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## Eritrean Land Reform: The Forgotten Masses

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## Eritrean Land Reform: The Forgotten Masses

### Cover Page Footnote

International Law; Commercial Law; Law

## NOTE

### Eritrean Land Reform: The Forgotten Masses

#### I. Introduction

In May 1993, after nearly three decades of armed struggle, the nation of Eritrea formally proclaimed its independence from Ethiopia by popular referendum.<sup>1</sup> One of the results of the independence movement was the widespread destruction of the Eritrean countryside and infrastructure.<sup>2</sup> In response to this tragedy, the Eritrean government implemented numerous state programs to rebuild and reform the nation. In 1994 the government adopted the Land Proclamation,<sup>3</sup> which initiated a nationwide land reform program vesting ownership of all land in the government while granting limited usufructuary rights to Eritreans and providing land leases for domestic and foreign investors.<sup>4</sup> The stated purpose of the Land Proclamation is to:

assure agricultural and industrial development; promote or

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<sup>1</sup> See Jonathan M. Lindsay, *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, U.N. Food and Agriculture Organization, Main Report, at 9, U.N. Doc. TCP/ERI/4554 (1997) [hereinafter Main Report].

<sup>2</sup> See TESFA G. GEBREMEDHIN, *BEYOND SURVIVAL: THE ECONOMIC CHALLENGES OF AGRICULTURE & DEVELOPMENT IN POST-INDEPENDENCE ERITREA* 5-6 (1996). The war claimed the lives of over 150,000 Eritreans, destroyed tons of crops, and almost 70% of the livestock. *See id.* at 5. It had been estimated that, in 1993, about 75% of the population was dependent on food aid. *See id.* at 6. Further, the majority of the infrastructure including roads, banks, postal service, and rail service deteriorated substantially. *See id.*

<sup>3</sup> ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F.

<sup>4</sup> See *The Economist Intelligence Unit, Eritrea Country Profile 1997*, available on THE ECONOMIST INTELLIGENCE UNIT CD-ROM, COUNTRY REPORTS: SUB-SAHARAN AFRICA (Dec. 28, 1997). Black's Law Dictionary defines usufructuary rights as an individual's right to enjoy property that he does not own. *See* BLACK'S LAW DICTIONARY 1544 (6th ed. 1990).

assure initiative and motivation among beneficiaries and producers; encourage private investment and initiative; avoid contradiction, friction, and dispute; pave way for the improvement of the living standard of the people of Eritrea; be standard and applicable throughout the nation; and . . . replace[] the existing progress-impeding system of land tenure in Eritrea [with] a new and dynamic system.<sup>5</sup>

Though broad and ambitious, the Eritrean Land Proclamation does not address directly the property rights of indigenous pastoralists whose survival is intricately tied to the land.<sup>6</sup> The primary focus of this Note will be on the potential legal rights of pastoralists to Eritrean land absent legislation defining those rights. Part II briefly outlines the relevant history of land use within Eritrea.<sup>7</sup> Next, Part III examines the Land Proclamation itself.<sup>8</sup> Part IV describes the land tenure systems in other African nations that have undergone extensive land reform.<sup>9</sup> Finally, Part V concludes that the Eritrean government will likely adopt the unfavorable policy of passive settlement towards the nomadic pastoralists rather than a more equitable alternative, such as protected open range herding.<sup>10</sup>

## II. Background

### A. Traditional Land Systems

At present the Land Proclamation is the most important legal

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<sup>5</sup> ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F, at 1.

<sup>6</sup> See generally ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, at Annex F (illustrating that the Land Proclamation fails to address directly the property rights of indigenous pastoralists). Article 48 of the Land Proclamation states that "all villages in Eritrea shall, according to local custom, use their own pasture and wood." *Id.* at 16. This is the only place within the proclamation that mentions communal property rights.

<sup>7</sup> See *infra* notes 11-99 and accompanying text.

<sup>8</sup> See *infra* notes 100-12 and accompanying text.

<sup>9</sup> See *infra* notes 113-85 and accompanying text.

<sup>10</sup> See *infra* notes 186-88 and accompanying text.

document in Eritrea regarding land and its use.<sup>11</sup> The Proclamation brings with it the potential for great change and reform. It is, however, impossible to understand the new legal system governing all real property rights within Eritrea without first acknowledging the traditional land tenure systems that developed before 1994.<sup>12</sup>

The geography of the nation determines the use and value of the land in Eritrea.<sup>13</sup> Eritrea is made up of three distinct geographical areas: the highland plateau, the western lowlands, and the coastal area along the Red Sea.<sup>14</sup> The geographic areas divide the nation's population both ethnically and religiously.<sup>15</sup> Tigrinya-speaking Christians, who engage in "sedentarized agriculture," predominantly inhabit the highland plateau.<sup>16</sup> The Beni-Amer and the others who historically have lived in the western lowlands practice pastoralism and agropastoralism.<sup>17</sup> The Arabic-speaking Afar and Saho population of the coastal area, also known as the Danakalia, engage in pastoralism.<sup>18</sup> Approximately eighty percent of the Eritrean population lives in rural areas, and of that eighty percent, "twenty-five to thirty percent of the population are nomadic or semi-nomadic."<sup>19</sup>

While it is difficult to generalize about the traditional land tenure systems in each of these areas, some broad categories of land use can be identified.<sup>20</sup> The varieties of rural land tenure systems that have traditionally existed in Eritrea stem from the country's cultural traditions, population density, land capacity, and

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<sup>11</sup> See Main Report, *supra* note 1, at 10, 13.

<sup>12</sup> See *id.* at 13.

<sup>13</sup> See *id.* at 13-14.

<sup>14</sup> See Sandra Fullerton Joireman, *The Minefield of Land Reform: Comments on the Eritrean Land Proclamation*, 95 AFR. AFF. 269, 270 (1996).

<sup>15</sup> See *id.*

<sup>16</sup> *Id.*

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> GEBREMEDHIN, *supra* note 2, at 12; Joireman, *supra* note 14, at 271 (explaining that 60% of the population engage solely in agriculture, 35% practice agropastoralism, and 5% pursue a pastoralist lifestyle).

<sup>20</sup> See Main Report, *supra* note 1, at 14.

colonial influences.<sup>21</sup> The most important of these tenure systems for the majority of Eritreans are those held in common.<sup>22</sup> Within these communal systems, the entire village or extended family holds rights to land.<sup>23</sup> Often, communal systems allow the land to be cultivated but generally not to the exclusion of any individual.<sup>24</sup>

One such type of communal holding, commonly practiced by agriculturalists in the highlands, was known as diessa, or "residence-based communal tenure."<sup>25</sup> Under this system the land of the village was reallocated among the villagers on a rotational basis every five to seven years.<sup>26</sup> To qualify for a portion of the land, a male resident of the village would first have to marry and create a household separate from his parents.<sup>27</sup> These members of the village, also known as Ballabats, were the only community members allowed a portion of the village's arable land.<sup>28</sup> The land of the village could not be sold or inherited, and it reverted back to the village upon death.<sup>29</sup> Often village custom and law would allow single widows with children, orphans, and widowers a one-half share of the community's land.<sup>30</sup> The diessa land tenure system held all pasture land out for communal use.<sup>31</sup>

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<sup>21</sup> See *id.*; see also Joireman, *supra* note 14, at 271 (illustrating colonial influences on Eritrean land reform).

<sup>22</sup> See Tesfa G. Gebremedhin, *Constraints to a Viable Agricultural Development in Eritrea*, 1 ERI. STUD. REV. 95, 122-23 (1996).

<sup>23</sup> See *id.* (describing how, under communal land-tenure systems, individual farmers have usufructuary rights but do not have rights to the "exclusive use of the land").

<sup>24</sup> See *id.* at 123.

<sup>25</sup> Joireman, *supra* note 14, at 271; see also Main Report, *supra* note 1, at 14 (defining the diessa land-tenure system).

<sup>26</sup> See Joireman, *supra* note 14, at 271; Main Report, *supra* note 1, at 14.

<sup>27</sup> See Kidane Mengisteab, *Rehabilitation of Degraded Land in Eritrea's Agricultural Policy: An Exploratory Study*, in EMERGENT ERITREA: CHALLENGES OF ECONOMIC DEVELOPMENT 109, 109 (Gebre Hiwet Tesfagiorgis ed., 1993); GEBREMEDHIN, *supra* note 2, at 25.

<sup>28</sup> See GEBREMEDHIN, *supra* note 2, at 25. Ballabats are those residents who have descended from the village's founding fathers. See *id.*

<sup>29</sup> See *id.* at 25-26.

<sup>30</sup> See *id.* at 25.

<sup>31</sup> See Mengisteab, *supra* note 27, at 110.

The highlands, in particular, supported a second type of communal land use: *risti* (risty).<sup>32</sup> In the *risti* tenure system, only those families—the *Enda*<sup>33</sup>—descended from a village's founders held rights to arable land.<sup>34</sup> This extended family system denied an individual the power to devise separate shares of land to different children and disallowed the disinheritance of any offspring.<sup>35</sup> *Risti*, therefore, was more equitable than the *diessa* system because male and, sometimes, female siblings inherited equal portions of land.<sup>36</sup> Individuals could also own land in more than one village if they could prove direct lineage from the founders of those villages.<sup>37</sup> Further, a landholder held the right to cultivate his land and lease it to others but could only sell his land with the consent of the entire extended family.<sup>38</sup> In addition, all pastureland was held in common, similar to that in the *diessa* system.<sup>39</sup>

While these two types of land tenure systems dominated rural village life throughout Eritrea, they do not reflect all of the various traditional pastoralist land systems.<sup>40</sup> Traditionally, pastoralists have comprised a substantial portion of the rural population of Eritrea.<sup>41</sup>

Within Eritrea, pastoral groups can be broadly categorized as nomadic pastoralists, agropastoralists, and sedentary pastoralists.<sup>42</sup>

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<sup>32</sup> See Joireman, *supra* note 14, at 271; GEBREMEDHIN, *supra* note 2, at 23.

<sup>33</sup> *Enda* is defined as the extended family of a village's founding settler. See GEBREMEDHIN, *supra* note 2, at 22.

<sup>34</sup> See *id.*

<sup>35</sup> See Mengisteab, *supra* note 27, at 110.

<sup>36</sup> See GEBREMEDHIN, *supra* note 2, at 23.

<sup>37</sup> See *id.*

<sup>38</sup> See Mengisteab, *supra* note 27, at 110.

<sup>39</sup> See *id.*

<sup>40</sup> Villages practicing primarily agriculture within the *diessa* and *risti* models experience few internal land disputes, while those that practice an intermixed system of agriculture and pastoralism often experience disputes over village boundaries. See Main Report, *supra* note 1, at 15.

<sup>41</sup> See GEBREMEDHIN, *supra* note 2, at 46.

<sup>42</sup> See *id.* at 45-46. Pastoralism is the practice of herding as the primary economic activity of a society. See THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1419 (2d ed. 1987). Agropastoralists practice a combination of agriculture and livestock production. See GEBREMEDHIN, *supra* note 2, at 13.

While all three of these groups are greatly dependent on their animal stock for wealth and security, they each view land tenure differently.<sup>43</sup> Among the pastoralists, communal land use systems range from unrestricted open access to pastoral land to community affiliated lands open to one or several groups.<sup>44</sup>

The living patterns of the three types of nomadic pastoralists vary. Traditional nomadic groups in Eritrea do not encumber themselves with permanent residences, or tie themselves to the land by engaging in agricultural practices.<sup>45</sup> These nomadic pastoralists move freely about the semi-arid lowlands and coastal areas in search of water and land where their livestock may graze.<sup>46</sup>

Agropastoralists live within semi-permanent villages in the Western lowland regions near water and land resources that are able to sustain farming and livestock grazing.<sup>47</sup> They move their herds of livestock as water and grazing needs dictate.<sup>48</sup> When resources become scarce, they abandon their villages.<sup>49</sup>

Sedentary pastoralists constitute the third classification of pastoralists found in Eritrea. Members of this group live in permanent residences and cultivate some crops among the highland plateaus but rely predominantly on their livestock for subsistence.<sup>50</sup> The milk and meat provided by the herds is vital to all pastoralists.<sup>51</sup>

### *B. Colonial Influence*

Traditional land tenure systems have changed in character over the decades due to colonial influences, population and livestock increases, and war.<sup>52</sup> In 1890 Italy joined the rest of Europe in the

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<sup>43</sup> See Main Report, *supra* note 1, at 14.

<sup>44</sup> See *id.*

<sup>45</sup> See GEBREMEDHIN, *supra* note 2, at 45.

<sup>46</sup> See *id.* at 45-46.

<sup>47</sup> See *id.*; Joireman, *supra* note 14, at 270.

<sup>48</sup> See GEBREMEDHIN, *supra* note 2, at 46.

<sup>49</sup> See *id.*

<sup>50</sup> See *id.* at 45-46; Joireman, *supra* note 14, at 270.

<sup>51</sup> See GEBREMEDHIN, *supra* note 2, at 46.

<sup>52</sup> See Mengisteab, *supra* note 27, at 111-12.



colonization of Africa.<sup>53</sup> For the next fifty-seven years, Eritrea was an Italian colony.<sup>54</sup> The influence of Italian administration on land tenure was wide reaching.<sup>55</sup>

In 1909 and 1926, the Italian government nationalized large sections of land throughout Eritrea.<sup>56</sup> It designated these tracts as *demaniale*, or government land.<sup>57</sup> Although much of the expropriated land fell within the control of local villages and pastoralists, the colonial government classified it as "unoccupied" and granted much of it to Italian farmers.<sup>58</sup>

As the Italian occupation continued, the colonial government expropriated the most fertile lands for Italian colonists.<sup>59</sup> This effectively restricted pastoralists in the lowland areas from using the best and most suitable lands for grazing.<sup>60</sup> Furthermore, local landlords, known as Diglals, held much of the arable lowland areas that were not under the control of the colonial government.<sup>61</sup> The combined actions of the colonial government and the local landlords forced a majority of the pastoral populations in the lowlands into a state of landlessness.<sup>62</sup> Since the majority of pastoralists owned no land, they rented grazing tracts from the colonial Italian government or local landlords.<sup>63</sup> The government and feudal landlords exploited the nomadic people of the lowlands

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<sup>53</sup> See F.F. Russell, *Eritrean Customary Law*, 3 J. AFR. L. 99, 99 (1959).

<sup>54</sup> See *id.*

<sup>55</sup> See generally Mengisteab, *supra* note 27, at 110 (discussing Eritrean territory seized by the Italian colonial government which has since been preserved as "state land" by successive governments).

<sup>56</sup> See Main Report, *supra* note 1, at 14.

<sup>57</sup> See *id.*

<sup>58</sup> See *id.*

<sup>59</sup> See Joireman, *supra* note 14, at 271.

<sup>60</sup> See GEBREMEDHIN, *supra* note 2, at 46.

<sup>61</sup> See *id.* Local chiefs in the lowlands would charge the pastoralists rents or services in exchange for the use of the pastoral land under their tribes' control. See *id.* Landed gentry, while constituting less than 2% of Eritrea's farming population, often exploited the pastoralists for rents and services in exchange for the use of their land. See *id.* at 40, 46. Feudal landlords no longer exist in post-independence Eritrea. See *id.* at 41.

<sup>62</sup> See *id.* at 46.

<sup>63</sup> See *id.*

for tax purposes, labor, and a free supply of milk and meat.<sup>64</sup>

The Italian government's land policy also affected the sedentary pastoralists. The new colonial government observed that the rotationally-based diessa land tenure system was less hostile to outsiders than the lineage-based risti system.<sup>65</sup> The government began actively to promote, in the highland plateaus, the use of the diessa land tenure system over the risti system.<sup>66</sup>

The Italian occupation of Eritrea came to an end in 1941 with the invasion of British forces during World War II.<sup>67</sup> Under British rule land expropriation continued, especially in the lowlands.<sup>68</sup> The British relocated onto the expropriated lands those Italians who remained in Eritrea after the invasion.<sup>69</sup>

Having taken control of Eritrea, the British government began to dismantle many of the land policies promulgated under colonial Italian rule. The occupying British force deemed the communal-based land tenure system of diessa, the land system promoted by the Italian government, to be inferior to individual ownership.<sup>70</sup> The British Military Administration (BMA) believed that "[l]and should be allocated in individual plots or allotments and not to communal groups."<sup>71</sup> While the occupying British force advocated individual land ownership in Eritrea, it did not implement any widespread land reform.<sup>72</sup> Thus, land rights in the lowlands

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<sup>64</sup> See *id.*

<sup>65</sup> See Joireman, *supra* note 14, at 271.

<sup>66</sup> See *id.*

<sup>67</sup> See Russell, *supra* note 53, at 99. The British occupied Eritrea in 1941, but Italy did not abandon its claim to it until 1947. See *id.* At the time of Eritrean liberation from colonial Italian rule, some 70,000 Italians were living there. See Mengisteab, *supra* note 27, at 111.

<sup>68</sup> See Mengisteab, *supra* note 27, at 111. British administration of Eritrea came to an end on September 15, 1952. See Russell, *supra* note 53, at 99.

<sup>69</sup> See Mengisteab, *supra* note 27, at 111. Strong resistance from local farming populations, which culminated into several rebellions during the 1950s, met the British when they expropriated and evicted individuals from their land. See GEBREMEDHIN, *supra* note 2, at 29.

<sup>70</sup> See Joireman, *supra* note 14, at 271.

<sup>71</sup> *Id.*

<sup>72</sup> See *id.* at 272.

became more uncertain and muddled.<sup>73</sup>

### *C. The Road to Revolution*

In September 1952, in accordance with the wishes of the General Assembly of the United Nations, Eritrea became a federation of Ethiopia.<sup>74</sup> The Eritrean federation, to protect property rights, added article 37 to its Eritrean constitution. This article provided that:

Property rights and rights of a real nature, including those on State lands, established by custom or law and exercised in Eritrea by the tribes, the various population groups and by natural and legal persons, shall not be impaired by any law of a discriminatory nature.<sup>75</sup>

While the constitutional provision guaranteed all citizens of Eritrea freedom from discriminatory property laws, it did nothing to reform the varied assortment of land systems present throughout the country.<sup>76</sup> Furthermore, the Ethiopian government made no attempt to create a cohesive land tenure policy.<sup>77</sup> The plight of the pastoralists grew to the point that they became one of the most oppressed and slighted populations in Eritrea.<sup>78</sup>

In 1962, after several years of strained relations between Ethiopia and the Eritrean federation, Haile Selassie's Ethiopian government officially annexed Eritrea as an Ethiopian province.<sup>79</sup>

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<sup>73</sup> See *id.*

<sup>74</sup> See Russell, *supra* note 53, at 99; UNICEF, CHILDREN AND WOMEN IN ERITREA: 1994 17 (1994). After considering "(a) The wishes and welfare of the inhabitants of Eritrea, . . . (b) The interests of peace and security in East Africa, [and] (c) The rights and claims of Ethiopia based on geographical, historical, ethnic or economic reasons, including in particular Ethiopia's legitimate need for adequate access to the sea," the U.N. decided that Eritrea should become a federation of Ethiopia. G.A. Res. 390(V), U.N. GAOR, 5th Sess., Supp. No. 20, at 20, U.N. Doc. A/1775 (1950).

<sup>75</sup> ERI. CONST. pt. I, ch. 5, art. 37 (rendered moot by Ethiopia's 1962 annexation of Eritrea), in ETHIOPIA AND ERITREA: A DOCUMENTARY STUDY 201, 211 (Habtu Ghebre-Ab ed., 1993).

<sup>76</sup> See Joireman, *supra* note 14, at 272.

<sup>77</sup> See generally *id.* (describing how the Ethiopian government failed to develop a cohesive land-tenure system until 1974, when Ethiopia became embroiled in a revolution).

<sup>78</sup> See GEBREMEDHIN, *supra* note 2, at 46.

<sup>79</sup> See Main Report, *supra* note 1, at 9.

Armed conflict between Ethiopians and Eritreans soon grew into open revolution.<sup>80</sup> The Eritrean highlands, under Ethiopian influence, became dominated by a communal residence-based system similar to the traditional diessa land tenure system.<sup>81</sup> Due to the strong rebel presence in the western areas of Eritrea, however, no cohesive land tenure system reached the pastoralists in the lowland areas.<sup>82</sup> Thus, the multi-tenured system of land use continued throughout the war.<sup>83</sup>

The war's effect on the pastoralists of Eritrea was mixed. The two main liberation groups within Eritrea, the Eritrean Liberation Front (ELF)<sup>84</sup> and the Eritrean People's Liberation Front (EPLF),<sup>85</sup> recognized that land reform was necessary in order to promote stability within the liberated areas.<sup>86</sup> The ELF and the EPLF, however, formed very different land tenure policies with respect to pastoralists.<sup>87</sup>

The EPLF enticed nomadic pastoralist groups to settle in villages and become farmers by providing them with both veterinarian services for their cattle and education for their

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<sup>80</sup> See generally Mengisteab, *supra* note 27, at 112 (noting that the military conflict between Ethiopia and Eritrea started in 1960 and ended in 1991). The Ethiopian military placed a great strain on the Eritrean peasantry by burning villages and crops and looting property. See *id.*

<sup>81</sup> See generally Joireman, *supra* note 14, at 272 (describing how the Eritrean lands dominated by Ethiopia came to have a single land-tenure system after the Ethiopian revolution of 1974).

<sup>82</sup> See *id.*

<sup>83</sup> See *id.*

<sup>84</sup> See GEBREMEDHIN, *supra* note 2, at 5. The ELF was the first organized independence group. See *id.* Its principal membership consisted of those Eritrean worker and peasantry groups that clamored for independence during colonial rule. See *id.* The ELF gathered much of its support from pastoralists and those living in lowland areas. See Joireman, *supra* note 14, at 273.

<sup>85</sup> See GEBREMEDHIN, *supra* note 2, at 5. The EPLF was organized after the ELF. See *id.* It formed a broad-based coalition with several groups in Eritrea and later became the dominant resistance group in the nation. See Joireman, *supra* note 14, at 273. Further, the EPLF championed women's rights during and after the independence movement. See GEBREMEDHIN, *supra* note 2, at 72. It gained control of the entire country in 1991. See Joireman, *supra* note 14, at 273.

<sup>86</sup> See Joireman, *supra* note 14, at 272.

<sup>87</sup> See *id.*

children.<sup>88</sup> It created the Agricultural Commission in 1975 in an effort to execute an agricultural policy of self-reliance, which would increase the food supply for its army.<sup>89</sup> By contrast, the ELF championed the nomadic pastoralist way of life.<sup>90</sup> The divergent land reform policies of these groups reflected their supporters' economic and political basis.<sup>91</sup> The ELF gathered the majority of its support from the lowland areas dominated by the pastoralists, while the EPLF aligned itself with a variety of ethnic groups.<sup>92</sup>

#### *D. Independence Achieved*

As the revolution dragged on, the EPLF became the dominant resistance movement within Eritrea and, in 1991, gained control of the entire nation.<sup>93</sup> The EPLF recognized, early on, the problems presented by the application of divergent land tenure systems in Eritrea.<sup>94</sup> It began to consider some type of national land reformation, even before Eritrean independence was officially proclaimed.<sup>95</sup> In response to this need, the EPLF formed the Eritrean Land Commission in 1993 with the directive to create a cohesive national land tenure policy.<sup>96</sup>

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<sup>88</sup> *See id.*

<sup>89</sup> *See* The Agricultural Commission, EPLF, *Problems, Prospective Policies and Programs for Agricultural Development in Eritrea*, in EMERGENT ERITREA: CHALLENGES OF ECONOMIC DEVELOPMENT 89, 91 (Gebre Hiwet Tesfagiorgis ed., 1993). The EPLF abandoned its plan to engage directly in farming, and the group's focus moved towards assisting the peasantry with their problems in agricultural production. *See id.*

<sup>90</sup> *See* Joireman, *supra* note 14, at 272. David Pool, in an article for the *Manchester Papers in Politics Working Papers Series*, described an occasion where the ELF encouraged farmers who attempted to expropriate pastoralist lands for agricultural purposes to settle elsewhere. *See id.* at 272-73.

<sup>91</sup> *See id.* at 273.

<sup>92</sup> *See id.*

<sup>93</sup> *See id.*

<sup>94</sup> *See id.* In addition to the varied traditional land systems that were in effect, the armies of the ELF and EPLF created several new types. *See id.* at 272. The EPLF realized that the problem of land ownership would only grow as liberation troops returned to their home villages. *See id.* at 273.

<sup>95</sup> *See id.* at 273.

<sup>96</sup> *See id.*

The Commission researched and debated several different land tenure systems.<sup>97</sup> It considered reforming the nation's land use policy through privatization, a return to the diessa system, implementation of a modified diessa system with land rotation every twenty years, and other similar plans.<sup>98</sup> Believing that traditional land systems in Eritrea were a hindrance to development within the nation, the Land Commission proposed a radical land reformation.<sup>99</sup>

### III. The Land Proclamation

In 1994 Proclamation No. 58/1994, "The Land Proclamation," became the cornerstone of Eritrean land tenure.<sup>100</sup> The Land Proclamation revolutionized land tenure in Eritrea by conferring upon the state ownership of all land.<sup>101</sup> The Land Proclamation created a system of individual usufruct rights in the land, while allowing the government to retain final dispossession rights.<sup>102</sup>

According to the Proclamation, land is to be distributed to all citizens and also made available for lease.<sup>103</sup> First, all citizens of Eritrea, indiscriminate of sex, race, clan, or beliefs, have a usufruct right to an allotment of land for housing, business, or agricultural

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<sup>97</sup> See *id.*

<sup>98</sup> See *id.*

<sup>99</sup> See Jonathan M. Lindsay, *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, U.N. Food and Agriculture Organization, Executive Summary, at 1, U.N. Doc. TCP/ERI/4554 (1997) [hereinafter Executive Summary]. The EPLF perceived that traditional systems of land use impeded the growth and progress of the nation's agricultural sector. See *id.* Traditional land use systems restricted the establishment of adequately-sized farms, caused excessive subdivision of the land, and dissuaded farmers from making permanent improvements to the land. See GEBREMEDHIN, *supra* note 2, at 150. The development of the agricultural sector in Eritrea is important to alleviate poverty and to protect the environment. See *id.* at 156.

<sup>100</sup> See Executive Summary, *supra* note 99, at 1.

<sup>101</sup> See *id.*

<sup>102</sup> See *id.*; Joireman, *supra* note 14, at 273. A return to a modified diessa system and privatization were among those systems the Commission considered and rejected. See Joireman, *supra* note 14, at 273. The Commission determined that these systems did not create the uniformity of tenure the nation sought. See *id.*

<sup>103</sup> See ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F, at 3-4, 12.

pursuits for their lifetime.<sup>104</sup> Each parcel of land may be leased, but not sold, and inherited by a dependent if the dependent is willing to relinquish his rights to any other land allocated to him by the government.<sup>105</sup> Second, all land that is not distributed by the government will remain in the government's custody to be administered by it.<sup>106</sup> Lands that are administered by the government will be leased to foreign investors, held in reserve for mining and timber resources, and distributed to citizens as the need arises.<sup>107</sup>

Due to the all-encompassing nature of the Land Proclamation, its implementation will have a powerful effect on most of the individuals and groups within Eritrea.<sup>108</sup> The Proclamation is designed to promote capital investment on farms since individuals are assured tenure in their allotment of land because the land will not be redistributed in five to seven years as under the diessa system.<sup>109</sup> In addition, disputes over particular portions of land will be easier to adjudicate after land holdings are registered and

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<sup>104</sup> See *id.* at 3-4, 6; Joireman, *supra* note 14, at 273.

<sup>105</sup> See ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F, at 9-13; Joireman, *supra* note 14, at 273-74.

<sup>106</sup> See ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F, at 4.

<sup>107</sup> See Joireman, *supra* note 14, at 273; see generally ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F, at 2-3 (noting that land held by the government which has been designated "land requisite for development and reconstruction" can be used for, among other things, capital investment, urban expansion, mining, and industry).

<sup>108</sup> See Main Report, *supra* note 1, at 1. As of April 1997, the Land Proclamation had yet to be implemented throughout Eritrea. See *id.* Initially, two pilot sites were chosen for the Proclamation's trial run, but work at one of the sites has since been suspended. See *id.* In December 1996 the Land Commission held a lottery to allocate, in the village of Adi Guadid, the first parcels of land under the new system. See *id.* at 22. Commission personnel implemented the lottery when it became clear that there were more villagers than parcels of land. See *id.* The fate of those not chosen in the lottery was unclear at the time of the Lindsay report's publication. See *id.*

<sup>109</sup> See generally *id.* at 7 (noting that land registration provides rightholders with greater security, inducing them to invest in their land).

recorded by the government.<sup>110</sup> Evidence of boundaries and tenure rights will be accessible to individuals seeking clarification of their rights.<sup>111</sup>

While designed with the stated intent of accommodating Eritrea's increasing population growth, providing opportunities for implementing modern land use systems, and raising the nation's living standard, the Land Proclamation has failed to consider the needs of lowlands pastoralists and agropastoralists.<sup>112</sup> The Land Proclamation, in fact, wholly ignores these groups. These groups still exist within Eritrea, however, and a ruling must eventually be made regarding their status within the new legal framework of land rights.

The remainder of this Note is dedicated to exploring some possible answers to this dilemma. A comparative study of other nations in Africa that have faced these problems may give some insight into the viable possibilities that exist. While the results are varied, some policies have proven more effective than others.

#### IV. Analysis

##### A. *"The Tragedy of the Commons"*

It is impossible to understand the development of land tenure

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<sup>110</sup> See *id.* (describing how it has been argued that land registration reduces boundary disputes).

<sup>111</sup> See generally *id.* (illustrating that land registration provides evidence of land boundaries). Critics, however, believe that there exist several potential drawbacks for agriculturists under the current plan, including the possibility that land registration laws will undermine traditional means of determining boundaries that already work well. See *id.* at 8.

<sup>112</sup> See ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F, at 1; Joireman, *supra* note 14, at 275. The Land Proclamation does not address the rights of pastoralists directly. See generally ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F. (illustrating that the Land Proclamation fails to address directly the property rights of indigenous pastoralists). Article 48 of the Proclamation speaks only to the use of traditional village pasture land. See *id.* at 16. An indirect result of the Land Proclamation and its redistribution of land rights has been the abolition of rural landlords. See GEBREMEDHIN, *supra* note 2, at 46-47.



reform in Africa, and its effects on nomadic pastoral populations, without first acknowledging the underlying philosophical ideals that govern land reform in this area of the world. In 1968 the philosophical theory known as the "Tragedy of the Commons" was introduced.<sup>113</sup> The theory posits that land held in communal ownership inevitably leads to the over-exploitation of natural resources.<sup>114</sup> Since publication of "The Tragedy of the Commons," developing nations have used its hypothesis as the foundation for land use policies that end communal ownership of resources.<sup>115</sup>

The "Tragedy of the Commons" theory begins with the premise that all of those who graze their herds in common areas have an incentive to use the land to their own advantage and to the disadvantage of all others.<sup>116</sup> In application this means that an individual is motivated to overstock his herd.<sup>117</sup> By overstocking, the individual, in essence, receives a "free ride" because the costs of overstocking would be deferred among all of those who use the land, and only the individual will receive any benefit.<sup>118</sup>

It then follows that without enforcement of rules prohibiting this type of behavior, all of those who use the common grazing areas have an incentive to over-graze in order to take advantage of the commons.<sup>119</sup> Following this thesis one step further, the only conclusion that can be reached is that over-grazing and land deterioration is inevitable.<sup>120</sup> Within that lies the tragedy.<sup>121</sup>

Communal property, according to "The Tragedy of the

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<sup>113</sup> See Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968).

<sup>114</sup> See *id.* at 1244.

<sup>115</sup> See Carlisle Ford Runge, *The "Tragedy of the Commons" and Resource Management in Botswana*, in A COLLOQUIUM ON ISSUES IN AFRICAN LAND TENURE 1, 1 (1985). The African nations that have encouraged individualized land holdings reflecting the philosophy of "The Tragedy of the Commons" include Botswana, Ghana, Kenya, Somalia, Uganda, and Zimbabwe. See Richard Barrows & Michael Roth, *Land Tenure and Investment in African Agriculture: Theory and Evidence*, 28 J. MOD. AFR. STUD. 205, 205 (1990).

<sup>116</sup> See Runge, *supra* note 115, at 2.

<sup>117</sup> See *id.*

<sup>118</sup> See *id.*

<sup>119</sup> See *id.*; Barrows & Roth, *supra* note 115, at 207.

<sup>120</sup> See Runge, *supra* note 115, at 2.

<sup>121</sup> See *id.*

Commons," is viewed as open access property that is owned and maintained by no one.<sup>122</sup> In the absence of secure, individualized tenure, the incentive to continue "hit-and-run" grazing practices remains.<sup>123</sup> Thus, the only solution is a system of private ownership that allows individuals to exclude others, preventing over-grazing by creating a motive to manage and maintain the land.<sup>124</sup>

Several African nations have attempted to apply the "Tragedy of the Commons" scheme in their land reform policies.<sup>125</sup> The most common method has been to entice pastoralists into sedentary lifestyles within fixed boundaries, thus avoiding the "Tragedy of the Commons" and granting the government greater control over these groups.<sup>126</sup> Through governmental legislation or through the enclosure of grazing areas, pastoralists can be encouraged to adopt a more sedentary lifestyle.<sup>127</sup>

When a government actively pursues the settlement of nomadic pastoralists, it often encounters high costs, including policing costs.<sup>128</sup> Hence, the value of the grazing land for commercial exploitation is appealing.<sup>129</sup> The villagization program

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<sup>122</sup> See *id.* at 3.

<sup>123</sup> Kyle W. Danish, *International Environmental Law and the "Bottom-Up" Approach: A Review of the Desertification Convention*, 3 IND. J. GLOBAL LEGAL STUD. 133, 140 (1995).

<sup>124</sup> See Runge, *supra* note 115, at 2-3.

<sup>125</sup> See Steven W. Lawry et al., *Land Tenure Policy in African Livestock Development*, in A COLLOQUIUM ON ISSUES IN AFRICAN LAND TENURE 17, 17-18 (1985). An explicit example of the application of "The Tragedy of the Commons" in Africa can be seen in the land reform policies of Botswana in the 1970s. See *id.* In 1975 the president of Botswana told that country's parliament that "[u]nder our communal grazing system it is no one individual's interest to limit the number of his animals. If one man takes his cattle off, someone else moves his cattle in. Unless livestock numbers are somehow tied to specific grazing areas no one has an incentive to control grazing." *Id.*

<sup>126</sup> See Mengisteab, *supra* note 27, at 113.

<sup>127</sup> See Joireman, *supra* note 14, at 280.

<sup>128</sup> See *id.* A government which adopts a policy of forced settlement must provide for infrastructure costs, expanded policing, and building materials for homes and schools. See *id.*

<sup>129</sup> See VICTOR AZARYA, *NOMADS AND THE STATE IN AFRICA: THE POLITICAL ROOTS OF MARGINALITY* 76 (1996). Traditional grazing lands often have been converted, by post-colonial African governments, into agricultural, mining, ranching, or wildlife tracts.

in Tanzania is a good example of an active governmental settlement plan.<sup>130</sup>

Tanzanian leaders considered nomadic pastoralism to be a “backward” system of land tenure.<sup>131</sup> The government, therefore, attempted to place pastoralists in sedentary villages so as to increase the production of the land and to further national development.<sup>132</sup> The forced settlement caused a great deal of social and economic upheaval throughout the nation.<sup>133</sup> Many people found that their lands were being taken by the government and redistributed to newly created villages.<sup>134</sup> This, in turn, led to numerous legal battles over the land rights of those who were displaced.<sup>135</sup> In the end, Tanzania’s forced pastoral settlement program was deemed a failure by most international observers, and the program was terminated.<sup>136</sup>

Within the framework of the “Tragedy of the Commons,” passive sedentary practices that invite voluntary settlement offer many advantages over active governmental settlement programs.<sup>137</sup> By distributing land to individuals and encouraging them to develop it, the government passively encourages the enclosure and

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*See id.*

<sup>130</sup> *See id.* at 80.

<sup>131</sup> *See* Joireman, *supra* note 14, at 281.

<sup>132</sup> *See id.*; Simon Coldham, *Land Tenure Reform in Tanzania: Legal Problems and Perspectives*, 33 MOD. AFR. STUD. 227, 228-29 (1995).

<sup>133</sup> *See* Coldham, *supra* note 132, at 228-29. The government believed that villagization would promote public service, create large-scale farming, and prevent inequalities and exploitation of rural populations. *See id.* at 228.

<sup>134</sup> *See id.* at 236.

<sup>135</sup> *See id.* at 229-30. The high court of Tanzania in the 1980s dealt with this problem by holding that the governmental interest in socializing the nation’s land system outweighed the interests of a few injured individuals. *See id.* at 230. Since that time some relief has been offered by the government. *See id.*

<sup>136</sup> *See* Joireman, *supra* note 14, at 281-82; AZARYA, *supra* note 129, at 80; Coldham, *supra* note 132, at 228-29. Land disputes, distrust, new inequalities, and exploitation resulted in many areas where the Tanzanian government implemented its villagization program. *See* Coldham, *supra* note 132, at 229. No legal framework was created to define the individual’s rights over land that was farmed collectively or specifically allocated. *See id.*

<sup>137</sup> *See* Joireman, *supra* note 14, at 281.

protection of these lands for non-communal use.<sup>138</sup> Pastoralists become restricted to smaller grazing areas, which effectively limits the size of the herd maintained on the land.<sup>139</sup> The pastoralists are often forced either to accept the boundaries and become sedentary, like their neighbors, or resist the enclosures.<sup>140</sup> Resistance can precipitate violence.<sup>141</sup>

*B. "The Tragedy of the Commons" and Eritrea*

The Eritrean Land Proclamation's implementation of individual land holdings and its disregard for pastoralist rights imply that the Eritrean government is encouraging settlement of pastoralists.<sup>142</sup> If the Eritrean Land Proclamation is placed within the "Tragedy of the Commons" model, passive enforcement of pastoralist settlement is a likely result.<sup>143</sup> With the majority of governmental resources directed towards implementation of the Land Proclamation, active settlement programs become fiscally impossible.<sup>144</sup> The Land Proclamation, however, does provide for the enclosure of each allotment.<sup>145</sup> As more land is enclosed, the pastoralist will be forced to retreat to smaller and more marginal grazing areas or to accept sedentarization.<sup>146</sup> The disregard for nomadic pastoralists in the lowlands may cause long-term instability that could be detrimental to Eritrean development.<sup>147</sup>

Furthermore, the traditional political and economic basis of the Eritrean government under the EPLF gives some indication of the

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<sup>138</sup> See *id.* at 280-81.

<sup>139</sup> See *id.* at 281.

<sup>140</sup> See *id.*

<sup>141</sup> See *id.*

<sup>142</sup> See *id.*

<sup>143</sup> See *id.*

<sup>144</sup> See generally *id.* (describing how Eritrea will likely encourage passive enclosure as opposed to implementing an active settlement program because of limited state funds).

<sup>145</sup> See ERI. PROC. NO. 58/1994, in *Creating a Legal Framework for Land Registration in Eritrea: Consolidated Final Report of the International Legal Consultant*, *supra* note 1, Annex F, at 9. Article 19 provides the usufructuary with the right to fence in any land provided to him by the government. See *id.*

<sup>146</sup> See Joireman, *supra* note 14, at 281.

<sup>147</sup> See *id.* at 278-79.

government's attitude towards pastoralists.<sup>148</sup> The EPLF, as a matter of policy, favors sedentary practices over pastoralism.<sup>149</sup> Modern African history, moreover, illustrates that the fate of pastoralists within African society is intricately tied to their allegiances during the independence movements.<sup>150</sup> While some groups, such as the Moors in Mauritania, retained freedom of movement by allying themselves with the governing political faction during the transition to independence, many other pastoral groups have not been so fortunate.<sup>151</sup>

Groups such as the nomadic Fulbe in Mali and Cameroon have lost much of their power since independence.<sup>152</sup> The post-colonial ruling coalitions in these nations excluded the Fulbe.<sup>153</sup> The Fulbe, as a result, lost large land holdings, representation in local government, and, due to state imposed quotas, a significant portion of their livestock to the newly empowered governments.<sup>154</sup>

While newly independent nations in Africa often follow the "Tragedy of the Commons" model, the system has become discredited as overly simplistic and harmful by many observers.<sup>155</sup> In arid areas where agriculture cannot completely support the population, pastoralism has been shown to be a positive method of production.<sup>156</sup> In fact, over-grazing does not occur in many areas where pastoralists exist because of their heightened awareness of the environment.<sup>157</sup> Governments often advocate forms of

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<sup>148</sup> See *id.*

<sup>149</sup> See generally The Agricultural Commission, *supra* note 89 (noting, in the EPLF paper, the absence of an outlined, policy initiative to protect pastoralist rights to grazing lands).

<sup>150</sup> See AZARYA, *supra* note 129, at 69.

<sup>151</sup> See *id.* at 73.

<sup>152</sup> See *id.* at 71-72.

<sup>153</sup> See *id.* at 71.

<sup>154</sup> See *id.* Those who had no political connections and were dependent on cattle have suffered greatly since independence. See *id.* at 72.

<sup>155</sup> See Ahmed Yusuf Farah, *The Plight & the Prospects of Ethiopia's Lowland Pastoral Groups*, in IN SEARCH OF COOL GROUND: WAR, FLIGHT & HOMECOMING IN NORTHEAST AFRICA 124, 130 (Tim Allen ed., 1996); Joireman, *supra* note 14, at 281-82; Runge, *supra* note 115, at 1; Lawry, *supra* note 125, at 19-20.

<sup>156</sup> See Joireman, *supra* note 14, at 282.

<sup>157</sup> See Farah, *supra* note 155, at 130.

production which underestimate the effectiveness of traditional systems of pastoral production.<sup>158</sup> By remaining mobile, pastoralist groups are able to take advantage of seasonal grazing patterns, thus avoiding over-grazing.<sup>159</sup>

*C. "The Tragedy of the Commons" and Compromise*

While several African nations acknowledge the shortcomings of the "Tragedy of the Commons" model, they often hesitate to move away from individual land tenure systems.<sup>160</sup> In response to this dilemma, some countries are attempting to create a policy of compromise.<sup>161</sup> Kenya, for example, implemented a compromise system.<sup>162</sup>

In Kenya, the Swynnerton plan of land consolidation created individual land holdings during the 1950s.<sup>163</sup> The traditional tribal trust lands of the Maasai (Masai) pastoralists held great potential for agricultural production, and many farmers and progressive Maasai began to settle and to enclose large areas of the land.<sup>164</sup> It was felt that without governmental direction, the nomadic Maasai would be forced to range their herds on only the driest and most marginal lands.<sup>165</sup>

The post-colonial government of Kenya recognized the problems of the Maasai and sought to convert tribal trust land into group ranches.<sup>166</sup> The group ranch system was a compromise between allowing pastoralists to continue to range freely and the

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<sup>158</sup> See AGGREY AYUEN MAJOK & CALVIN W. SCHWABE, DEVELOPMENT AMONG AFRICA'S MIGRATORY PASTORALISTS 111 (1996).

<sup>159</sup> See Farah, *supra* note 155, at 130.

<sup>160</sup> See Lawry, *supra* note 125, at 19.

<sup>161</sup> See *id.*

<sup>162</sup> See *id.*

<sup>163</sup> See Barrows & Roth, *supra* note 115, at 209.

<sup>164</sup> See *id.* at 211.

<sup>165</sup> See *id.* (quoting Simon F.R. Coldham, *Land-Tenure Reform in Kenya: The Limits of Law*, 17 J. MOD. AFR. STUD. 615, 621 (1979)).

<sup>166</sup> See generally AZARYA, *supra* note 129, at 80 (noting that, after independence, the Kenyan government sought to change communal tribal land to individual or group ownership).

government's need to create a system of secure freeholds.<sup>167</sup> This system allowed groups of pastoralists to own large tracts of land for grazing by registering their land together.<sup>168</sup> While the registered land gave the owners exclusive grazing rights on that parcel, the owners would commonly allow neighboring groups to use the land so as not to offend traditional customs of reciprocity.<sup>169</sup>

While there were several problems with the group ranch system, many Maasai accepted the program as a way to protect their lands from ambitious farmers and land speculators.<sup>170</sup> In 1989, however, the Kenyan government reversed its stance and decreed that the program would not be a viable alternative in the future and that all group ranches should be subdivided into individual land holdings.<sup>171</sup> The subdivision of the group ranches into individual land tenures led to the sale of Maasai land to non-Maasai.<sup>172</sup> Further, the inability of the Maasai to practice their traditional conservation practices resulted in overcrowding and environmental deterioration of traditional Maasai land.<sup>173</sup>

Although the group ranch system failed in Kenya, its basic premise is still sound. The group ranch system may be a viable alternative for Eritrean pastoralists. This compromise can be implemented more effectively if the pastoralist groups are allowed a voice in the organizational stages of the ranch program.<sup>174</sup>

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<sup>167</sup> See *id.*

<sup>168</sup> See *id.*

<sup>169</sup> See *id.*

<sup>170</sup> See Lawry, *supra* note 125, at 19. The group ranches, however, did not coincide with traditional cattle management. See Joy K. Asiema & Francis D.P. Situma, *Indigenous Peoples and the Environment: The Case of the Pastoral Maasai of Kenya*, 5 COLO. J. INT'L ENVTL. L. & POL'Y 149, 162 (1994). In addition, the group ranches in Kenya were undermined by the fact that the ranch managers had no traditional legitimacy and that members would invite outsiders to live on the ranches, undercutting the very policy behind converting communal lands into freeholds. See *id.*

<sup>171</sup> See Asiema, *supra* note 170, at 163. The Kenyan government likely terminated the group ranches because it did not want to admit that it failed in its attempt to guide the lives of the Maasai. See *id.*

<sup>172</sup> See *id.* at 164-65.

<sup>173</sup> See *id.* at 165.

<sup>174</sup> See generally *id.* at 162-66 (describing the reasons for the failure of group

Careful planning can help avoid the problems that plagued the Maasai in Kenya.<sup>175</sup> Since all of the land is vested in the Eritrean government and the government has the power to grant usufruct rights over the land, the creation of group ranches are plausible. The ranch system will grant lowland pastoralists protective land rights that will prevent the incursion of farmers on their land. For the program to work, the government needs to take an active role in designing the group ranch system in conjunction with the pastoralists.

#### *D. A Return to Communal Tenure*

The government should explore a third alternative for the pastoralists in Eritrea, the preservation of communal tenure, before any conclusive actions are taken. As many in the international community have become aware of the failed and discredited policies underlying the "Tragedy of the Commons" model, there is a renewed interest in communal land tenure among scholars.<sup>176</sup>

In many situations, communal tenure is the best economic and ecological alternative.<sup>177</sup> Most pastoralists thrive economically in communal tenure systems.<sup>178</sup> Few livestock holdings in Africa exceed one hundred head of cattle.<sup>179</sup> Division of land into individual lease or usufruct holdings in arid areas, such as the Eritrean lowlands, effectively denies many pastoralists access to adequate water and fodder supplies.<sup>180</sup>

Communal land tenure, ecologically, is superior to individual

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ranches in Kenya, including the Maasai's lack of an effective governmental lobby, while noting that group ranches did have one advantage: traditional Maasai grazing lands remained under Maasai control).

<sup>175</sup> See *supra* notes 163-73 and accompanying text.

<sup>176</sup> See generally Lawry, *supra* note 125, at 26-27 (illustrating that converting communal land into individualized freeholds has not solved the problems associated with communal land tenure, while noting that communal land use remains important to pastoral production); see also Runge, *supra* note 115, at 1 (noting that the "Tragedy of the Commons" model is "an erroneous and inaccurate description of many problems of common resource use").

<sup>177</sup> See Lawry, *supra* note 125, at 26.

<sup>178</sup> See *id.* at 19.

<sup>179</sup> See *id.*

<sup>180</sup> See *id.* at 19-20.



land tenure in many situations.<sup>181</sup> Due to the arid conditions of the Eritrean lowlands and the seasonal rain patterns, pastoral herds require large areas in which to seek subsistence.<sup>182</sup> It is often necessary for pastoralists to respond quickly to changes in seasonal rainfall.<sup>183</sup> The transient nature of resources requires a flexible land tenure system.<sup>184</sup> It will be nearly impossible to develop an individual land tenure program that will adequately meet the seasonal needs of lowland pastoralists.<sup>185</sup>

Each of the land systems presented has strengths and weaknesses. The systems reflect different policy goals advocated by the ruling governments. Moreover, each land tenure system has the potential to bring increased stability to Africa if implemented correctly. Eritrea must decide which system is best for its citizens.

## V. Conclusion

The Eritrean Land Proclamation is a bold and decisive program that creates an equitable land tenure system for the majority of Eritreans. The Proclamation, however, does not speak to the land tenure needs of lowland pastoralists. It disregards the multitude of studies and experiences that demonstrate both the value of pastoral activities in arid areas and the difficulties encountered when attempting to settle nomadic groups.<sup>186</sup> The Eritrean government must consider and implement land tenure policies to govern pastoralist lowlanders. This Note sets forth three alternative land tenure systems that should be considered by the Eritrean government. Each system must be judged on its inherent strengths and weaknesses.

First, African nations continue to use the "Tragedy of the Commons" pastoral model as a method of settling pastoralists. While many disavow the fundamental philosophy underlying this

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<sup>181</sup> *See id.*

<sup>182</sup> *See id.* at 19.

<sup>183</sup> *See id.*

<sup>184</sup> *See id.* at 19-20.

<sup>185</sup> *See id.* at 20.

<sup>186</sup> *See Joireman, supra* note 14, at 282.

approach to settling pastoralists, it has found acceptance in African nations seeking to maximize the benefits of individual land tenure. Pastoralists, however, are often unwilling to give up their traditional lifestyle voluntarily. The land occupied by the pastoralists is often better suited for their nomadic lifestyle than for agricultural production.<sup>187</sup>

Second, group ranches offer a viable alternative to the "Tragedy of the Commons" model. This system allows groups to continue their pastoralist lifestyle and remain autonomous. In most cases, however, the group ranch model has difficulty balancing the needs of individuals and in managing assets.<sup>188</sup>

Finally, a policy of protected open range herding should be considered. While this system of communal land ownership does not provide for the development of individual land tenure, it provides greater economic and ecological benefits than other systems. Further, pastoral groups retain their autonomy and are free to continue to live under traditional law and custom without governmental interference. This policy will greatly protect the rights of nomadic pastoralists in Eritrea. The Eritrean government should strongly consider open range herding as a viable policy alternative.

Currently, only speculation can be offered concerning the Eritrean government's policy towards pastoralists. Given the government's amicable relationship with these groups, a program of passive settlement seems likely. The failures of the past have shown that this is not the best policy for the pastoralists or the nation that implements it. Given Eritrea's land and economic resources, a policy of open range herding seems to be the best alternative. One can only hope that the Eritrean government considers all of the information available before deciding on the fate of its forgotten masses.

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<sup>187</sup> See generally *id.* ("Later reconsiderations of pastoralism as a mode of production have posited that, rather than being inferior to agriculture, it is a positive response to an arid environment where agriculture alone would be untenable in supporting the population.").

<sup>188</sup> See Lawry, *supra* note 125, at 19.