). Moreover, there is no specific legislation that protects pastoralists right to access land or water.

Chad's legislative framework on land tenure has not been substantially modified since the 1960s. Three laws passed in 1967, and closely modelled on legislation from the colonial period, still govern the land tenure system today (CILSS, 2003). Laws² N° 23, 24, 25 of 1967 (on the status of social assets, the land ownership and customary laws and limitations to entitlements to land) declare that all unregistered land is owned by the government of Chad, and gives the government the right to confiscate community land for public purposes (Law No. 25). The same law imposes strict productive land use clauses that discriminate against pastoral land uses in favour of agricultural uses (Bary, 1997). As regards customary law, some recognition is accorded to it by the three laws, however, they do not recognise collective property rights, and require legal (statutory) registration and titling of customary land rights (SWAC, 2006). However, due to weak state capacity traditional chiefs in rural areas still largely manage natural resources (SWAC, 2006).



The only statutory legislation governing livestock mobility dates from the colonial period, and aims to restrict transhumance. According to the *Loi portant réglementation du nomadisme sur le territoire de la République du Tchad* of 1959, a

² “In French legislative terms, a *loi* is a piece of legislation enacted by vote of the National Assembly, an *ordonnance* is enacted by the head of State, a *décret* is an enactment of the executive, often used to clarify a *loi* or *ordonnance* or to provide the guidelines for its application, and an *arrêté* is formulated and promulgated at the ministerial, or even the regional level” (Elbow and Rohegude 1990, cited in Benjaminsen and Ba (date unknown))

date is set each year before which livestock mobility is prohibited. Pastoralists must submit an itinerary of their movements prior to the beginning of transhumance with local administrative units (*cachimbet*), which must be approved by a commission staffed by elected district officials, herders and other notables. Traditional chiefs in the relevant areas are informed of the itineraries, and pastoralists should not deviate from this route, which reduces their ability to respond to environmental conditions. Sedentary groups are required not to block livestock corridors, and conflicts are referred to criminal courts (*tribunaux correctionnels*) (Bary, 1997: 27-28). Networks of livestock corridors do exist, but they are not governed by a specific state policy (Guihini, pers com., 2008).

Legislation governing water resources is also of crucial importance to pastoralists. The 1999 Water Code (*Code de l'Eau*) envisions management of water points through settled communities and fails to take into account livestock mobility (Bonnet *et al.*, 2004). Full implementation of the Water Code, which has yet to occur, can be expected to have significant negative impacts pastoral livelihoods. Furthermore, the Livestock Ministry (*Ministère de l'Elevage*) recently lost responsibility for hydraulic pastoral resources to the Environment and Water Ministry, which may result in a further alienation of pastoralists from these resources (Bonnet *et al.*, 2004).

.....
"In Chad, there is no
legislation specifically
concerning pastures and
the right to graze cattle."
Sitta Bary, PRASET
.....

Code Pastoral blocked; decentralisation stalled

Chad has recently followed other francophone countries in West Africa in drafting a Pastoral Code (*Code Pastoral*) sponsored by the Livestock Ministry. The Code would recognise mobility as an efficient use of pastoral resources (Bonnet *et al.*, 2004). However, it does not provide for access to water points and other services along livestock corridors, which would tend to limit mobility.

This has been a sticking point in gaining civil society adhesion to the proposed legislation, and it has been blocked for the past three years due to a disagreement between the Livestock Ministry and the *Association des Eleveurs Nomade* (AEN) an NGO representing pastoralists. The AEN held workshops and consultations that judged the proposed legislation to be overly restrictive and biased in favour of agricultural interests (Guihini, pers com., 2008). In the short term, a reengagement with the Pastoral Code appears unlikely leaving pastoralists without statutory protection of their rights.

As regards decentralisation, despite passing the Rural Communities Act in 2002, no practical moves towards delegating more responsibility to local government have yet occurred, and none of the proposed rural communes have been established (Guihini, pers com., 2008). If implemented, the Act may allow pastoralist peoples more influence over the management of natural resources, as it aims to facilitate rural communities participation in the protection and maintenance of *inter alia* natural areas, wildlife and vegetation and surface and ground water (CILSS, 2003).

Some recent government initiatives

A number of government-led programmes and initiatives merit a brief description.³ The National Livestock Programme (*Programme National d'Elevage*) (PNE) had a

³ See Bonnet *et al* (2004) for a fuller account

large influence on policy in the 1980s and 90s. It promoted institutional reform and civil society capacity building through the creation of *groupements d'intérêt pastoral* (GIP) (Bonnet *et al.*, 2004). The PNE also created and maintained public water points in order to improve the management of natural resources. However, this policy concerned sedentary herders in the main, and did not take into account livestock mobility (Bary, 1997: 24).

More recent programmes such as the Rural Development Intervention Plan (*Plan d'Intervention dans le Développement Rural*) (PIDR) launched in 1999, and the Project to Secure Pastoral Systems (*Projet de Sécurisation des Systèmes Pastoraux*) (PSSP) aimed, *inter alia*, to improve pastoral livelihoods through reform of the regulatory and legislative framework governing the sector, and to promote co-management of natural resources (Bonnet *et al.*, 2004). Also, worthy of note is the Pastoral Livestock Support Programme (*Programme d'Appui au Système d'Élevage Pastoral*) (PASEP) which began in 2004.

In the hydraulic sector, the Water and Sanitation Programme (*Schéma Directeur de l'Eau et de l'Assainissement*) (SDEA) 2003-2020 devotes a chapter to livestock mobility. This element of the Programme aims to protect pastoralists and agro-pastoralists access to water points, and to reform the Water Code (Bonnet *et al.*, 2004).

Finally, the government created a National Land Observatory (*Observatoire National du Foncier*) in 2001. The Observatory has a dual mandate (1) to improve, “knowledge and understanding of land related problems in order to support the development of relevant land policies and legislations”; and (2) to disseminate information to stakeholders and build local and national capacity in land tenure issues (CILSS, 2003). This institution could play an important role in securing pastoralists right to mobility, but the extent of its influence is unclear.

Cross-border transhumance

Cross-border transhumance between Chad and neighbouring countries has been complicated by conflict, notably in the case of the Chad-Sudan border. Transhumance between Chad, Central African Republic, Cameroon and other states in the region (but not Sudan) is governed by an agreement through the regional economic organisation, CEMAC, as discussed below.

Key points

- The law governing livestock mobility was passed in 1959 and seeks to limit transhumance
- There is no legislation that protects pastoralists' access to land or water resources
- A draft Pastoral Code has been blocked due to lack of agreement between the Livestock Ministry and civil society organisations.

3.2 Ethiopia

Federal legislation with relevance to pastoral mobility

1975	Proclamation No. 31/1975 to provide for the public ownership of rural lands
1992	Federal Constitution of Ethiopia (adopted in 1994)
1997	Proclamation No. 89/1997 on Rural Land Administration
2005	Proclamation No. 456/2005 on Rural Land Administration and Use

Regional State legislation with relevance to pastoral mobility

1997	Tigray Rural Land Proclamation No. 23/1997
2000	Amhara National Region: Administration and Use of the Rural Land Proclamation No. 46/2000
2002	Oromiya Regional Government: Rural Land Use and Administration Policy Proclamation number 56/2002

Introduction

Pastoralists make up 10% of Ethiopia's population, and approximately 40% of the national land area is only suitable for pastoral land use (Helland, 2006: 5). Despite this, there is ambiguity and contradiction towards pastoralism in the public policy discussions. Pastoralism is recognised as a viable livelihood system but livestock mobility is considered backward and a cause of degradation and conflict due to a poor understanding of the dynamics of dryland ecology and the rationale underpinning pastoralism. Ideas such as livestock corridors are little understood. In the Ethiopian Constitution only one article (out of 105) relates to pastoral areas.

The legal security of pastoral land tenure has improved in recent decades in Ethiopia, however, this has not been translated into more secure land tenure in practice, with alienation from valuable resources continuing. This appropriation of pastoral areas for other uses threatens the survival of pastoralism in Ethiopia and exacerbates land conflicts. Reports suggest that some pastoral groups have lost access to sacred burial sites (Elias, pers com., 2008).



1975 Land Reform

The 1975 Land Act nationalised all lands in Ethiopia, and proclaimed, “nomadic people [pastoralists] shall have possessory rights over the land they customarily use for grazing or other purposes related to agriculture.” (Article 24). However, lands taken from the Sultan and other commercial holders were not returned to Afar pastoralists (Helland, 2006: 15).

The provision for pastoral land in the 1975 reform was undone by the state's ‘modernising’ agenda, which promoted the land claims of irrigated farming, national

parks and investment projects ahead of pastoralist. As Helland (2006) notes, “ the primacy of government claims to land for various purposes was not in doubt.” This was evidenced by alienation of pastoralists from land in the Awash and Omo River Valleys.

Federal land policy since 1991

The Ethiopian People’s Revolutionary Democratic Front (EPRDF), in power since 1991, have brought about many pro-pastoralist institutional changes such as establishing the Parliament Pastoralist Standing Committee, the creation of pastoralist extension unit within the Ministry of Agriculture, and annual celebration of a national Pastoralist Day (Elias, pers com., 2008). Nevertheless, they have continued to follow the main policy lines of the 1975 Land Act (Helland, 2006: 7).

The new Ethiopian Constitution of 1992 guarantees that pastoralists have the right to unclaimed land for grazing and cultivation, and the right not to be driven from their lands (Article 40(4)⁴). The Constitution vests right of ownership of rural and urban lands ‘in the State and the peoples of Ethiopia’, and land cannot be sold or exchanged privately (Art. 40 (1)⁵). This means that officially all pastoral land is owned by the state, and administered on behalf of the people of Ethiopia.

“The basic lesson is that pastoral land use and pastoralism as a way of life has very little legitimacy in Ethiopian public discourse and little protection in Ethiopian public policy. Pastoral production still remains the only sensible and sustainable way of exploiting close to 50% of the land resources of the nation, but this adaptation is denied all merit. The inability of the central government to offer the pastoralists the land rights they need for continued survival is ominous for the future of pastoralism in Ethiopia.”
(Helland, 2006: 16)

Despite these provisions, there is no legislation that actively secures land and water rights of pastoralists in Ethiopia and alienation of pastoralists from their land continues. As Adams and Palmer (2007: 11-16)

explain: “Pastoralists have lost access to semi-arid lowland areas – that were a vital drought fall-back zone – due to government policies promoting irrigation and rain fed crop cultivation in these areas”.

The Federal Land Act 1997 (Federal Proclamation No. 89/1997 on Rural Land Administration) stipulated that land holding rights be assigned to both ‘peasants and nomads [pastoralists]’ (Alden Wily, 2003: 62). However, the legal framework only allows for individual or state rights to be granted and not communal rights. Since the majority of pastoralists’ land claims are via the community, this helps explain the absence of land registration and certification in pastoral areas (Elias, pers com., 2008).

Proclamation No. 456/2005 on Rural Land Administration and Use – included a, “modest strengthening of holders’ rights”, but the land is still owned by Federal State. It also includes some productive use clauses requiring land holders to use land sustainably (Adams and Palmer, 2007: 12). This can be expected to negatively effect

⁴ Article 40 (4): “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.”

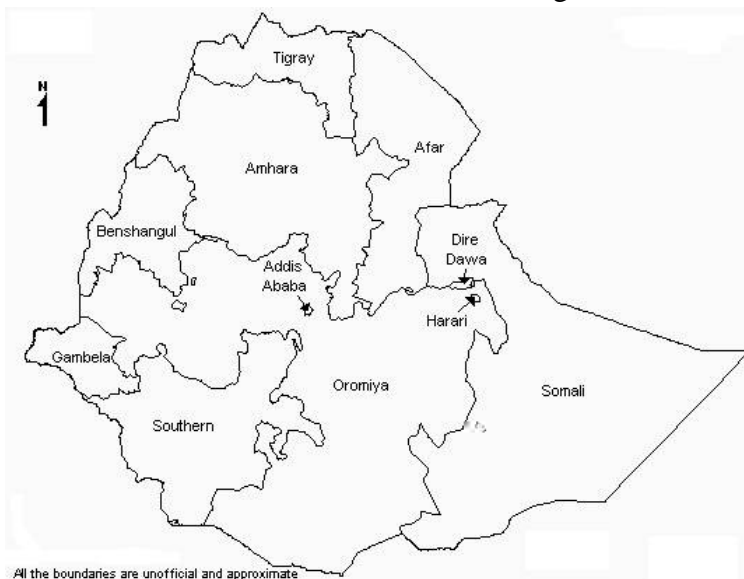
⁵ Article 40 (1): “The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.”

pastoralists' land tenure as technicians often misunderstand what constitutes productive pastoral land use. They often equate productive land use with high productivity per unit of land and although pastoralism has a higher return per unit of land compared to ranches in similar environments this is not known to government technicians.

Regional state legislation

The 1992 Constitution introduced 'ethnic federalism' with regional states based on ethnic areas having a degree of autonomy from the government in Addis Ababa. Under this system, the federal government produces a land policy, but delegates the responsibility for regional states to pass specific legislation on the conditions for land access and ownership (Helland, 2006: 6).

With the implementation of ethnic federalism, and the creation of regional states in purely pastoral areas such as Afar and Somali, significant areas of land, including state farms, have been returned to pastoralist societies (Helland, 2006: 15). However, Afar and Somali regional states have yet to develop land tenure policies that secure pastoralists land rights, so that these pastoral areas are still governed by federal laws designed for agriculture. This is due to a number of factors.



Source: FAO (<http://www.fao.org/docrep/005/AC627E/AC627E02.jpg>)

First, the fledgling regional states have a lack of administrative capacity and financial autonomy. This hampers efforts to implement or monitor legislation effectively (Helland, 2006: 15). Afar and Somali regional states are particularly weak, and are considered 'emerging regions' meaning they are less likely to implement a policy independent of the federal government (Elias, pers com, 2008). Development projects by SIDA and US-AID has increased institutional capacity in a number of states, including Amhara, Tigray and Oromiya (Adams and Palmer, 2007: 15).

The recent system of ethnic federalism, which in principle should allow pastoral societies like the 'Afar and the Somali to make their own arrangements with regard to land tenure, has not yet resulted in land tenure regulations specific to the pastoral system in question.
(Helland, 2006: 4)

Second, strengthened pastoralists rights are in direct competition with regional investment codes. "Pastoralists are regularly displaced by various investment projects" (Helland, 2006: 15). For example, pastoralists have lost over 10,000 hectares to an agricultural project (growing castor beans for biofuel) in Oromiya regional state (Cotula et al, 2008: 39). And

finally, with weakening solidarity in pastoralist clans, wealthy individuals have profited from granting ‘informal’ temporary land rights to investment schemes (Helland, 2006).

The more agriculturally-based regional states have enacted new land policies, such as Tigray, Amhara, Oromiya and the Southern Regional States. In general, these have improved the land tenure security of smallholder farmers, but tended to exclude pastoral land from the formal land registration and certification process (Elias, pers com., 2008).

For example, Tigary Land Law (Proclamation No. 23/1997) recognises that pastures will be defined by customary law and that future boundaries of grazing areas will be set by “mutual agreement of the surrounding community and administration” (Article 18). However, according to the same law, uncultivated or “barren” land can be used

<p><i>“New policies and laws are needed which take account of the requirements of pastoral systems and protect customary rights of access to pastoral resources.”</i> (Adams and Palmer, 2007: 16).</p>	for residential buildings, public works, communal building or “governmental activities” (Article 12). It is clear that depending on the influence of different land users, and the prevailing policy direction, Tigary Land Law could be interpreted to either grant or deprive pastoralists of their land.
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The Oromiya Regional Government proclaimed a new Rural Land Use and Administration Policy (Proclamation No. 56/2002). The proclamation asserts that the government fully acknowledges communal ownership rights, and customary rights of access to communal grazing lands and ritual sites (Article 5.3). However, the policy does not deal with registration or certification of rights to these grazing or watering resources, despite providing such a framework for agriculturalists in the highlands (Elias, pers com, 2008).

Marginalised pastoralists

Security of land rights will not come to pastoralists in Ethiopia until the productive value of transhumant livestock rearing is recognised on a par with agriculture. Tools such as livestock corridors that help facilitate livestock mobility, link producers to markets and reduce conflict are rarely discussed by Ethiopian policy makers and little understood. (Elias, pers com., 2008). The current government policy is one of ‘voluntary sedentarisation’ of pastoralists and expansion of agriculture on riverbanks. This has marginalised pastoralists people as Helland notes: “Commercially more valuable forms of land use has driven the pastoralist away from the river, denying them access to vital dry-season pastures and making them highly vulnerable to climatic variation, drought and famine” (Helland, 2006: 15).

Key points

- Land tenure legislation continues to value other land uses as more productive than pastoralism leading to widespread alienation of land
- Ethnic federalism offers the opportunity of implementing a land policy specific to the pastoral system
- Regional states in pastoral areas have yet to establish an independent land policy due to lack of capacity

3.3 Niger

Legislation with relevance to pastoral mobility

1993	Ordonnance no. 93-015 du 2 mars 1993 portant Principes d'Orientation du Code rural
1997	Décret no. 97-007/PRN/MAG/EL du 10 janvier 1997 fixant le statut des terroirs d'attache des pasteurs
1997	Décret no. 97-006/PRN/MAG/E du 10 janvier 1997 portant réglementation de la mise en valeur des ressources naturelles rurales
2001	Loi no. 2001-23 du 10 août 2001 portant création des circonscriptions administratives et des collectivités locales
2002	Loi no. 2002-12 et no. 2002-13 du 11 juin 2002 Loi no. 2002-13 du 11 juin 2002 portant transfert de compétence de l'Etat aux collectivités locales
Draft	Projet de Loi sur le Pastoralism (2007)

Niger has one of the more progressive legislative frameworks governing livestock mobility, however, there are problems of implementation, overly rigid productive land use conditions and pastoralist representation in local government.

A pioneering piece of legislation: the Code Rural and Decrees

Niger's 1993 *Code Rural* was a pioneering piece of legislation in francophone West Africa, and was used as a model for regional land tenure reform by the CILSS Praia process (CILSS, 2003). The *Code Rural* attempted to bring together in one document the diverse legislation regulating rural space, it explicitly raised customary law to the same status as statutory law (Article 5), and recognised customary property rights (Article 8). Both actions were considered revolutionary in the evolution of francophone West Africa's legal frameworks, and strengthened the land tenure of pastoralists. Article 23 gives pastoralists the "right to freely access natural resources" (*le droit d'accéder librement aux ressources naturelles*).



The *Code Rural* is supplemented two Decrees (1997) on (1) the status of pastoral home areas (*terroirs d'attache*) and (2) productive land use of rural natural resources.

On the institutional level, the National Committee on the Rural Code is a decision-making body that seeks to develop and monitor implementation of the Code. The Permanent Secretariat of the Rural Code (*Secrétariat Permanent du Code Rural*) acts as a resource centre, evaluates land commissions and develops related bills (CILSS, 2003). The final element of the institutional architecture is the land commissions or COFO, as discussed below. These institutional arrangements have been praised as "exemplary" by CILSS (2003), but other such as Lund (1998) have been more critical.

Priority rights of use

The Code, and subsequent decrees, give pastoralists two levels of access to natural resources: (1) common rights of use and (2) priority rights of use (Articles 24-28). Pastoralists have common rights of use over ‘*des espaces globalement reserves au parcours, aux pâturages et au pacage*’ and over livestock corridors and paths used to transport cattle (Articles 24 and 25). They have priority rights of use over their *terroirs d’attache* or ‘home areas’ where pastoralists often spend much of the dry season due to access to a permanent water resource, or retain some link to during periods of transhumance. The introduction of the concept of *terroirs d’attache* is innovative, and helps strengthen pastoralists land tenure security. The *terroirs d’attache* and other areas over which pastoralists have priority use rights, remain part of the public domain and are the property of the state. However, within these areas only pastoral land uses are valid, and the group can control access by third parties. The provision of these rights by the legislation gives pastoralists legal protection of using the land for livestock rearing, and opposing the use or appropriation of that land for other purposes. Ownership of land is explicitly ruled out for mobile groups (Article 28).

Priority rights of use can only be withdrawn for public purposes and after ‘*une juste et préalable indemnisation*’, or because rights holders’ are judged not to have respected

.....
Definition of *terroirs d’attache* :

“*l’unité territoriale déterminée et reconnue par les coutumes et/ou les texts en vigueur à l’intérieur de laquelle vivent habituellement pendant la majeure partie de l’année des pasteurs, unite territoriale à laquelle ils resent attachés lorsqu’ils se déplacent que ce soit à l’occasion de la transhumance, du nomadisme ou des migrations*”

Article 2, Décret fixant le statut des *terroirs d’attache* des pasteurs, Niger
.....

productive land use

(*mise en valeur*) conditions (Art. 19 and 31). In addition in areas reserved for common usage, pastoralist can access other areas through inscription in the *dossier rural*⁶ (rural dossiers) (Article 30).

Productive land use (*mise en valeur*)

The Decree on productive land use of natural resources, has a potential discriminatory impact on the pastoral system, as it tends to recognise agricultural or ranching patterns of land uses (such as fencing, creation of artificial water points) as ‘positive’ and does not recognise positive impacts of livestock mobility (such as rational and flexible use of resources, provision of manure for fields, spreading seeds etc.). The decree cites ‘anarchical exploitation’ of natural resources as a ‘negative’ land use, which may be used against pastoralists by those who fail to understand their systems of social and customary management of resources. As Thébaud (2004) says, productive land use is still not adequately defined which could lead to confusion or abuse of the legislation. Indeed, an “excessive” focus on productive land uses and a narrow interpretation of the legislation has been reported, which is likely to harm pastoral land tenure security (SWAC, 2006). The COFO, as discussed below, can withdraw priority rights of use given to pastoralists if they judge that land is not productively used.

⁶ Rural dossiers bring together tenure information including individual and communal rights and loan agreements (IIED, 2006).

Nonetheless, the general definition given of productive use of pastoral areas does give some scope for pastoralists. Article 10 of the Decree defines it as “*toutes actions ou activités matérielles par lesquelles un éleveur exploite les pâturages et l’eau pour accroître ou améliorer la production et la reproduction du capital-bétail*”. This means that any action a farmer takes on the land to improve the quality or number of his cattle is a productive land use. In addition, the provisional Pastoral Law would expand the definition of productive land use, as discussed below.

Code Rural in the balance

Although it is too early to produce a firm judgement, the Code Rural appears to be an advance on earlier legislation, as it provided a framework to move forward and simplified the vast number of laws in relation to rural areas. However, so that it does not just remain legislation on paper, practical and clear modalities of action are required, necessitating both the engagement of civil society and the necessary political will (Yahaya, pers com., 2008).

Problems of implementation of the Code have been cited as leading to a, “*de facto* privatisation of common property resources”, and, “wealthy influential individuals have been given titles to large tracts of pastoral land” (IIED, 2006). However, this is not a universal picture and there have been successful examples of the registration of collective management of common property under the legislative framework. The sylvo-pastoral sites of Mai Salka, Mairemi, Moa and Kup Kup are close to receiving formal recognition and are implementing local resource management strategies (Vogt *et al*, 2006 cited in IIED, 2006).

Some observers (Hammel, 2001) have praised the Code for its flexibility, as it does not try to lay down set regulations for every eventuality but leaves space for the role of negotiation between resource users. Whilst others (Alden Wily, 2003) have complained that it does not provide a mechanism for pastoralists to organise themselves, and leaves them inadequately represented on the COFO.

Of course, the content of the legislation is only one element in the policy environment governing pastoral mobility, and it is important to consider the context in which the legislation is implemented, and the relationship (and power asymmetries) between different land users, the state and institutions with responsibility for managing rural land.

Decentralisation: COFO and *COFO de base*

In Niger, changes in pastoral legislation have been closely associated with the decentralisation process (2002-2003 in its most recent phase), and local government bodies have considerable powers under the *Code Rural* and its subsequent decrees. The *Code Rural* set up an estimated 57 Land Commissions (COFO or *Commissions Foncières*) at commune level, with planning and decision-making powers including registration of customary rights (Alden Wily, 2003), they are responsible for the implementation of the Code and prepare deeds and control land development (SWAC, 2006) Certificates and proofs of tenure are issues at community level by COFO. The COFO are responsible for ensuring that land is being put to productive use and are empowered to withdraw land if they consider it is not (IIED, 2006).

As part of the (albeit decentralised) state machinery, the COFO are administrative structures largely staffed by technicians that often have little experience of rural areas. There is only provision for one pastoral representative to sit on the Commission, thus

they have limited capacity to understand the rationale and dynamics of pastoralism. There have also been criticism for the under-representation of marginalised groups such as pastoralists, peasant and women (SWAC, 2006). There are anecdotal reports of COFO giving agricultural land uses priority over pastoralist uses (Yahaya, pers com., 2008). The location of COFO at the district rather than village-level reduced their accessibility (SWAC, 2006).

In order to address these problems, the government has established a new level of COFO at the village level, the so-called *COFO de base* (*Commissions foncières de base*) (SWAC, 2006). The *COFO de base* bring together all the communities in a given territorial area, including settled villages and pastoralists and agro-pastoralists camps. This is a positive institutional development, which could provide an essential framework to dialogue to settle land tenure disputes. There are, however, some challenges to be met for this to happen.

The capacity of pastoralists or grass-roots pastoral groups to participate in the *COFO de base* is restricted due to the low levels of general education and literacy. In addition, rolling out *COFO de base* across Niger requires a large investment (a permanent secretary, demarcation of territorial boundaries, GPS etc.). External donors, instead of the government, have so far provided this investment, leading to an uneven distribution of *COFO de base* across the country. In some regions *COFO de base* are numerous, and in others completely absent (Yahaya, pers com., 2008).

.....
 “La mobilité est reconnue comme un mode
 d’exploitation rationnelle et durable des
 ressources pastorals et ne peut être entravée que
 de manière temporaire et pour des raisons de
 sécurité des personnes, des animaux, des forêts et
 des cultures dans les conditions définies par la
 loi.”
 Article 3, Projet de Loi sur le Pastoralism, Niger

However, in an upbeat assessment SWAC (2006) states:

“Despite a few shortcomings identified by many observers, the decentralised land administration system in Niger is considered effective. Procedures for obtaining the recognition of customary land rights are simple and fully undertaken locally. The costs for delivering needed documents are decided by each local commission, according to local realities. As a result, procedures are simple and affordable. The main challenge ahead is the Code’s full implementation throughout Niger.”

Overlapping legislation

Despite the aim of the Code Rural to codify all legislation relating to rural space in Niger, there are areas of confusion and overlap with other legislation notably the Water Code (Hesse and Thébaud, 2006). The *Code Rural* includes water rights and gives herders priority rights and access to water through negotiation. Pastoralists have traditionally used access to water as a way of regulating access to grazing areas. However, the Water Code promotes an open access policy for water points and does not make a link between water access and grazing rights. Traditional wells are not included in the Water Code’s provision and neither are “controlled access systems developed by pastoral communities” (Hesse and Thébaud, 2006).

The philosophy underlying the Water Code is one based on the management of water points by settled communities in villages, and thus fails to account for livestock or

pastoral mobility. The structures put in place by villages for the management of wells and other water resources often demand payment from pastoralists to access the water, although this depends from village to village. There are also reports that the establishment of water points has been used by some land users to gain exclusive rights to the land leading to privatisation of rural lands (Yahaya, pers com., 2008).

In addition, legislation governing the forests restrains pastoralists' mobility. The state maintains a central role in the management of the forest areas, with little scope for participatory management. There are problems with a lack of awareness and demarcation of different classifications of forest areas. The state officially owns classified forests, and access is reliant on payment of taxes (Yahaya, pers. Com., 2008).

Draft Pastoral Law

The proposed *Projet de Loi sur le Pastoralism* has been developed by the Permanent Secretariat of the Rural Code, and is, in part, the outcome of sustained lobbying action by pastoral civil society groups to improve the land tenure security of pastoralists. Article 3 specifically recognises pastoral mobility as a rational and sustainable form of land use that can only be restricted temporarily and then only for reasons of security of people, animals, forests or crops (see box). Article 5 prohibits the granting of exclusive land rights that would restrict pastoralists from free access to natural resources. The Draft Law also expands the legal definition of productive land uses to include both modern and tradition uses such as the creation of traditional wells, and the '*mise en défens*' or set aside of certain areas to allow regeneration of flora (Article 44).

Other provisions include the "*liberation des champs de culture pluviale en zone agricole*", after a set date according to which animals could freely access harvested areas (Art. 28); and a penalty scheme for obstruction of livestock corridors (Art. 31). It also includes specific recognition of transhumance across national borders, on condition of reciprocity from neighbouring states.

This is a promising development that could be expected to markedly improve the legislative environment as regards livestock mobility if it were passed and implemented.

Key points

- The Code Rural and Decrees provide a solid legal framework to improve pastoral land tenure
- Productive land use clauses still prioritise agricultural land uses above animal rearing land uses, and their application by COFO needs to be carefully monitored
- A new Draft Pastoral Law would reduce the marginalisation of pastoralists
- Lack of capacity by government and other actors to implement good provisions within laws

3.4 Nigeria

Legislation with relevance to pastoral mobility

1916	Land and Native Rights Ordinance (repealed)
1962	Land Tenure Law (repealed)
1965	Grazing Reserve Law
1978	Land Use Act of 29 March 1978
1999	Constitution of the Federal Republic of Nigeria

Nigeria has not followed its West African francophone neighbours in reform of land tenure legislation in the last two decades, and is not part of the CILSS Praia Process which has maintained momentum behind land tenure reform in the region. The current legislation governing land tenure is the 1978 Land Use Act, which officially abolished customary land management systems. The 1965 Grazing Reserve Law, which sought to define and demarcate specified grazing areas, has not successfully defended pastoralists land rights in northern Nigeria.



Management of rural lands

Similar to many African countries, dual statutory and customary legal system operate side-by-side in rural areas. Nigeria operates on a structure of federal states, and each state government is must pass legislation to ensure democratically elected local government councils, according to Article 7 (1) of the Constitution. Local Governments are aided in the management of rural spaces by Land Advisory Committees (SWAC, 2006). However, in rural areas customary institutions still play a significant role in land management, this dualism has been described as a “traditional-modern administrative continuum” (Hoffmann, 2004: 86).

Land Reform in 1978

In the colonial period, land was managed by the Native Authority (NA), a body at the village and district level equivalent to customary institutions and usually controlled by the Fulani (Hoffman, 2004: 85). This system continued after independence with the Land Tenure Law of 1962. However, problems of increased rural land acquisition due to urbanisation and demand from the oil sector in the 1970s led to the enactment of the Land Use Act of 1978 was a distinct break from the past.

The Land Use Act swept away previous statutory and customary land tenure systems in the north and south of the country. It nationalised all land and vested it under the control of the military governor of each state who is given authority to manage land for the benefit of all Nigerians (CIEL, 2006). State governors are given the power to, “grant statutory rights of occupancy to any person for all purposes” in rural and urban areas (Art. 5(1)). Management of rural land was removed from the NA and given to

the local government (Art. 2). They have the power to grant customary rights of occupancy for agricultural, residential, grazing or other purposes (Art. 6 (1)). The Act also placed heavy restrictions on the transfer of statutory and customary land rights. However, legal dualism has continued: “Despite the national law aiming at regulating land use, rights to land are most frequently determined by customary tenure rules.” (Hoffmann, 2004: 86).

The Land Use Act, however, does not provide a supportive legal framework for pastoralists livelihoods. The Act empowers the state governor to grant land for “grazing purposes”, but as these are defined as “such agricultural operations as are required for growing fodder for livestock on the grazing area” (Art. 50 (1)), “the Land Use Decree of 1978 does not provide traditional pastoralists with any legal rights over land. They are still at the mercy of their host communities” (Hoffman, 2004: 86).

The Land Use Act is considered controversial. Whilst it aims at an equitable distribution of land, there have been reports of local communities being deprived of land and an increase of corruption (SWAC, 2006). The Act also serves to reduce land tenure security even of those in possession of legal titles, as the Governor has the legal right to revoke titles for public interest projects, such as oil prospecting or pipelines. (SWAC, 2006).

“Today, access to pasture and water resources [in Nigeria] is still not clearly regulated... the Land Use Decree of 1978 does not provide traditional pastoralists with any legal rights over land. They are still at the mercy of their host communities
(Hoffman, 2004: 86)

As regards access and ownership to water points, there is no distinct legislative or institutional framework outside a few river basins (Olofin, 1987 cited in Hoffmann, 2004).

Formation of Grazing Reserves

The 1965 Grazing Reserve Law aimed to settle herders in northern Nigeria, through the acquisition of ‘native land’ for gazing. The Law gives state governments and local governments the power to establish grazing reserves. “A local government may constitute such areas by order with the approval of the minister, and then determine rules of access including the level of grazing fees... However, less than 1% of targeted grazing reserves had been gazetted in the northern states by 1980, and the situation has remained largely unchanged” (Hoffman, 2004: 86).

An ambitious programme to support pastoral livelihoods was launched by the 1988 National Agricultural Policy which aimed to grant 10% of national territory, as “grazing reserves for lease allocation to herders” (CIEL, 2006). CIEL call this policy a “conscious effort by the central government to protect pastoralism” but note that it has not been enforced (CIEL, 2006). By 1998, of the 313 grazing reserves acquired, only 52 had been gazetted, and even in these areas reserves have been intruded into by agricultural cultivation (CIEL, 2006). In addition, the provision of grazing reserves did not take sufficiently into account the dynamics of the pastoral system, in particular in not providing dry season grazing and hence forcing herder to leave the reserves.

As CIEL sum up:

While the comprehensive legal provisions should provide an enabling environment for pastoral development, they have not been fully implemented. This can be attributed

either to political motivation on part of the authorities or ineffective lobbying from pastoral groups (CIEL, 2006).

However, in northern Nigeria the strength of the Fulani in urban and rural areas generally equates into a less marginalised position for pastoralists than in some other countries. As Hoffman states, “there is still relatively extensive grazing land available, and conflicts are not always solved to the disadvantage of the Fulani” (Hoffman, 2004: 86).

Key points

- The Land Use Act of 1978 does not provide pastoralists with clear rights to land
- Legal provisions to create grazing reserves have not been implemented
- Pastoralists in Nigeria are not as marginalised as other countries due to close ties between urban and rural Fulani

3.5 Somaliland

Legislation with relevance to pastoral mobility

1998	Conservation and Protection Act of May 1998
1999	Agricultural Land Ownership Law (Law No. 8/99)
2000	Somaliland Constitution
2002	Regions and Districts Law (Law No. 23/2002)
Draft	Provisional Land Tenure Law, 2 nd Draft (February 2008)

Despite lack of international recognition, Somaliland has been functioning as a state since 1991. The elected Somaliland government maintains a relatively high level of security and peace, but instability in the region has led to illegal land grabbing and a proliferation of land conflicts. Pastoralists, in particular, have been excluded from traditional rangelands, high value pastures have been fenced off, and livestock corridors to markets and water points blocked (MoPDE & MoA, 2008: 3-5).

A history of alienation

Since independence the Somali land legislation has been broadly anti-pastoralist.

Somaliland inherited a system of land tenure from the British colonial period and the Siad Barre regime of the ‘failed’ Somali state. A series of laws in the 1970s (1974 Law on Cooperative Development, 1975 Land Law and 1979 Rangeland Development Law) promulgated by the Barre regime, set up a system of exclusive land rights and promoted ranching, the enclosure of grazing land and agricultural expansion into rangelands. These measures were disastrous for the traditional pastoral societies and attacked the system of communal land use (MoPDE & MoA, 2008: 6).



Governmental structure

The present government in Hargeisa is more accommodating to pastoralism, but lacks capacity to enforce legislation. The Ministry of Pastoral Development and Environment (MoPDE), for example, only has 110 employees (Babiker & Birch, 2008). Another obstacle to a clear policy on pastoral areas is the proliferation and overlapping mandates of ministries. Babiker & Birch (2008) have noted that: “Responsibility for natural resources falls under five different ministries or departments”.

Even if clear policies were in place, the government has insufficient capacity to implement and enforce them.

(Babiker & Birch, 2008)

The Somaliland Constitution (2000) divides the country into regions and districts, which are charged with implementing laws and monitoring their impacts (APD, 2007: 6). Regional Governments link the local-level District Councils with the central government in Hargeisa. The District Councils are elected bodies that are entrusted with regulating the all land use practices in their areas. Lower level Village Councils are nominated by elders subject to approval by the District Councils, but their mandate is left undefined in the constitution (APD, 2007: 6-7). District Councils should set up a committee on land issues according to the Regions and Districts Law of 2002, but it is unclear whether these provisions have been enacted or are functioning in all districts. There is often non-existent or outdated land management plans (APD, 2007: 12)

Land rights of pastoralists not secured

There is no legal protection of pastoralists' land rights in the Somaliland legal system. According to the Somaliland Constitution, all land is common property of the nation, controlled and administered by the government (Article 12.1). Rural lands are governed by Agricultural Land Ownership Law (Law No. 8/99). Under this law, the enclosure of pastures by fences or other means is prohibited (Article 9). However the government is unable to prevent this in practice and there has been a sharp rise in fencing off communal land for exclusive use, often blocking livestock corridors which provide access to water resources and markets (APD, 2007: 9). In addition, the law

.....
 : “*[L]and ownership and user rights of*
 : *pastoralists are not secured within the*
 : *[Somaliland] legal system, making them*
 : *particularly vulnerable for land grabbing*
 : *by farmers, town dwellers or others.*
 : *Because there is no clear demarcation*
 : *between agricultural, pastoral and urban*
 : *land, the domains of the different ministries*
 : *and state agencies overlap and may cause*
 : *further land management problems.*”
 : (APD, 2007: 11)
 :

allows for the establishment of irrigated farms where this does not obstruct roads, water points or the movement of livestock (Article 17) (APD, 2007: 6).

In general, there is much stronger legal protection and promotion of irrigated farmland than grazing land. As the APD (2007) sum up: “While it is not allowed to turn grazing land into rain-fed farms, irrigated cultivation farms may be established wherever this does not

block roads, the movement of livestock, or wells and *berkads* for watering livestock. But as these criteria can be handled in a very flexible manner, there is no effective legal protection for pastoral land.”

Moves towards a new Land Tenure Law

A new draft Land Tenure Law came out of a VETAID and PENAH workshop in 2001, and attempts to bring together the mandates of the Ministries of Pastoral Development and Environment and of Agriculture into one comprehensible law that will be presented to Parliament (MoPDE & MoA, 2008: 3-4).

The Draft law would place all land and natural resources under control of the state as ‘common property’, and guidelines include an objective to: “Enforce the legal rights of access of pastoralists to free land grazing and cultivation as well as the right not to be displaced from their own lands” (MoPDE & MoA, 2008: 12). The proposed law recognises community ownership of land (as well as public and private ownership) but do not recognise customary law (MoPDE & MoA, 2008: 13-14).

In addition, under the new law pastoral associations would have some role in the management of pastoral resources through local Tuulo Environment Committees (TEC) and mandatory consultations with other bodies (MoPDE & MoA, 2008: 24). It is not clear whether this legislation will be passed by parliament and enacted.

Persistence of customary systems

In most rural areas where statutory pastoral legislation does not exist customary institutions manage land access and rights (often in collaboration with the Mayor and District Council). The Academy for Peace and Development highlight some of the main elements of this traditional law. Pastures are accessed on a communal basis by clans. These claims of land ownership are referred to as '*degaan*'. The other pillar of the traditional system are *xeer* agreements between clans that define the rules of access to resources, negotiated by clan elders on behalf of the clan. These are regularly renegotiated in order to adapt to changing environmental conditions (APD, 2007: 7). However, these agreements are under strain, prone to breakdown leading to inter-clan conflicts (APD, 2007: 9).

Other legal and governance problems in Somaliland stem from clan politics which often cuts across ministerial and district boundaries. There is a general lack of financial support and governance capacity at local and regional levels. More generally, legal pluralism (a common feature of the African legal frameworks) confuses the situation with different layers of competing jurisdictions. Added to this are problems of environmental degradation in part due to the increased spread of water points and a fall in livestock exports markets from Somaliland. There have been some good recent studies on the origins of the land conflicts and environmental degradation in rural Somaliland (APD, 2007; Horn Relief, 2006)

Key points

- Land rights of pastoralists are not secured in the legal system
- Legislation is regularly not enforced due to lack of government capacity, overlapping ministerial mandates and the continued influence of customary law
- Alienation and fencing off of pastoral land continues

3.6 Sudan

Legislation with relevance to pastoral mobility

1925	Land Settlement and Registration Ordinance
1970	Unregistered Land Act (repealed but still applied)
1983	Civil Transaction Act
1989	Forest Act
1990	Investment Act
1998	Water Law
2005	Interim National Constitution (INC)
2005	Interim Constitution of Southern Sudan (ICSS)
Draft	Range Protection and Pasture Resources Development Bill (1996)
Draft	Draft Land Commission Bill (2005)

State legislation with relevance to pastoral mobility

1999	Law of Stock Routes (North Kordofan)
2002	Law Organizing Agriculture and Pastoralism (South Kordofan),
Date tbc	Laws on pastoral mobility (South Darfur)
Draft	Law on livestock corridors (Gedarif, Eastern Sudan)
Draft	Law on livestock corridors (Sennar)

Introduction

Military conflict in Sudan has precipitated a fragile and fractured set of land tenure arrangements. There is not one single legal framework recognised by all as legitimate, instead the country is divided into two largely autonomous zones. The Comprehensive Peace Agreement (CPA) of 2005 divides control of Sudan between the northern Government of National Unity (GNU) in Khartoum and the Government of Southern Sudan (GOSS) in Juba, with governance of areas such as Darfur, South Kordofan, and Blue Nile contested.



Sudan has a federal structure of government with 26 states: 16 in North and 10 in South. The legal framework is marked by lack of clear jurisdiction between federal and state governments and legal plurality (statutory, customary and religious legal frameworks). Land legislation at the national level has strongly favoured rainfed and mechanised agricultural land uses over pastoralism, whilst customary systems continue to operate widely in rural areas. The legislation governing natural resources is often not implemented, contradictory and of little relevance in rural areas where customary law is more highly respected (De Wit: 2004). There is no legislation at the national level, which specifically regulates livestock mobility, or secures pastoralists' land rights.

This section will first look at statutory national legislation in relation to livestock mobility, then at decentralised state-level, and customary legislation.

3.6.1 National level statutory legislation

Confused national land legislation

The national legislative framework for land in Sudan is primarily constituted by two laws: the 1970 Unregistered Land Act and the 1983 Civil Transaction Act. The general direction of national land laws has been towards the alienation of pastoralists from traditional rangelands.

Sudan's current land tenure policy is strongly influenced by colonial land legislation on one hand, and formalised customary norms from pre-colonial and colonial times and an Act from 1925 still governs the registration of land⁷ (IFPRI, 2007: 28).

“In sum, the 1970 Act empowered the state at least formally to take control over land in rainfed areas, and the state had a developmental incentive to actually do so wherever it found environmental conditions favorable to the establishment of mechanized farming schemes (in Southern Kordofan, for example).”

(IFPRI, 2007: 30)

The 1970 Land Act nationalised all ‘unused’ land, including pastures (Article 4(1)). The Act is considered particularly regressive as regards pastoralists’ land tenure rights. It denies recognition or legal status to customary property rights of pastoralists and other rural groups to water, land or grazing resources. It allowed the government to acquire large tracts of land for mechanised agricultural schemes (De Wit, 2004: 12), and “[set] in motion a process of continuous alienation of agro-pastoralists from their traditional homelands” (Egemi in el-Tayeb, 2006).

In addition, the Act did not provide any compensation for holders of customary titles, or include them as stakeholders in future agricultural projects on land they had previously occupied. In fact, the Act legitimised a “moderate degree of force” to evict reticent customary land users from land required for mechanised farming (IFPRI, 2007: 30).

The Act was designed to allow President Nimeiri’s Sudan to hugely increase agricultural production and become the “bread basket of the Arab world” (cited in

“All land of any kind whether waste, forest, occupied or unoccupied, which is not registered before the commencement of this Act shall, on such commencement, be property of the Government and shall be deemed to have been registered as such...”

Article 4(1), Land Act (1970), Sudan

IFPRI, 2007: 29). Land given over to mechanised rainfed and irrigated agriculture increased rapidly in the following decades, rising 600% between 1970 and 2001 with obvious impacts on other land users such as pastoralists (Egemi in el-Tayeb, 2006). It severely hindered transhumant pastoralists mobility through blocking livestock corridors that link producers to water points, markets and traditional grazing areas.

The 1970 Land Act was repealed and replaced by the 1983 Civil Transactions Act (amended in 1990), however its principles still underpin Sudanese land legislation, and its by-rules have continued to be applied by courts after 1983, leading to procedural confusion (IFPRI, 2007: 31). The 1983 Act is more comprehensive and reasserts that the government of Sudan is the primary owner and manager of the

⁷ The 1925 Land Settlement and Registration Act is still in force and has provisions which cover the granting and transaction of individual land ownership and certification. It provided the legal basis for later claims of government ‘ownership’ over all unused land in Sudan (IFPRI, 2007: 29).

country's land (el-Tayeb, 2006; De Wit, 2004: 13). The Act also introduced elements of *shari'a* law, such as the principle of *Manfaa* (usufruct) by which “unregistered benefits in land are recognized and protected” (PAS, 2007: 10). As IFPRI state, “the 1983 Civil Transaction Act formally recognized the status of registered usufruct rights as having legal weight comparable to that of ownership rights proper” (IFPRI, 2007: 31). However, this was little more than recognition of the reality of a land system still dominated in the main by customary systems.

Statutory land legislation is invoked by the government in foreign investment projects, and more generally in the Nile states. In most rural areas, however, and especially in the South, customary law (see below) continues to be the most well respected legal framework (De Wit, 2004: 10).

Water and Forest legislation

The water governance framework in Sudan is also incoherent. National laws on water management (Water Law 1998) are not implemented, and every state sets its own water policy (IFPRI, 2007: 33). In the Nile states, there is a clearly worked out water policy, elsewhere the situation is more uneven (Mohammed Abdel Mahmoud, pers com, 2008).

The water management system in some states is directly antagonistic to a participatory, community based management. In North Kordofan State, the Water Corporation is the local government authority responsible for water enacted a new law stating that water points (*hafirs* – man-made reservoir) would be their property regardless of who had constructed them. The Corporation also decided to tax the use of the *hafirs* water (Mohammed Abdel Mahmoud & Faisal Hasab El Rasoul, 2005: 18). However, it was not clear that they would pay for the upkeep of the water points. Ten villages who had constructed the *hafirs* in association with an NGO (SOS Sahel), and who used them to water their animals refused to pay the Corporation, and after taking the matter to court won the decision (Mohammed Abdel Mahmoud & Faisal Hasab El Rasoul, 2005: 18).

“In practice this amounts to a weak, fragmented legislative and policy framework for water governance, which does not provide a solid basis for the organization of sustainable rural livelihood systems.”

(IFPRI, 2007: 33).

As regards forestry regulations, an “overlap... exists in the legislation referring to forest and pasture. In the Forest Act of 1989, the definition of “land under government disposal” includes “unreserved forests, particularly in marginal lands and watersheds...”. Thus the rights of pasture and woodcutting in unregistered land (in other words, all of North Kordofan) are subject to the restrictions contained in the Forestry Act.” (Omer Egeimi, Mohammed Abdel Mahmood & Abdeen Mohammed Abdella, 2003: 12)

The authors continue: “The Forest Act does recognise the need to allow passage across an area and access to water resources and grazing (without prejudice to the basic role in production and protection) as an authorised use in a reserved forest. However a later section of the same Act prohibits livestock entering and grazing unless authorised by the FNC and the local council.” (Omer Egeimi, Mohammed Abdel Mahmood & Abdeen Mohammed Abdella, 2003: 12)

A more recent Forest and Renewable Natural Resources Bill (2002) placed the rights of Arabic gum tree cultivators above those of pastoralists, and has not been widely implemented due to a lack of popular legitimacy (IFPRI, 2007: 31-32).

Ministerial ping-pong and proposed national legislation on mobility stalled

The 'Range and Pasture Administration' are responsible for pastoralism at the national level. The Administration is currently part of the Ministry of Agriculture, although it was previous under the Ministry of Animal Wealth, and has been shunted back and forth between these two ministries a number of times. Jurisdiction for

..... transhumance rests with two ministries at the moment - the mobile animals are the responsibility of one ministry and the people of other (Mohammed Abdel Mahmoud, pers com, 2008).

“Successive laws and decrees have undermined the legal rights of rural Sudanese communities in general, and the small producers (framers and pastoralists) in particular. Especially egregious and repressive is the 1970 Unregistered Land Act that created land as a scarce commodity subject to privatization, accumulation by a minority and commercial speculation that results in modified local land tenure systems and conditions of popular access to and control over land and, therefore, setting in motion a process of continuous alienation of agro-pastoralists from their traditional homelands. The Act, a de facto nationalization by the state, denies any formal legitimacy or judicial status to traditional property rights and implies the cancellation of all rights relating to water, land and grazing by pastoralists, as well as suppression of any future income related to such rights.”

(Egemi in el-Tayeb, 2006)

..... The proposed national law on Range Protection and Pasture Resources Development Bill was formulated in 1996 and sent to parliament for discussion. It attempted to define different types of pastureland and pasture management, and included some popular participation in resource management. Under this draft Bill “the management of pastoral

reserves would be entrusted to communities under the supervision of state-level Range and Pasture Departments” (IFPRI, 2007: 31-32). However, the Bill has been frozen since 1996 due to a dispute between the Ministry of Agriculture and Ministry of Animal Wealth over which of them has the overriding rights and authority for pastoralism (Babiker, pers com., 2008).

According to the CPA,. the governments of North and South Sudan should create a Land Commission to, “co-operate and co-ordinate their activities so as to use their resources efficiently” (Art. 189, Interim National Constitution, 2005). The National Land Commission (in the North) would have a dual mandate (1) to develop laws and policies suitable to the post-conflict dryland ecosystem (policy making functions) and (2) to arbitrate land claims (judicial functions). The process is being supported by FAO, but apart from the logistical challenges of establishing an entirely new institution across the country, there seems to be a lack of political will to engage with the process (Mohammed Abdel Mahmoud, pers com, 2008). It is unlikely that either the North or South land commissions will be created in the near future.

3.6.2 Decentralised governance: States and Native Administrations (NA)

At the local level there are two sets of institutions that government access to natural resources: the states, part of the federal structure, and the Native Administrations (NA), part of the customary governance structure.

Sudan's engagement with decentralisation goes back to the early 1970s, but the present system of 26 states was created by reforms in 1992 and officially adopted by the Sudanese Constitution of 1998 (Omer Egeimi, Mohammed Abdel Mahmood & Abdeen Mohammed Abdella, 2003: 13). The federal government passes broad guidelines on natural resources management, and it falls to states to pass, "[detailed regulations on land, state forests, agriculture, animal and wildlife]" (Omer Egeimi, Mohammed Abdel Mahmood & Abdeen Mohammed Abdella, 2003: 14).

State legislation

To date, three states (North Kordofan, South Kordofan, South Darfur) have passed such legislation regulating livestock corridors, and two further states (Gedarif in Eastern Sudan and Sennar) have provisional legislation on livestock corridors, which has yet to be enacted (Babiker, pers com., 2008).

North Kordofan's Law of Stock Routes passed in 1999 (amended in 2003) prohibits activities that would block corridors, including crop planting, establishing permanent villages or other investments. However, investments approved by the relevant minister are not banned. The law compels herders to comply to animal health regulations in order to use the routes, but provides good protection (Babiker, pers com., 2008).

There are significant established stock routes in Sudan. One survey identified eleven major stock routes in Darfur, with a total length of 4,869km. Eight routes in Central State with a combined length of 1,022km, and twenty-four in Kordufan state with a length of 4,668km. Services available on stock routes in Gedarif (Eastern Sudan) include a hospital, mobile clinic, pharmacy, and education services (Babiker, pers com., 2008).

However, there is confusion as to the division of jurisdiction over the management of natural resources between the national and state governments, which has raised problems of conflicting sources of legitimacy over land rights and access claims. It has been reported that this has increased land conflicts and competition for access (Egemi in el-Tayeb, 2006). States also have to compete with traditional institutions, such as NA, in their jurisdiction of natural resources.

Native Administrations (NA)

Customary authorities still enjoy considerable power, and the respect of much of the population, in Sudan. The NA, originally set up by the British and officially dissolved in the early 1970s, have been gradually brought back (albeit in a hollowed out form) by subsequent pieces of legislation and continue to play a key role in local land management (PAS, 2007: 10).

In some states, the NA is a more powerful actor than the local government: "Formally, the Native

.....
: *These responsibilities [of Native*
: *Administrations] traditionally included the*
: *negotiation of stock routes, passing and*
: *grazing rights, and farming and grazing*
: *calendars among sedentary and nomadic*
: *groups, supporting allied tribes in conflict*
: *situations, and resolving disputes both*
: *within and among tribes...Since traditional*
: *farming in many parts of Sudan is based on*
: *shifting cultivation and since pastoralist*
: *groups may need to move across large*
: *expanses of territory, management of*
: *mobility was a key element in this system.*
: (IFPRI, 2007: 36)
:

Administration is accountable to local government authorities at the rural council level. However, in Northern Kordofan State the Native Administration Act (1999) delegated power from local councils to the Native Administration. This authority includes power over land, natural resource management and environmental conservation.” (Omer Egeimi, Mohammed Abdel Mahmood & Abdeen Mohammed Abdella, 2003: 12). In fact, according to anecdotal evidence the government is considering returning more powers to the NA (Mohammed Abdel Mahmood, pers com, 2008).

.....
“To date there is no legislation to sanction the right of entitlement of pastoralists and small farmers to natural resources, particularly land.”
.....
(Egemi in el-Tayeb, 2006).

Both pastoralists and farmers are represented in the NA, and it uses indigenous mediation systems (such as *Judiyia*) to govern conflicting land use claims. However, there has been some “politicisation” of the NA elites which has reduced their impartiality (IFPRI, 2007: 38). Still, they remain a flexible system of governance well adapted to the demands of managing mobile and sedentary peoples.

Foreign investment and tensions between centre and state

The acquisition of land for foreign investment projects has been facilitated by the 1990 Investment Act, by which, “vast tracts of land have been allocated to private capital investments, including foreign capital, a situation that resulted in heavy cuts in rural communities’ rights to land and in dislocation of [a] considerable [number] people out of land” (Egemi in el-Tayeb, 2006). Indeed, the central management of investments has been a large source of tension between states and federal government (Mohammed Abdel Mahmood, pers com, 2008).

It has also been a cause of strained relations between statutory and customary institutions, and conflict between different land uses:

“Cases of state or federal government over-riding the Native Administration in the allocation of land, however, continue to create tensions between the two systems. The law still allows for land to be allocated by federal or state authorities as they deem appropriate. For example, federal or state authorities retain the right to define where and when grazing is allowed as well as to designate areas for grazing and related activities for the interest of the whole community. In North Kordofan, leasing land to an international Gum Arabic company was done against the will of the traditional leadership. The company refused access to livestock, which meant that livestock corridors had to be re-demarcated and once again this was done without the agreement of the Native Administration. The result has been widespread conflict between farmers, who consider the land as theirs to cultivate and herders who see the land as their only route through the area to the north.” (Omer Egeimi, Mohammed Abdel Mahmood & Abdeen Mohammed Abdella, 2003: 12)

There are also reports of pastoralists losing land to mechanised farming in North Kordofan. In particular, to the allocation of land to the Gandail Agriculture Company carried out without consultation or consideration of pastoralists who used the area as a wet season grazing ground. As pastoralists look for new drinking water sights, conflict with sedentary farmers has increased. (Omer Egeimi, Mohammed Abdel Mahmood & Abdeen Mohammed Abdella, 2003: 15).

Conclusion

As stated at the beginning of this section, Sudanese land legislation is a complicated set of often overlapping regulations. However, one of the biggest blocks to mobility has been the civil war, which has restricted access to areas in the south, and reduced pastoralists security. In response, pastoralists are spending more of the year with sedentary groups further north disrupts traditional relationship patterns and periods of regeneration for the fragile ecosystem (Mohammed Abdel Mahmoud, pers com, 2008)

Sudanese general elections are scheduled for 2009, and a change of government and the first elections to State Parliaments could present pastoralists with an opportunity to halt the parcelling off of their land to investment project, mechanised farming and other land uses.

Key points

- There is no national legislation regulating livestock mobility; land legislation has legitimised the alienation of pastoralists from their land
- There are some state level regulations governing livestock mobility
- Native Administrations (NA) continue to play a key role in conflict dispute resolution and management of rural lands

3.7 Burkina Faso

Legislation with relevance to pastoral mobility

1984	Agrarian and Land Reform Act (RAF: <i>Réorganisation agraire et foncière</i>) (amended 1991, 1996)
2002	Loi no. 034-2002 portant loi d'orientation relative au pastoralisme au Burkina Faso
2007	Décret n° 2007-408 portant conditions d'exploitation des ressources en eau à des fins pastorales
2007	Décret n° 2007-415 portant conditions d'exercice des droits d'usage pastoraux
2007	Décret n° 2007-416 portant modalités d'identification et de sécurisation des espaces pastoraux d'aménagement spécial et des espaces de terroir réservés à la pâture du bétail

Local legislation with relevance to pastoral mobility

2000	Arrêté conjoint no. 2000-30 portant réglementation du pâturage et de la transhumance du bétail au Burkina Faso
2002	Arrêté n°2003-22 portant approbation du cahier des Charges Spécifique de la Zone à vocation Pastorale de Tapoa-Boopo

There are three main systems of livestock rearing in operation in Burkina Faso, a transhumant system primarily carried out by Fulani, an agro-pastoral system, and a sedentary village system. The Fulani-led extensive system is the most important, contributing 70% of the country's cattle population (Wane, 2006). In recent years there have been serious conflict between resources users (for example farmers, pastoralists, migrants and urban investors) and increased competition for fertile lands in Burkina.



Burkina Faso offers one of the clearest examples of legal dualism and the problems of ambitious legislative projects that do not take social and cultural realities sufficiently into account. It is also one of the more progressive countries as regards pastoralists land rights with the enactment of the 2002 Pastoral Law (*Loi Pastorale*).

RAF (*Réorganisation agraire et foncière*) 1984

The revolutionary government in Burkina Faso passed the Agrarian and Land Reform Act or RAF (*Réorganisation agraire et foncière*) in 1984. The RAF aimed to allow all Burkinaabé citizens access to agricultural land and reduced the power of traditional authorities for managing land, vesting these powers with new elected village committees. This ambitious piece of legislation was designed to legislate the entire rural space, and superseded all previous rural legislation. This included pastoral customs and practices, which were no longer officially recognised as valid with the

passing of the Act. However, much of the substance of RAF has not been applied, and it has been revised twice (in 1991 and 1996) to facilitate implementation.

The RAF nationalised all land, and removed management of rural land from customary authorities. In their place, it introduced a *gestion des terroirs* approach which aimed to allow local populations to govern their own defined area of land (*terroir*) through land management committees (*Commissions villageoises de gestion des terroirs – CVGT*) (Gning, 2005: 23). The participatory approach has been welcomed by many, but has encountered significant problems of implementation. Customary authorities have resisted the transfer of some of their competencies to the new bodies, and the committees responsible for managing land use have not spread far around the country due to lack of funding. In addition, marginalised sectors of society (pastoral producers, women, young people) are under-represented on the committees (Gning, 2005: 23). Painter (1994) has also questioned the appropriateness of using the *gestion de terroir* approach in pastoral and agro-pastoral areas where local livelihoods are heavily dependent on accessing resources beyond the village setting. The *gestion des terroirs* approach, in principle, “reflects a fundamental shift in relations between local land users and the state by redefining local community responsibilities and rights in relation to land.” (Lane, 1998: 12).

Customary rules, however, have not withered away despite being abolished. Often judgements declared according to state law appear ‘illegal’ in customary law (Gning, 2005: 23). Thus judgements are not always implemented, as one judge said, “a favourable judgement goes no further than the courthouse door” (Ouédraogo, M., date unknown: 11). Urban people, and state officials according to Ouédraogo continue to abide by traditional customary in relation to land, and states that, “in practice, customary land tenure rights are recognised, despite the fact that they have been theoretically abolished since the promulgation of the RAF.” (Ouédraogo, M., date unknown: 11)

This conflict between customary and statutory law severely restricts the implementation and effectiveness of the RAF and subsequent laws.

.....
: “L’Etat et les collectivités territoriales :
: garantissent aux pasteurs le droit :
: d’accès aux espaces pastoraux, le droit :
: d’utilisation équitable des ressources :
: naturelles et la mobilité des :
: troupeaux”
: Article 5, Loi Pastoral, 2002, Burkina :
:.....

Pastoral Law (2002)

In the course of the revision of RAF, legislators gave up their attempt to regulate all rural land uses with one act. Hence, new legislation was passed on forests (1997), pastoralism and water resources (2002). This legislation embodied “the principles of dialogue, subsidiarity and participation in resource management” (SWAC, 2006).

The Pastoral Law of 2002 guarantees the rights of pastoralists to access pastoral spaces, the right of equitable use of natural resources and herd mobility (Article 5). Pastoralists have to work with other resource users to share access to land (Article 10), and the farmers encroaching pastoral land with crops will be fined (Article 50). It also prohibits the blocking of livestock corridors, which are compulsory for herder during the growing season, and optional after the harvest (Articles 43-48). The Law also aims to integrate pastoral, agricultural and forest activities economically and socially through the local communities (FAO, Livestock Sector Reports). A recent FAO report summed up, “Burkina’s current legislation, therefore, considers

pastoralists as essential actors as farmers for the sustainable development of rural areas” (FAO, Livestock Sector Reports).

While the Pastoral Law of 2002 does offer many innovative features, it also contains certain provisions which if implemented will threaten pastoral mobility and the sustainability of pastoralism (Hesse and Thébaud, 2006). For example, provisions allow for the creation of special grazing reserves (*zones pastorales aménagées*) through a complex national land planning exercise that follows a top-down approach. These areas belong to the State which, while associating a range of actors, including pastoral groups, in determining the management objectives of these areas, reserves the right to fix the specific conditions of access and use (Articles 3, 13, 18-21). These are skewed towards fixing membership levels of these areas, controlling stocking densities and investing in infrastructure. They seek to replace customary tenure rules based on negotiation and mobility with what is perceived to be a more orderly and technical approach. In practice, the latter are unlikely to be sufficiently flexible to enable livestock keepers to respond to the unpredictable Sahelian environment.

As regards cross-boarder mobility, it is regulated in Burkina Faso through the ECOWAS’s International Transhumance Certificates (ITC). In addition, Article 36 of the Pastoral Law gives herders from neighbouring countries the right to enter Burkinaabé territory on condition of reciprocity from their country of origin.

Decentralisation

There has been a concomitant process of decentralisation. The government launched a *decentralised sustainable development policy* in 2001, which has led to the engagement of local populations in the process ((Ouédraogo, M., IIED date unknown: 4-6). However, despite these moves, rural populations are only marginally incorporated into the political system, and the state continues to rely upon customary authorities to support its work in rural areas (Gning, 2005: 4).

Institutions

The Ministry of Livestock, in charge of implementing pastoralism policy in Burkina Faso, has been described as a “politically marginalised ministry” (Gning, 2005: vi). This translates in practice to a lack of funding, although it does allow the Ministry more flexibility in engaging with civil society in a pro-poor agenda (Gning, 2005: vi).

Pastoralists civil society organisations are active at the national and provincial levels. At the national level, the *Fédération des Éleveurs de Burkina Faso* (FEB) is mainly geared towards the cattle sector and has been strongly criticised for its inability to campaign for policy changes for all livestock users. It also lacks grassroots support (Gning, 2005: 13).

At the provincial level, herders unions (*syndicates des éleveurs*) primarily made up of Fulani peoples have established themselves as key local actors. They have been active in advocacy, especially in regards to land tenure. Their primary tactic has been to engage directly with the state to resolve land claims (as their land use rights are guaranteed at this level) and bypass local politics (where traditional chiefs and farmers have more influence). The ethnic base of the organisations, in the Fulani, has opened them up to criticism (Gning, 2005: 10-12).

As Ouédraogo notes, “Any consideration of the future application of the legislation governing land tenure must take into account the persistence of customary rights.”

This could possibly involve including traditional authorities as an element of decentralised governance. (Ouédraogo, M., IIED date unknown: 21)

New Decrees in 2007

Three new decrees have been issued in 2007 with relevance to pastoralist rights to natural resources. These are on (1) the use of water resources by pastoralists, (2) the conditions for the exercise of pastoral land use rights, and (3) modalities for identifying and securing special pastoral and reserved grazing areas (*espaces pastoraux d'aménagement spécial* and *espaces de terroir réservés à la pâture du bétail*). These decrees represent a strengthening of pastoralists rights, but it remains to be seen what their practical impact will be.

Key points

- The RAF nationalised all land and introduced participatory, local management of natural resources through *gestion des terroirs*
- Despite lack of official recognition, much land management is still arranged through customary law
- The Pastoral Law (2002) while guaranteeing access to natural resources and livestock mobility adopts a very bureaucratic approach that will undermine the flexibility of pastoral systems to respond to climatic variability

3.8 Mali

Legislation with relevance to pastoral mobility

1986	Code Domainial et Foncier
1995	Code of territorial authorities, Loi 95-034
1996	Law on the Domain of Territorial Authorities, Loi 96-050
2000	Land Ordinance (Ordonnance No. 00-027 du 22 mars 2000 portant code domainial et foncier.)
2001	Charte Pastorale and Décret
2004	Loi d'Orientation Agricole

The government of Mali has particular reasons to heed the voices of its rural dwellers, as the former autocratic government was ousted from power after a chain of events that began with widespread rural discontent largely levelled at the Forestry Service.

Mali is relatively sparsely populated and like much of the Sahel has highly variability of rainfall, which makes much of the country unsuitable for large-scale crop cultivation. Mali can roughly be divided into two areas, one in the south of restricted land availability (75% of the population inhabit 25% of the total area) and the second in the arid lands to the north of much greater land availability (SWAC, 2006).



Until 2000, pastoralism was not acknowledged as a legitimate form of land use in Mali, but clearing land for cultivation of crops was considered productive use (Konaté, 2003). This legal disequilibrium led to a number of conflicts linked to the encroachment of agriculture on livestock corridors, *terroir d'attache*, water points and other pastoral spaces (Konaté, 2003).

Land Tenure Legislation

Shortly after the revolution, a National Land Observatory was created under the guidance of the Ministry for Rural Development and charged with proposing a land charter (Chauveau et al, 2006).

The current land legislation in force is the Domain and Land Tenure Code (2000) and associated decrees.

“The Code establishes a national domain comprised of all land on Malian territory, which includes that which belongs to the State as well as those belonging to local communities or private individuals (Art. 1). The national domain is the property of

Malian Nation represented by the State. Customary land and so-called vacant land and without owners enters into private State domain” (SWAC, 2006)

Alongside the statutory legislation, customary legal practices stemming from local traditions and some remnants of Shari’a law continue to have relevance (SWAC, 2006).

In 2000, the Ministry of Finance promulgated a new land order, which reasserted that land belongs to the state, and, “private ownership is possible through immatriculation” (Chauveau et al, 2006). The CLAIMS report states: “While it also accorded slightly clearer recognition to customary rights than the 1986 Land Law, the decree determining how this would be put into practice was the only one that was never promulgated.” (Chauveau et al, 2006)

Benjaminsen and Ba judge the Domain and Land Tenure Code as a disappointment for pastoralists with its focus on facilitating registration and transfer of land rights, and productive land use clauses (*mise en valeur*). They also criticise it for not addressing pastoral land tenure, and the failure to make it available in local languages (Benjaminsen and Ba, date unknown).

However, the Code did improve the legal status of customary rights. Article 43 confirms (collective and individual) customary rights on unregistered land:

“In Article 43, it not only confirms customary rights exercised individually or collectively over unregistered land, it also states that no person or community can be dispossessed of his, her or its customary rights except for reasons of public utility and upon receipt of fair compensation. When these customary rights provide for regular usage or exploitation of the land, they can be granted to the benefit of any third party or transformed into ownership rights to the benefit of their holder (Article 45). Following a public inquiry during which all parties are heard, customary rights can be the object of a title valid against third parties. At the same time, the state sets limits on the exercise of said rights. When customary rights do not entail clear and permanent control of the land, they cannot benefit from the various effects listed and cannot be registered. Specification of this condition helps to curb the sometimes exaggerated claims of customary communities. Moreover, by refusing to recognize full ownership of such land by rights-holders, the state is in a way preventing land-grabbing by the customary elite.” (Djiré, 2006: 5-6)

A more recent addition to the statute book is the *Loi d’Orientation Agricole* enacted in 2004, which aims to be an overarching piece of legislation for the rural domain, and may negatively impact on pastoralists land tenure security, through overlaps and contradictions with the Pastoral Charter.

Pastoral Charter

The *Charte Pastorale* passed in 2001 formally recognises pastoralism as a livelihood system. It provides legal recognition of the right of herders to move with their livestock in search of pasture and water coupled with legal provisions to protect grazing lands and livestock corridors from agricultural encroachment. Other positive features include herders’ rights over the common use of rangelands and rights to compensation in the event of losing their lands to public interest needs (Alden Wily, 2003).

There is recognition of customary tenure arrangements including the principle of multiple and sequential use of resources by different actors at different times of the year and the need to manage conflict at the local level. Articles 4-6 give transhumant herders the right to mobility inside Mali and between neighbouring countries. However, the implementing regulations have still not been enacted seven years after the initial legislation was passed. Although, it has yet to be implemented the Charter is important for guaranteeing access rights to water and grazing resources, although it does not give pastoralists any land ownership rights.

Policies and institutions

The Livestock and Fisheries Ministry (*Ministère de l'Élevage et de la Pêche*) is in charge of formulating pastoral policy. Its focus mainly restricted to animal health and economic development of livestock, ignoring underpinning factors such as land tenure and conflicts (Benjaminsen and Ba, date unknown). Moreover, it has a “notorious lack of logistic and financial means” in comparison to other government departments (Benjaminsen and Ba, date unknown).

The Ministry launched a National Livestock Development Policy (*Politique nationale de développement de l'élevage du Mali*) in 2004. The Policy has six axes of intervention including economic development, animal health, capacity building and “rational management of natural resources”. However, according to critics, “the policy leaves an impression that a technocratic and modernizing approach [unsuited to the realities of pastoral livelihoods] still dominates in the ministry’s thinking on livestock development.” (Benjaminsen and Ba, date unknown). Thus the new policy is in contradiction with the Pastoral Charter and is a clear demonstration of legislative confusion.

Mali is more advanced along the path to decentralisation than many other states, but implementation has been slow with responsibility for few tasks transferred due to reticence from ministries and lack of capacity of communes (Hetland 2007 cited in Benjaminsen and Ba (date unknown)). The central government have so far only transferred authority over three areas (domestic water, health and education); and have refused to transfer authority over land and natural resource access.

The decentralisation was ratified by the Constitution passed in 1992, with laws adopted by the National Assembly in 1993 and 1995. The main administrative units in the decentralised systems are the Region, the Cercle and the Commune manage the resources of their territorial units (*collectivités*) in rural areas (Benjaminsen and Ba, date unknown).

Conclusion

The formal recognition of pastoralists’ rights in the Charter was a clear step towards security of land tenure for transhumant herders in Mali. However, there still remains significant obstacles to be overcome to translate the rights guaranteed in law into social realities. Chief among these is the weakness of civil society to participate in the formation of laws, analyse, raise awareness and monitor the implementation of laws (Konaté, 2003).

The legal texts, as Moussa Djiré (2006: 7) says, “are generally incomprehensible to ordinary people. In addition, they are written in French, the official language, which is not understood by the vast majority of the population.” The necessity of engaging with local populations in their first language cannot be overstated. Another problem is

the large distances that often separate rural communities and dispensers of justice (such as magistrates courts), which are only found in urban areas, or regional capitals (Djiré, 2006: 7).

Finally, there is a lack of procedural norms for the conditions of verifying customary land tenure claims provided for in the relevant legislation, which constrains the enforcement of these rights. “Thus, practices of access to land ownership are in a context of considerable legal ambiguity as they move from an initial informal status to legality.” (Djiré, 2006: 7).

As regards cross-border mobility, Mali has also been a key player in the expansion of bilateral agreements regulating livestock mobility across national frontiers. The government systematically instigated and concluded bilateral deals with neighbouring states in the late 1980s (see later section) (Ouédraogo, 1995 : 19-20)

Key points

- The pastoral Charter 2002 provides a legal framework to protect pastoral land rights and livestock mobility
- Regulations to implement the Pastoral Charter have still not been passed
- Despite broadly positive legislation government attitudes to pastoralism are still negative

3.9 Mauritania

Legislation with relevance to pastoral mobility

1983	Ordonnance no. 83-127 portant réorganisation foncière et domaniale (1983) (amended 1990 and 2000)
2000	Loi No. 44-2000 portant Code Pastoral en Mauritanie
2004	Décret No. 2004-024/PM.MDRE portant application de la Loi no. 2000-44 du 26 juillet relative au code pastoral

Introduction

Livestock mobility, primarily dromedaries, oxen and goats, is one of the mainstays of the Mauritanian economy. It constitutes 70% of the GDP of the primary sector, and 14.6% of total GDP (Wane, 2006).

Variants of livestock mobility area practiced including, transhumant, agro-pastoral and sedentary livestock systems (Wane, 2006). The nature of livestock mobility in Mauritania has experienced changes, most notably since the droughts of the 1970s and 1980s. Movements have gradually been diminishing, and are limited to a period between May and July near the south of the country, instead of other a period of seven or more months (Wane, 2006).



Land Legislation

Ordonnance no. 83-127 portant réorganisation foncière et domaniale (1983) nationalised land and officially abolished customary land tenure management (Lane, 1998: 18). It also promoted private property, and included productive land use clauses that favoured agricultural land uses (SWAC, 2006).

.....
“La mobilité pastorale est préservée en toute circonstance et ne peut être limitée que de manière temporaire et pour des raisons de sécurité des personnes, des animaux et des cultures, et ce conformément aux dispositions prévues par la loi.”
 Pastoral Code, Mali (Article 10)

However, the communal land tenure system remained (Lane, 1998: 18), and the Act gave all Mauritanian citizen equal rights to be landowners (SWAC, 2006). It also introduced elements of Islamic law into the legal code. All land not owned by either the state or private individuals was covered by Islamic law (SWAC, 2006).

Pastoral legislation

The Pastoral Code (2000) and decree (2004) recognised pastoral land use rights in Mauritania for the first time. Article 10 guarantees pastoralist the right to livestock mobility, which can only be limited temporarily for specific reasons. The Code also provides compensations for herders if they lose their land for public purposes. It has sets out provisions for local dispute resolution in the case of land conflicts, and for local government to aid pastoralists to form associations. However, it does not address access or management of the large number of water points privately owned by pastoralists (Alden Wily, 2003).

Stamm (date unknown: 8-9) highlights the main principles of the Pastoral Code:

- *Le principe de la communauté des ressources pastorales est de droit (Art. 8)*
- *L'espace pastoral est un domaine collectif inaliénable et imprescriptible, réservé exclusivement aux activités du pastoralisme. (Art. 13)*
- *Toute forme d'appropriation exclusive de l'espace pastoral est illégale (Art. 14)*
- *La mobilité pastorale est préservée en toute circonstance (Art. 10)*

The Code does not attempt to legislate for every eventuality, but sets out the guiding principles and leaves space of negotiation between actors (Stamm, date unknown: 9).

Key point

- The Pastoral Code (2000) formally recognised pastoral land use rights in Mauritania

4. Regional and bilateral agreements governing cross-border transhumance

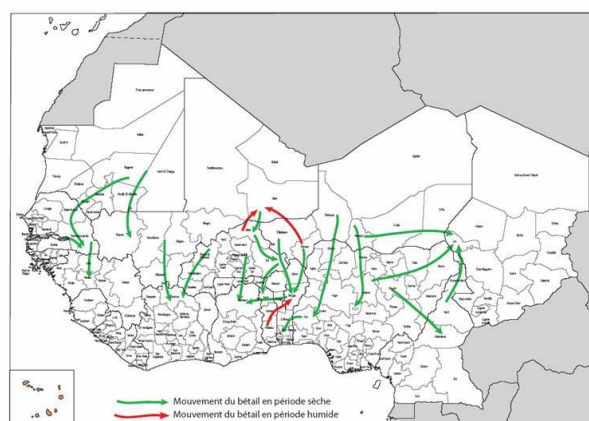
Some bilateral agreements governing livestock mobility

1988	Accord sur la transhumance – Burkina Faso and Mali
1988	Protocol d'accord en matière de transit du bétail – Niger and Mali
1989	Accord sur la transhumance – Mauritanie and Mali
1993	Accord zoo-sanitaire – Senegal and Mali
1994	Accord cadre réglementant la transhumance entre la République du Mali et la République de Côte d'Ivoire
2003	Protocole d'accord portant création d'un cadre de concertation entre le Burkina Faso et la République du Niger sur la transhumance transfrontalière

Regional agreements governing livestock mobility

1987	Commission Economique du Bétail, de la Viande et des Ressources Halieutiques (CEBEVIRHA) - Cameroon, the Central African Republic, Chad, the Republic of the Congo, Equatorial Guinea and Gabon
1991	Accord CEBV Relatif à la réglementation de la transhumance (2 March) - Benin, Burkina, Côte d'Ivoire, Niger
1998	Réglementation de la transhumance entre les états membres de la CEDEAO Décision A/DEC.5/10/98 of 1998 and C/REG.3/01/03 of 2003 – 15 member states of ECOWAS

Cross-border transhumance is an important element of pastoralists adaptation to the drylands ecosystem, but it also risks spreading animal diseases.⁸ Governments have sought to manage this international transhumance primarily through bilateral accords, and regional and sub-regional agreements. These will be explored by this section, first in West Africa, which has the most developed set of agreements, and then in other regions. Civil society initiatives to manage cross-border livestock mobility are not included in this summary.



Cross-border transhumance in West Africa
Source: (Kamuanga *et al*, 2007: 68)

West Africa

Although they existed before, agreements between countries on livestock mobility became more prominent in the late 1980s. Mali, in particular, took an active role in agreeing bilateral accords with its neighbours to govern transhumance and animal health (Ouédraogo, 1995: 19-20). Mali agreed deals with Burkina Faso (1988), Niger

⁸ See DIAKITE, Dr Noumou (2003) *Transhumances Transfrontalières en Afrique de l'Ouest, Rapport provisoire, IIED / CILSS*

(1988), Mauritania (1989), Senegal (1993) and Côte d'Ivoire (1994).⁹ More recent bilateral accords have been agreed between Benin and Burkina Faso, and Benin and Niger.¹⁰

In Mali, over 400,000 head of livestock (primarily cattle, sheep and goats) were registered crossing the border in 2002. In declining order of importance, the highest exchange of livestock with was between Mauritania, Burkina Faso, Senegal, Niger and Côte d'Ivoire, (DIAKITE, 2003: 54).

The accords are relatively short documents (two to four pages) that set the modalities for cross-border mobility. To take one representative example, the *Protocol d'accord en matière de transit du bétail* between Mali and Niger agreed in 1988. Pastoralists wishing to enter Niger from Mali must hold a passport, border documents and vaccination / animal health certificates. Cross-border transhumance is only authorised between the months of November and April, and not exceeding a period of 30 days. The agreements often specify entry and exit points for herders, and livestock corridors by which they are obliged to travel. As regards any conflicts or infringements that may arise between pastoralists and farmers, the former receive the protection of the legislation of the host country and must respect its land, environmental and natural resources legislation.

.....
 "Pour des raisons de commodité, les convois ne sont autorisés à traverser le territoire nigérien qu'entre les mois de Novembre et Avril.
 Le bétail malien est autorisé à traverser le territoire par les couloirs indiqués à l'article 4 sans aucune restriction et par convois de 100 têtes au plus.
 Toutefois, au-delà de 40.000 têtes le transit sera effectué par camions."
 Article 7, *Protocol d'accord en matière de transit du bétail – Mali and Niger*

In other accords geographical limits are set on pastoralist, for example in the agreement between Mali and Mauritania fixes a southern limit for Mauritanian grazing animals in Mali.

ECOWAS International Transhumance Certificate

In addition to negotiating bilateral accords, West African states have set up a number of regional schemes to manage cross-border livestock mobility. Moves towards a regional charter governing livestock mobility in West Africa started with the formation of CEBV (*Communaute Economique du Betail et de la Viande – Cattle and Livestock Economic Community*) in 1970 by Benin, Burkina, Côte d'Ivoire, Niger and Togo. CEBV was designed to strengthen the livestock sector and in 1991 passed an accord regulating transhumance between member states.¹¹ The accord was signed as a 'directive', meaning that it does not have direct jurisdiction in states but that they should adopt national legislation in agreement with its principles (Ouédraogo, 1995: 18-19).

⁹ Burkina – Mali – Accord sur la transhumance (1988); Mauritania – Mali – Accord sur la transhumance (1989); Niger – Mali – Protocol d'accord en matière de transit du bétail (1988); Senegal – Mali – Accord zoo-sanitaire (1993); Accord cadre réglementant la transhumance entre la République du Mali et la République de Côte d'Ivoire (24 août 1994 à Bamako)

¹⁰ See (Kamuanga *et al*, 2007: 70)

¹¹ Accord CEBV Relatif à la réglementation de la transhumance (2 March 1991). The accord was not signed by Togo. CEBV was absorbed into UMEOA in 1994.

The CEBV agreement regulates transhumance through livestock corridors, each country fixes the periods of entrance and exit of livestock, and sets ‘welcoming areas’ (*zones d’accueil*) where animals can graze. As regards conflict resolution, it recommends a local resolution before recourse to judicial institutions. The CEBV agreement was used as the basis for the later ECOWAS agreement on transhumance, and shares many of its features including the issuance of International Transhumance Certificates (ITC).¹²

The ECOWAS (or CEDEAO in French) decision agreed in Abuja in October 1998¹³ provides a regional framework for cross-border transhumance between fifteen member states.¹⁴ The decision authorises cross-border transhumance in respect of certain conditions (Article 3), the chief of which is the granting of an International Transhumance Certificate (ITC) (*Certificat International de Transhumance* in French). The ITC aims to (Article 5):

- (1) allow a control of departing transhumants;
- (2) assure the protection of animal health of local herds;
- (3) inform in good time the populations of ‘welcoming areas’ of the arrival of transhumant herders.

In line with other bilateral and regional agreements, the rights of transhumant herders are protected by the host countries legislation, but they also have to abide by the laws of the host country in relation to forests, wildlife, water points and pastures (Article 16). Conflict resolution is envisaged via a conciliation commission (*commission de conciliation*) made up of herders, farmers, local government representatives and other concerned parties (Articles 17-18).

.....
“Le franchissement des frontières terrestres en vue de la transhumance est autorisé entre tous les pays de la Communauté pour les espaces bovine, ovine, caprine, caméline et asine dans les conditions définies par la présente Décision”

 Article 3, Décision A/DEC.5/10/98 réglementation de la transhumance entre les états membres de la CEDEAO (ECOWAS)

There are certain restrictions for pastoralists. In order to gain the ITC, they must provide local administration services with information on their herd, vaccinations, the itinerary they intend to follow and the border posts they will use. In addition, there must be minimum two guardians at any one time, and at least one guardian per 50 head of livestock (Art. 11).

Implementation of ECOWAS ITC

The recent report by the *Club du Sahel*, provides up to date information on the challenges faced in the implementation of the ECOWAS decision (Kamuanga *et al*, 2007). Herders have complained about the administrative ‘red tape’ and that livestock corridors are blocked in host countries such as Benin, Côte d’Ivoire, and Ghana. Local populations in the areas welcoming transhumant herders (*zones d’accueil*) have accused pastoralists of damaging crops and protected areas, and of violence against local habitants. In addition, there has been little involvement of grassroots

¹² Other West African agreements on transhumance include a 2002 accord under UEMOA (*Union Economique et Monétaire Ouest Africaine*), and an earlier CILSS agreement.

¹³ Reglementation de la transhumance entre les etats membres de la CEDEAO Decision A/DEC.5/10/98 of 1998 and C/REG.3/01/03 of 2003

¹⁴ Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo

organisations in the decision and its rigidity discourages some potential uses (Kamuanga *et al*, 2007: 69-70).

In order to respond to this ECOWAS organises an annual mission to raise awareness of stakeholders in the decision including herders, traditional chiefs, state and local governments. This mission has led to an understanding of the need for bilateral agreements between governments and civil society organisations of departing and host countries regulating animal health, points of entry and departure, period of transhumance, conflict resolution etc. Both experts and herding organisations are included in the process in order that it raises all relevant issues and to facilitate implementation of decisions taken (Kamuanga *et al*, 2007: 69-70).

Despite these limits, the ECOWAS decision remains the most advanced regional scheme to govern cross-border transhumance. ECOWAS International Transhumance Certificates are, according to reports, obtained without great difficulty by herders from local authorities in their departing countries. The ECOWAS experience also shows how different layers of governance (regional, state, local) interact and how developments at one level can give impetus to policy and institutional advances at other levels. The awareness and implementation of ECOWAS accords has been increased through the involvement of organisations representing pastoralists such as AREN in Niger, UDOPER in Bénin, RECOPA in Burkina Faso (Kamuanga *et al*, 2007: 70).

According to anecdotal evidence, many pastoralists and farmers are still unaware of the certificates and do not use them. The long borders of African states are porous and often unguarded, and many herders prefer to follow traditional livestock routes, knowledge of which is handed down between generations (Yahaya, pers com., 2008).

Bilateral agreements to facilitate implementation of ECOWAS ITC

One outcome of the ECOWAS annual mission to raise awareness of the regional framework for transhumance, was an understanding for bilateral agreements to support and facilitate implementation of the regional deal according to specific local conditions.

In 2003, Burkina Faso and Niger agreed an ambition scheme to create a series of bilateral institutions to provide a framework for dialogue and policy formation on cross-border livestock mobility.¹⁵ The protocol has four main objectives (Article 2):

- (1) to manage transhumance between the two states;
- (2) to supervise the application of ECOWAS decision;
- (3) to promote discussions and exchanges between two states concerning transhumance and natural resources; and
- (4) to propose measures to facilitate the implementation of the regional programme on inter-state transhumance.

In order to carry out these functions two organs are set up:

- (1) An annual meeting of livestock ministers from the two countries, which have executive functions; and,

¹⁵ 'Protocole d'accord portant création d'un cadre de concertation entre le Burkina Faso et la République du Niger sur la transhumance transfrontalière' (2003)

- (2) A Joint Technical Committee (*Comité Technique Paritaire*), which supports the livestock minister meeting, provides recommendations, and plays a role in regulating conflicts and implementing other activities.

The committee has is mainly constituted of governmental representatives. Out of the thirty-four member, four are representatives of pastoral communities (two each from Burkina and Niger) and another four of customary bodies representing farming communities.

Central Africa, East Africa and the Horn

Cross-border transhumance is also common in other regions of Africa, but there is no evidence for bilateral agreements between states on the subject. It has recently been reported in the Ethiopian media, that the relevant representatives of Ethiopia and Sudan will discuss the creation of cross-border livestock corridors between the two countries in the Metma and Azezo areas (Elias, pers com., 2008). Cross-border mobility between Sudan and its neighbouring countries (in particular Chad) has been impeded because of military conflict.

In Central Africa, cross-border transhumance is regulated by the *Commission Economique du Bétail, de la Viande et des Ressources Halieutiques* (CEBEVIRHA) created by Heads of State representing the six member states¹⁶ of the UDEAC (now CEMAC) in 1987.¹⁷ The commission aims to promote the livestock sector in member states, and has set up a system regulating cross-boarder transhumance similar the to International Transhumance Certificates (ITC) ECOWAS, albeit less developed. The agreement regulates international transhumance particularly between Chad and the Central African Republic, and Chad and Cameroon (Guihini, pers comm., 2008). The Commission's status was revised in 2001.

East Africa and the Horn do not as yet have any regional agreements on transhumance comparable to those in West Africa. In East Africa, however, there were recent discussions about a protocol to the Treaty of East African Cooperation to deal with cross-border movement of pastoralists (Odhiambo, pers com., 2008). There are no such regional discussions in the Horn at present.

The need to support pastoral livelihoods with a suitable legislative framework does not yet appear to be a priority of East African policy makers, as seen in the recent East African Community Protocol on Environment and Natural Resource Management. The Protocol between Kenya, Uganda and Tanzania was agreed in April 2006. The section on rangelands includes nothing on supporting livestock mobility, provision of livestock corridors or cross-border movements of pastoralists but calls rather vaguely for the development of, "common policies, law and strategies for ensuring sustainable development of rangelands" (Art. 22). Likewise, the section on the management of transboundary resources does not mention transhumance or transboundary pastures, but calls for states of the region to, "jointly develop and adopt harmonized common policies and strategies for the sustainable management of transboundary natural resources" (Art. 9).

¹⁶ The member states of CEMAC are Cameroon, the Central African Republic, Chad, the Republic of the Congo, Equatorial Guinea and Gabon.

¹⁷ The *Union Douanière des Etats de l'Afrique Centrale* (UDEAC) was superseded by CEMAC, the Economic and Monetary Community of Central Africa, in 1999. CEMAC takes its name from the French *Communauté Économique et Monétaire de l'Afrique Centrale*.

Key points

- Despite implementation problems ECOWAS International Transhumance Certificates are the most advanced regional scheme to regulate cross-border mobility
- In East Africa and the Horn neither bilateral nor regional agreements exist

5. Pan-African and International Frameworks

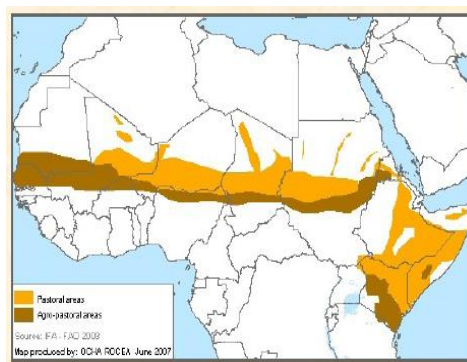
Pan-African agreements with relevance to pastoral mobility

Proposed African Union Pastoral Policy Framework for the Continent (inception workshop 2007)

International declarations / conventions with relevance to pastoralists' land

1989 International Labour Organisation: Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries
 1992 Rio Declaration on Environment and Development and Agenda 21
 2007 UN Declaration on the Rights of Indigenous Peoples

An inception workshop for an African Union (AU) Pastoral Policy Framework for the Continent sponsored by AU Interafrican Bureau for Animal Resources and the UN OCHA (UN Office for the Coordination of Humanitarian Affairs) Pastoral Communication Initiative was held in Isiolo, Kenya on 9-11 July 2007. Authors of the report, link the improvement in pastoralists' livelihoods and the attainment of the Millennium Development Goals (MDGs).



Source: Pastoral Voices (Nov 2007), Vol. 1, Issue 1, UN OCHA RO-CEA

The process aims to secure agreement from AU Heads of State to a policy framework for pastoralism, which would aim to serve, “as a mechanism through which pastoralist life and livelihood matters find official recognition. It aims primarily at securing and

.....
“The pastoral policy report will provide pastoral people with:

 • *an open space for the definition and management of their own development activities,*

 • *make it possible for appropriate interventions to address the natural, physical and anthropogenic problems,*

 • *create economic opportunities for pastoral people”*

 Summary Report, AU Pastoral Policy Framework for the Continent (AU/IBAR & UN OCHA-PCI, 2007 : 4)

protecting the rights of pastoralist people and lays the foundation for a continent-wide commitment to political, social and economic development of pastoral communities.” (AU/IBAR & UN OCHA-PCI, 2007)

The next step in the process is regional studies on pastoralism to be carried out by five African regional organisations.¹⁸ A Specialist Task Force whose membership includes technical experts and pastoralists' representatives will provide further guidance to the formation of the policy framework.

¹⁸ ECOWAS (Economic Community of West African States), COMESA (Common Market for East and South Africa), ECCAS (Economic Community of Central African States), SADC (South African Development Community), UMA (Union Magreb Arab)

At this early stage, there is little that can be said about the potential impacts of a continent-wide framework. One disappointing element is the virtual absence of livestock mobility from the initial report. However, according to some reports, it can be expected that the Specialist Task Force will strengthen this element.

Other continental agreements that are relevant to the present study include the African Convention on Conservation of Nature and Natural Resources agreed at the Assembly of the African Union in Maputo in 2003. Pastoralism or cross-border mobility are not mentioned, but Article 17 (3) of the Convention calls parties to, “take the measures necessary to enable active participation by the local communities in the process of planning and management of natural resources upon which such communities depend”.

.....
 “Law and regulations should facilitate cross-border mobility and transhumance rights, increasing access to water, pastureland, and markets, while minimising the spread of trans-boundary animal and human diseases and conflict within and between communities.”
 Summary Report, AU Pastoral Policy Framework for the Continent (AU/IBAR & UN OCHA-PCI, 2007 : 8)

Emerging international norms

There are a number of international conventions, declarations and policy statements that support pastoralists’ (and indigenous peoples’ more generally) land access and land rights.

ILO (International Labour Organisation) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries was signed in 1989 and entered into force in 1991. Article 14 (1) states:

*The rights of ownership and possession of the [indigenous] peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.*¹⁹

Subsequent articles safeguard rights to participatory management of natural resources in these areas, right not to be removed from land they occupy, relocation with ‘free and informed consent’, and compensation. The Convention is binding for countries that have signed and ratified the agreement. By 2008, 19 countries have done so, none of which are in Africa.²⁰ But it has had some effect even in states where it has not been ratified.²¹

The UN Declaration on the Rights of Indigenous Peoples agreed on 13 September 2007 by the UN General Assembly is a non-binding, so-called ‘soft’ international law. Article 10 states that indigenous peoples must not be forcibly removed from their lands, and can only be relocated with prior, informed consent and subject to compensation. Article 26 urges countries to give legal recognition to traditionally occupied lands.²²

¹⁹ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>
²⁰ <http://www.ilo.org/ilolex/english/convdisp1.htm>
²¹ <http://www.ilo.org/public/english/indigenous/standard/super2.htm>
²² <http://www.un.org/esa/socdev/unpfii/en/drip.html>

Other ‘soft’ law statements with relevance to tribal and indigenous peoples’ land rights, include Agenda 21, in particular Chapter 26,²³ and Principle 10 of the Rio Declaration on Environment and Development (1992) which encourages states to provide adequate information to concerned citizens and promote a participatory approach.²⁴

Although not legally binding, ‘soft’ law can often feed into national legislations and constitutions. Even binding agreements such as the ILO convention do not have direct application for citizens, but can influence national legislations.

“Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

These agreements may form the basis of an emerging international legal framework governing land rights of marginalised communities which may in the future grow into customary international norms regulating state behaviour.²⁵

Article 10, UN Declaration on the Rights of Indigenous Peoples (2007)

Key points

- The proposed African Union Pastoral Policy Framework for the Continent aims to secure the rights of pastoral people with a continent-wide agreement
- A growing number of international declarations and conventions reaffirm the principle that pastoralists and other indigenous people should not be removed from their traditional territories

²³ <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter26.htm>

²⁴ Principle 10 of the 1992 Rio Declaration on Environment and Development: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

²⁵ See also Moretti, Marco (date unknown), ‘International Law and Nomadic People’, available at <http://www.geopolitis.net/LES%20DOCUMENTS/NOMADIC%20PEOPLE.pdf>, accessed 18 April 2008

6. Lessons emerging

In much of the Sahel (particularly the West) the last ten years has been a busy period of reform of land legislation, democratisation, decentralisation, and reform of the legislative environment governing pastoralism. There are a number of provisional lessons emerging from this experience: (i) that legislation alone cannot protect livestock mobility; (ii) that decentralisation can restrict as well as expand pastoralists' control over strategic natural resources; and (iii) that the most effective and adapted natural resources legislation is rooted in the social realities of rural populations.

Legislation cannot stand by itself

Cotula (2007) makes the distinction between legal tools, "institutional arrangements that are designed to respond to specific needs or problems... and that draw legitimacy from their being anchored to the legal system", and para-legal tools, "materials and activities to build local capacity to use those legal tools more effectively; and more generally, the range of strategies and tactics for helping these groups make the most of the opportunities offered by the law" (Cotula, 2007: 11-12). He makes the case that legislation or 'legal tools' needs to be supported by 'para-legal tools' in order to be successfully implemented.

A key lesson emerging is that the legal protection of pastoralists' land rights is not by itself adequate, but that organisation and awareness-raising of land uses is important. Pastoralists need to be able to become legally and politically engaged, through civil society organisations and have the confidence and knowledge to be able to stand up for their rights and resolve dispute peacefully. This awareness-raising can be carried out by a range of techniques such as local language broadcasts on rural radios, workshops, community meetings and the training of para-legals from within the pastoral community, as demonstrated in the Niger Delta region of Mali (Ba in Cotula and Mathieu, Eds, *forthcoming*).

.....
"A legal text alone offers a framework, but it is certainly not adequate to change the behaviour of actors, to promote sustainable development of a given socio-economic activity and to reduce tensions between different natural resource users."¹
.....
(REOUNODJI, et al., 2005: 99)

The engagement of civil society organisations through awareness-raising, "local conventions" on resource access, establishing forums to encourage social dialogue and the demarcation of livestock corridors are crucial elements that fall outside the scope of this study.

In addition, substantive legislation the "rules of right which the courts are called upon to apply" needs to be backed up by solid procedural law "guidelines within which land conflicts or land needs could be address" (Nimair-Fuller, 1999: 278). The latter frames the rights, responsibilities, penalties for infringement in practical modalities, without them the law by itself is in danger of not being implemented and becoming a 'dead letter'. A solid basis of procedural law would mean that jurisprudence could be built up, and that rules would gain legitimacy as they are the issue of local power struggles (Nimir-Fuller, 1999: 278).

The two faces of decentralisation

Following on from the necessity of including pastoralists in governance structures, decentralisation presents itself through two angles to pastoralists. On one hand, it is

the means by which the governance structure comes closer to the people and encourages their participation, for example the village based *COFO de base* (village land commissions) in Niger. They promote dialogue between land users, local management and responsibility for natural resources

On the other, decentralisation parcels out or sub-divides the national domain into smaller territorial units which can establish more physical, administrative or financial barriers to livestock mobility (for example in Mali). This can lead to a multiplication of laws and regulations governing livestock mobility and reduce access to natural resources. This also makes raising pastoralists' awareness of multiple regulatory frameworks more complicated.

Legislation must be rooted in the social realities

Legislation does not take into account the practices and customs of natural resource users, as Ouédraogo (1995) convincingly argues risks exacerbating problems of unsuitable or implemented legislation, legal dualism, and lack of respect for judgments or transactions carried out according to the statutory legislation. It also makes the implementation much less likely, and the challenge of raising awareness, understanding of new legal concepts more acute.

.....
: “The analysis of pastoral : Looking towards the type of legislation most
: customs is an indispensable : suited to securing livestock mobility in East and
: methodological precondition : West Africa, a number of points arise. The
: for the success of any attempt : legislation should, of course, guarantee the rights
: to transform, adapt or : of pastoralists to access to natural resources, but
: harmonise African pastoral : flexibility – allowing space for negotiating access
: legislations.”¹ : – should also be respected. An overly-rigid piece
: (Ouédraogo, 1995: 3) : of legislation would undermine many of the
: : benefit of the pastoral systems adaptation to the
: drylands (REOUNODJI, et al., 2005: 99).
: Legislation should also be supple in recognising
: priority, secondary and tertiary rights of use, and not imposing a system demarcated,
: exclusive land rights (Niamir-Fuller, 1999: 278).

It is also important that the process of forming and consulting on the law be slow, and built on an inventory of pastoral customs and practices. The legislation should take into account both the local practices and social actors, they must also include modalities of application to facilitate implementation (REOUNODJI, et al., 2005: 99).

It is clear that the process of providing secure legal protection for livestock mobility in East and West Africa is still in formation. This study has shown particular areas where gaps and contradictions in the legal and institutional frameworks leave pastoral producers exposed, as well as examples of good practice from the region, which may provide a good model for future reform.

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