

Chapter 2

Land Rights in Ethiopia

2.1 Introduction

Land is the source of all material wealth; it provides us with all our needs to sustain on. It is also a major economic asset from which people and nations get significant profit. In many developing countries, land has been considered as an important economic and social asset where the status and prestige of people is determined. Because of such a high importance given to land, as compared to other properties, the legal protection accorded to land is always strict in nature.

Land is one form of property that is a subject of ownership or other form of use rights. Property is everything that has material or moral value for human beings... and guaranteed and enforced by law.¹ For legal scholars, “property” refers to entitlements to resources protected by formal legal institutions.² Property in the sense of legally protected entitlements comes in a variety of forms. The paradigmatic legal property right would be full title to a parcel of land or an object like a car, real property and personal property (or “chattels”), respectively. But, the law also affords legally enforceable claims to intangible resources such as intellectual property.

Different disciplines define “land” differently, in a manner that suits their objectives. In legal documents, mostly, it is considered as the surface of the earth and any fixtures on it, such as buildings, fence, tree plants, and improvement to the land.

For instance, according to Articles 552–554 of the French Civil Code, ownership of land “involves ownership of what is above and below it.” Unless restricted by statutes, the owner of a land is considered as owning also the minerals inside the

¹ Aubry & Rau 1966. *Droit Civil Francis-Property*-, Translated by the Louisiana State Law Institute West Publishing Co. Vol. II, p. 1.

² Merrill, T. W. & Smith, H. E. 2010. *The Oxford Introductions to U.S. Law: Property*, New York, Oxford University Press, p. 3.

land and the airspace above the land.³ The basic feature of the above rule is that the term “land” signifies not only the surface of the earth, the ground, but also things found beneath the surface and fixtures above, and sometimes the airspace, above the ground. Of course, the details of ownership beneath and above the ground may be limited by different legislations. But fixtures, such as trees and buildings are always considered as part of the land.

Under Ethiopian law, property is either movable or immovable (Article 1126 of the Civil Code).⁴ Land and buildings are considered as immovables (Article 1130 Civil Code). Hence, unlike the French one, where “land” includes “the ground and any fixture on the land”, the Ethiopian Civil Code treats “land” and “buildings” as two separate types of immovables. Whether buildings should be considered as part of the land is not clearly envisaged as its French Counterpart Ethiopian law, of course, follows the French Civil Code, Article 518 which also says “land and building are immovable by their nature.” But, as already shown above, in another section of the law, the French Civil Code declares that ownership of surface of land means ownership of all things above and below the land. In Ethiopia, however, there is no such kind of encompassing provision in the Civil Code. On top of that, today, as envisaged under Article 40(3), (7) of the FDRE Constitution, ownership of land is vested in the state and the people, while ownership of building is given to the individual. It means, the land surface and the building over the land are owned by two separate bodies. On the other hand, unless and until they are separated from the land, trees and crops are considered as part of the land (Article 1133 Civil Code). In other words, “land” signifies the ground and other fixtures to the land such as trees, grass, crops, excepting buildings and other similar erections.

In this chapter, land rights are referring to set of legally guaranteed entitlements or privileges which emanate by being an owner of the land. They may also be referred to as *bundle of right* or attributes of ownership. Ownership has not been defined in the Roman law or the French Civil Code, which is the main source of the Ethiopian Civil Code. The Romans were not concerned with theoretical definitions, and as Johnston, in his book, *Roman Law in Context*, remarked, “The best approach (taken by the Romans) seems to deal with the main attributes of ownership and from that allow the meaning of the term to emerge.”⁵ The attributes of ownership, according to the Roman law, are *usus*—the right to use the thing; *fructus*—the right to collect benefit offered by a thing; *abusus*—the right to dispose of a good either physically (destruction), or from a legal point of view (alienation-transfer gratuitously or for consideration).⁶ In Anglo-American legal system, ownership is best described as bundle of rights, lists of loosely attached and transferable rights.

³ Aubry and Rau, *supra* note 1, p. 182.

⁴ 1960. The Civil Code of Ethiopia. *Negarit Gazeta: Gazette Extraordinary*. Proclamation No. 165/1960. Hereinafter Civil Code.

⁵ Johnston, D. 1999. *Roman Law in Context*, Cambridge, Cambridge University Press, p. 22.

⁶ Munteanu, C. 2005. Historical Remarks on the Legal Notion of Property. *Acta Universitatis Lucian Blaga*, 54, p. 58.

Some of the land rights which emanate from ownership are the right of use and enjoyment, right of collecting benefit by renting and leasing, right to give as mortgage, alienating for consideration such as exchange or sale, and alienating for free such as inheritance and donation.⁷

2.2 Land Ownership Regimes

Before proceeding to the discussion of ownership, it is important to provide an explanation on the nature of land ownership in Ethiopia first. As shall be raised and discussed in different parts of this dissertation, the Ethiopian land is governed under two proclamations and provides two classes of land rights. From the outset one needs to know that land belongs to the common ownership of the Ethiopian people and the state, and hence it is not subject to sale or other means of exchange. For this reason, rural farmers and pastoralists are given a right called “holding right” that provides rights of use and enjoyment, lease/rent, and bequeath (donation or inheritance). Obviously, this right is short of ownership because of the absence of the sole right of selling the land. Similarly, urban residents can get land under lease agreement that guarantees a 99 years use right on the land. Even if the land may be transferred by sale together with the development or without it (bare land only), it is highly restricted which makes it also short of ownership (details are presented under Sects. 2.6.4 and 2.6.5).

Therefore, when it comes to the classifications of the land regimes in Ethiopia, it is not made from pure ownership right perspective, but from the “holding right” perspective.

Honoré, in his seminal article, *Ownership*, conceives ownership as “the greatest interest in a thing which mature systems of law recognize.”⁸ Looking into existing Civil Codes one may find similar expression in the renowned French Civil Code. The Code under Article 544 describes “Ownership” as “the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations.” Similarly, the Ethiopian Civil Code under Article 1204 explains ownership as “the widest right that may be had on a corporeal thing;” and “such right may neither be divided nor restricted except in accordance with the law.” In other words, of all property rights a person has over an object, ownership is the widest and most complete one; and yet, this right may be restricted for public health, safety, security etc. reasons sanctioned by law.

⁷ See for example Honoré, A. M. 1961. Ownership. In: A.G. Guest (ed.) *Oxford Essays in Jurisprudence*. Oxford: Oxford University Press. He provides list eleven attributes (property rights) found in any advanced legal system which may also be called bundle of rights: the right to the possess; the right to use; the right to manage; the right to the income; the right to the capital; the right to security; the right to transmitting; the absence of any term on possession; a duty to prevent harm; and the liability to execution, p. 165–179.

⁸ Ibid., p. 108.

Land may be held in one of the following four ownership regimes: private, communal, state or open access. The physical characteristics of the natural resource, social circumstances, technology change, or population growth dictate one of the above forms of property ownership solution.⁹ The idea is to own some land in one form (e.g. Private, common, state or open access) may be more appropriate perhaps from ensuring economic efficiency, for conservation/management of resource, for avoidance of conflict(ensuring justice) or for other reasons instead of another one.

For instance, to hold grazing land in common may be wise than using it privately (to avoid conflict and ensure justice) or in open access (to conserve the resource). Assume the grazing land in a village is owned by one individual while other villagers have no access or alternative food for their cattle. Obviously, people will feel that the arrangement is unjust and they may resort to violence to get access. As Anthony Scott has noted, "The mere existence of the institution of private property is not sufficient to ensure the efficient management of natural resources; the property must be allocated on a *scale* sufficient to ensure that one management has complete control of the asset."¹⁰ As argued by most property right theorists, the cost of preserving the asset (grazing land) may be higher than the benefit gained from it, and this makes the ownership unworthy.

On the other hand, if the land is open to all, then the result will be the immediate depletion and exhaustion of the resource, in this case the grass. In a word, there is always some kind of rationality behind some form of property ownership arrangement. In the following sub-topics, an attempt is made to discuss the nature of the four types of property regimes mentioned above. Based on the current Federal Democratic Republic of Ethiopia (hereafter FDRE) Rural Land Administration and Use Proclamation (hereafter RLAUP) and the Civil Code, we shall also identify what kind of land falls under which regime in Ethiopia.

2.2.1 Private Ownership

Private ownership is a property arrangement in which full and exclusive rights to decide about the property are given to a single person (natural or artificial) or group of persons. The owner shall have the right to use, possess, receive income from it, or alienate it gratuitously or for consideration. As mentioned earlier, in countries following the Roman law system, the usual way to describe ownership rights is of *usus*, *fructus*, and *abusus*. Modern writers add one important element to these rights: the right to exclude others from using and possessing the property.¹¹

⁹ Stevenson, G. G. 1991. *Common Property Economics: A General Theory and Land Use Applications*, Cambridge, Cambridge University Press, p. 4.

¹⁰ Scott, A. D. 1955. The Fishery: The Objectives of Sole Ownership. *Journal of Political Economy* 63, 116–124, p. 116.

¹¹ Snare, F. 1972. The Concept of Property. *American Philosophical Quarterly*, 9.

The experiences of many countries concerning land show that farming plots, residential land plots, buildings, easements (streets to serve the land property) are owned privately. In western countries, forest land, small lakes, streets and rural roads are also subject to private ownership.

The current governing land legislations in Ethiopia are mainly the FDRE Rural Land Administration and Use (RLAUP) 456/2005 and the Urban Land Lease Proclamation 711/2011, which are in place to govern rural and urban land respectively. Besides, the FDRE Constitution, FDRE Expropriation Proclamation 455/2005, and the Ethiopian Civil Code are relevant. Based on the above review, when one looks at the land ownership in Ethiopia, the ground (surface earth) is not subject to private ownership (see Article 40(3) of FDRE constitution). Land belongs to the state and the people, and is not subject of sale and exchange. This means that it is futile to classify the land paradigms in Ethiopia from pure ownership perspective. Rather, the land right provided, as termed in the RLAUP, is known as “holding right.” It is less of ownership in that the holder lacks the power of sale and exchange¹² (details are given in Sect. 2.6).

Based on the above information, when one looks into the FDRE RLAUP 456/2005, one finds under Article 2(11), “private holdings” referring to private farming plots given to peasant farmers, pastoralists and semi-pastoralists. It is not clear about the private plots to be given to pastoralists, though. But, the assumption is that the plots may be those which the pastoralists will use for settlement or housing, rather than for grazing, which is communal in nature. Private land plots that are provided to peasants in the highlands are used for farming and housing. In urban area, land that is acquired through lease or government grant is considered as a private possession.

2.2.2 Communal Property

As opposed to private ownership, communal ownership is a property right allocation made in the interest of group of users. Here, there is no single individual in a privileged position to control and have command over all of the resources. In a system of communal property, rules governing access to and control of material resources are organized on the basis that each resource is, in principle, available for the use of every member alike. As noted by Clark and Kohler, writers on property

¹² FDRE Rural Land Administration and Land Use Proclamation, Proclamation No. 456/2005. *Negarit Gazeta*. Year 11, No. 44. (hereinafter FDRE RLAUP) Article 2(4) defines “holding right” as “the right of any peasant farmer, semi-pastoralist and pastoralist... to use rural land for purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land... by his labour or capital and to sale, exchange and bequeath same”.

law, “The defining characteristic of communal property is that every member of the community has the right not to be excluded from the resource.”¹³ In principle, the needs and wants of every person are considered, and when allocative decisions are made they are made on a basis that is in some sense fair to all.¹⁴

The most usual types of properties owned in common are grazing lands, forest lands, fisheries, irrigation systems, underground water, water wells, village roads, neighborhood streets, and so on.

The common feature of such properties is that they are not destined to an exclusive use of an individual person; every member of the community wants them equally. The other feature is that most of them are exhaustible, if left to anybody as open or free access. Even in case of allocation of such properties to specific part of society, the resources may be quickly depleted and individual members may not be encouraged to conserve unless the use and enjoyment is regulated by an internal sets of rules.

This is because people tend to care less for what is common as compared to what is their own. As modern economists argue, when the incentive to care and conserve is less than the cost of so doing, people will not go for conservation. One such modern economic theorist is Harold Demsetz, who argues that people give less care to what is common property, since the cost of taking care is higher than the benefit gained. The primary function of private property becomes a guiding incentive to achieve a greater “internalization of externalities.”¹⁵ In this way, individuals are made to bear the costs and benefits of their own activities, and to absorb the costs of inflicting spillover effects upon others.

According to Demsetz, if land is held in common, it is likely each user will not feel the full impact, in terms of the benefits but particularly the costs of his use. When, for example, many individuals use a forest to produce wood, no one has an incentive to increase the forest population (e.g. by replanting when a tree is cut), since the benefits of his doing so will redound to others as well as himself. In other words, while he internalizes (suffers from or is burdened with) the costs of planting trees, it will be others who will reap the benefit. If this is the case, any rational person will not invest his money and time for the care of the forest land, unless he is sure that the benefit of his doing is by far greater than the cost he incurred; or at least that he is sure that others will also do the same.

In the absence of such assurance, the common property will be depleted quickly and will face what Hardin called “The Tragedy of the Commons”, a situation where common or open access resources exhausted quickly by unregulated

¹³ Clarke, A. & Kohler, P. 2005. *Property Law: Commentary and Materials*, Cambridge, Cambridge University Press, p. 36.

¹⁴ Waldron, J. 1988. *The Right to Private Property*, Oxford, clarendon press, p. 41.

¹⁵ Demsetz, H. 1967. Toward a Theory of Property Rights. *The American Economic Review*, 57, 347–359, p. 348.

overexploitation.¹⁶ For this reason privatizing the land resource or setting internal rules are usually come up as solutions to the problem.

The difference between private ownership and communal ownership is that while in the former case the owner can sell his property, in the latter case, owner members may not be able to transfer their right by way of sale, especially to non-members.

Furthermore, in a well-functioning communal property situation, the users have certain rights and duties among themselves with respect to possession, use, and enjoyment of benefits from the resource. For example, in a regulated irrigation system, all participants have the right to divert water for specific time; they also have the correlate duty of not exceeding their assigned rate so as not to interfere with others' water flow. Although by and large the internal rules governing the use of the common property are prepared by the members themselves, their enforcement or implementation may need state intervention.¹⁷

In Ethiopia according to Article 2(12) of the FDRE RLAUP 456/2005, "communal holding" is "rural land which is given by the government to local residents for common grazing, forestry and other social services." This list is just an illustrative one and what are given are only examples. The government may allocate additional land as communal ones, if the local community needs it for some social or economic activities. Thus, land necessary for religious ceremonies, cultural festivities, or social gatherings may be permanently allocated to the village community in common. Besides grazing and forest land, one may also add irrigation systems (although the irrigable land may be private holding), water wells (especially in pastoralist areas), small rivers, hills,¹⁸ etc. to the list of communal lands.

2.2.3 State Ownership of Land

To describe "state ownership" of land, terms like "public ownership", "collective ownership" or "government ownership" are also employed. Under the 1960 Ethiopian Civil Code, the term "public domain" is used for the same purpose. In any case, in this discussion, they shall be used interchangeably as the need arises.

¹⁶ Hardin, G. 1968. The Tragedy of the Commons. *Science*, 162, 1243–1248. The concept has further been used to explain overexploitation in fisheries, overgrazing, air and water pollution, abuse of public lands, population problems, extinction of species, fuel-wood depletion, misallocation in oil and natural gas extraction, groundwater depletion, wildlife decline, and other problems of resource misallocation.

¹⁷ For a better understanding on the nature of a well functioning communal property see generally Ostrom, E. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*, Cambridge, Cambridge University Press.

¹⁸ For example in the past 2 years the government has been transferring holding right of hills and small mountains to the local people in order the hills to be forested and protected.

In order to give additional explanation on the subject, it is proper to see the usage of the terms in some literature and legislations. The terms “state or government ownership” seem to denote the ownership of land by the political body, a central or municipal level, while “public or collective ownership” seems to signify the ownership of land by all the people or by the local community. It does not mean, however, that this definition would be fully acceptable; one has to rely on the legislation of the respective country to decide the actual meanings. Writers on property and land ownership, though, use the above terms interchangeably.¹⁹ Equally, others give different meanings. For example, the Chinese Land Law treats “collective ownership” and “state ownership” differently. Collective is understood as a village land committee, and farmers are forced to lease farm lands from these committees:

According to the 1982 Constitution...the structure of land ownership seems relatively clear that, in principle, natural resources and urban land are state-owned, while suburban and rural lands are collectively owned.²⁰

In any case, what is important is to know that material resources are answerable to the needs and purposes of society as a whole, irrespective of the fact that the decision maker is the central government, a special national committee, or a village committee. The assumption is that even though it is the state which owns the land, the objective is to use it in the best interest of society in general. For example, in many countries²¹ urban land owned by city municipalities or local governments is used to benefit society, such as the provision for low cost housing.

Practically, there are no real differences between the dichotomy of the “state or government” on one hand, and the “collective or public” ownership of land on the other. My argument is that since the government, as a political body, puts itself as the representative of the people, the power of administration and allocation of land property is, most of the time, vested in the hands of the state, and hence the state becomes the sole decision maker. If, for example, we look into the land ownership

¹⁹ For instance Philip Kivell, in his writing on the English and other European countries land ownership by central or municipal governments, uses the term “public ownership” of land to replace “state ownership” of land (see generally Kivell, P. 1993. *Land and the City: Patterns and processes of urban change*, London, Routledge.; Kivell, P. & McKay 1988. Public Ownership of Urban Land. *Transactions of the Institute of British Geographers, New Series*, 13, 165–178.). Similarly Jeremy Waldron, fuses both “collective ownership” and “state ownership” as giving the same meaning when he comments: “sometimes, collective property is presented as special type of private ownership with the state as the equivalent of a private owner” (Waldron, *supra* note 14, p. 40.). Further in her critical work on *Property*, Margaret Davies, employed “government” and “public ownership” equivalently (Davies, M. 2007. *Property: meanings, histories, theories*, New York, Routledge-Cavendish, p. 64).

²⁰ Ho, P. 2005. *Institutions in Transition: Land Ownership, Property Rights, and Social Conflict in China*, New York, Oxford University Press, p. 28.

²¹ See generally Kivell: 1988, 1992, *supra* note 19; Bourassa, S. C. & Hong, Y.-H. 2003. *Leasing Public Land: International experiences*, Cambridge, Massachusetts Lincoln Institute of Public policy. The writers raise many European, Asian and Australian cities where in urban land is owned by the city municipalities or local governments.

system in former socialist countries, land was owned by the collective or the public, but the state was the real decision maker; citizens had use right only.²² In Ethiopia we find the same approach in reading Articles 40(3) and 89(5) of the FDRE Constitution, where the “state” and the “people” are considered as two joint owners of land and natural resources, but the state is represented to administer it on behalf of the people.

The FDRE RLAUP identifies, under Article 2(13), “forestlands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands,” as state holding lands. In this case, “other rural lands” means all land which is not held privately or communally. State land in Ethiopia means, land held by Federal or Regional government or by city municipalities. Rural land held by Regional governments is administered by *woredas*, while urban land is administered by respective city/town administrations. This means *woredas* and city administrations have the power to give and take land. The Federal government holds vast tracts of land found in lowland rural areas of the country destined to be transferred for large-scale agricultural investments.

All urban land which is not occupied by private lessees is held by the government/municipality. Although it is not mentioned in the current lease proclamation, one can assume that all city streets, sewerage systems, parks, highways, and empty spaces must belong to the state.

One question that may be raised is that what can be done if the new land proclamations (urban and rural) fail to address all the issues? Definitely, we go to the Civil Code. It must be stressed that the land legislations must be considered as supplements or modifications to the Civil Code. Further, since in no where the Civil Code is clearly abrogated, as far as its provisions are not contrary to the existing land legislations, it must continue its function. The concept of public property of urban areas, both in the Civil Code and the current land legislations is basically similar. Based on this argument, we may apply the Civil Code provisions on “public domain” to determine the situation of public/state lands in urban areas.²³

The Ethiopian Civil Code under Articles 1444–1459 presents the nature and status of public lands in urban areas. To see the details, all [urban] lands owned by the state or administrative bodies are to be treated as “private lands” or as “public domains” (Article 1444). Although the provision lacks clarity, it must be understood as follows. All land owned by the state (centrally or through its various branches) is treated either as “private” or as “public.” “Private” means the state organ that owns (holds in today’s situation) land will have the right to exclude others from access and use. For example, state business enterprises (such as, banks,

²² See generally Wegren, S. K. (ed.)1998. Land Reform in the Former Soviet Union and Eastern Europe, London, Routledge. For example it is said that in Ukraine, like any other place in the then Soviet Union, in theory, land farmed by agricultural collectives was owned by the collective. In reality, because Ukrainian farms were subject to the USSR land code and the Model Charter for collective farms, land was state-owned and workers on these farms assumed the same role as wage labor in industrial enterprises, p. 49.

²³ See Civil Code, Articles 1444–1459.

insurances, transport companies, telecom companies or energy companies) or administrative bodies (such as ministry of agriculture, ministry of finance) all happen to hold land and buildings. There is no reason that they should make their property open to all, and such land holdings will be treated as private holdings and governed by the civil code part that governs private property.

On the other hand, there are other types of state lands whose use and enjoyment are put at a “public disposal”, or by their nature they are “destined to a public service”. These are the type of land or buildings that are termed as “public domain,” (Article 1445) and the law tries to define their character. Since the definition of their character is not enough to identify them, the Code, under Article 1446, provides an example of such properties: roads, streets, canals, railways; seashores, port installations and lighthouse; buildings specially adapted for public services such as fortifications and churches. Thus, roads, streets, railways, canals are examples of properties put at public disposal.

2.3 Land Tenure and Ownership in Ethiopia

Under the general label “land tenure,” we are concerned with the complex relationships that exist between categories of individuals and groups in reference to land and other natural resources. These relationships can be analyzed in terms of sets of rights and obligations held by these categories of people with regard to the acquisition, exploitation, preservation, and transfer of land and related resources.²⁴ A recent document published by United Nations Food and Agriculture Organization (FAO) defines land tenure as a “relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land.”²⁵ Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.²⁶

For a lawyer, as discussed above, what property right implicates is an entitlement that is enforced by law. Yet, tenure or property rights are wider than those written down in law books and enforced by law enforcements. Land tenure also encompasses those property rights recognized and enforced under customary systems. Customary land rights typically include communal grazing lands, private agricultural and residential houses. These rights are evolved indigenously within the local people. These traditional societies or groups have developed various ways of

²⁴ Clawson, M. 1968. Land. In: Sills, D. L. (ed.) *International Encyclopedia of the Social Sciences*. USA: The Macmillan Company & The Free Press. Id., p. 562.

²⁵ FAO 2002. *Land Tenure and Rural Development*, Rome, United Nations Food and Agriculture Organization, p. 7.

²⁶ Ibid.

controlling land rights in different situations. These cover how land is managed in relation to members of communities; how land rights can be transferred within the group; and how land rights can be transferred to other persons outside the group.²⁷

In Ethiopia, in Afar and Somalie Regions customary land tenure is still operational. Most of the time, community leaders and clan chiefs are at the center of the allocation and enforcement of rights.²⁸ For generations, land rights in Ethiopia were governed and enforced by customary system. It was only after the 1960s and 1970s, that some legal measurements that changed the old system were introduced, especially with regard to rural land. In this section, an attempt is made to discuss the three types of tenure systems in Ethiopia, based on the historical, legal and political ideologies of the periods.

2.4 Tenure Systems in Pre-1975 Ethiopia

Pre-1975 Ethiopia is generally characterized as a feudal state, where most of the land was controlled by the state and feudal lords, and in which citizens were using land under different tenure arrangements. Such tenure arrangements were customary by nature and numerous in numbers. Before 1975, there were several types of land tenure systems which differed from province to province. For the sake of convenience and because of historical factors, the land tenures will be classified as northern and southern following the geography of the country. But, before that, let us see the powers and prerogatives of rulers and emperors of the time.

2.4.1 Land and Imperial Prerogatives

As quoted in Pankhurst, Job Ludolf, a seventeenth century German historian, is said to summarize the power of Ethiopian kings as follows: “The power of the

²⁷ Arko-Adjei, A. 2011. *Adapting Land Administration to the Institutional Framework of Customary Tenure: The case of Peri-urban Ghana*, Amsterdam, TUDelft, p. 20.

²⁸ See generally, Kabtamu-Niguse. 2012. *Land Tenure and Tenure Security Among Somali Pastoralists: Within the Context of Dual Tenure System*. LL.M thesis, Bahir Dar University, School of Law. As quoted in Kabtamu’s thesis, the government land policy of the Somalie Regional State confirms the complete control of land by traditional chiefs rather than by government organs: “Because of the fact that all rural land in the region is administered by clan leaders under the traditional land administration system, government institutions, investors and others who are in need of rural land should negotiate with clan leaders who determine the amount of compensation. Thus, the willingness of clan leaders are necessary as both the access to land and the amounts of compensations are determined by the clan leaders and not by government agency,” p. 128.

Abyssinian Kings is absolute, as well in Ecclesiastical as Civil Affairs.”²⁹ Other travelers and writers also testified that Ethiopian monarchs had been absolute over the people and their objects.³⁰ Concerning land, the general claim, in the feudalistic Ethiopia, was that all land belonged to the king. Thus, all land rights emanated from the benevolent gift of the king to his subjects and the Church. The ideological background behind such claim was that land was acquired through conquest of local tribes by the Ethiopian kings to whom the land of the conquered was transferred in ownership as spoil of war. The state demanded an obligation of tribute from all land (except those which belonged to the church), as tax obligation was attached to land rather than a person.³¹ The idea of royal ownership of all land in Ethiopia was documented by royal chroniclers of different kings.³² For example, upon the purchase of land by king Lalibela (1200–1250) to construct his well known rock hewn churches in Roha, his hagiographer asked rhetorically to show the traditional power of the monarch in the distribution of lands: “who would have forbidden the king if he had decided to take the land [without purchase]?”³³ In his famous conflict with the monastic leaders, Emperor Amda-Sion (1314–1344) is said to have demanded their absolute obedience to him because they lived ‘on the land of the king’. His son and successor, Sayfe-Arad (1344–72), is also said to have made the claim that ‘God gave (all the) land to me’.³⁴ A more practical example of this royal prerogative over land is furnished by the abundant records of land grants made by Ethiopian kings in their name to various churches and monasteries.³⁵

²⁹ Pankhurst, R. 1966. *State and Land in Ethiopian History*, Addis Ababa, The Institute of Ethiopian Studies and the Faculty of Law, Haile Sellasie I University, p. 1.

³⁰ During his stay in Ethiopia in the 16th century, the Portuguese priest, Francisco Alvarez, testifies that the power of the king was absolute (Alvarez, F. 1970 (Originally translated by John Stanley in 1881). *Narrative of the Portuguese Embassy to Abyssinia During the Years 1520–1527*, London, The Hakluyt Society.). A 100 years latter Almeida (a Jesuit priest) said “the Emperor confiscates and grants all the lands as and to whom he chooses.” (See Pankhurst: 1966 (Ibid), p. 121.) James Bruce a 17th century Scottish traveler to Ethiopia has also declared that “all the land is the king’s; he gives to whom he pleases during pleasure and resumes it when it is his will; but the crown makes no violent use of its power in that respect” (Paul, J. C. N. & Clapham, C. 1972. *Ethiopian Constitutional Development I, a Source Book*, Addis Ababa, Haile Sellasie I University and Oxford University Press, p. 290.). An Ethiopian writer and Minister during the Imperial period also noted: “the Ethiopian Emperor has an uncontested and boundless power over the territories he rules. He is both the temporal and spiritual ruler” (Id., p. 58).

³¹ Ras Alula and Ras Gugissa, two famous governors of different part of the country, have once said to be declared that “Man is free, land tributary”.

³² Generally see Pankhurst: 1966, supra note 29.

³³ Taddesse-Tamrat 1972. *Church and State in Ethiopia, 1270–1527*, Oxford, Clarendon Press, p. 98.

³⁴ Ibid.

³⁵ See for example Huntingford, G. W. B. 1965. *The Land Charters of Northern Ethiopia*, Addis Ababa, Institute of Ethiopian Studies and the Faculty of Law, Haile Sellasie I University.; Crummey, D. 2000. *Land and Society in the Christian Kingdom of Ethiopia: From the Thirteenth to the Twentieth Century*, USA, University of Illinois Press.

2.4.2 Land Tenure System in Northern Ethiopia

The northern part of Ethiopia is the cradle of Ethiopian civilization. It is believed that after the establishment of the state at the northern city of Axum, around 100 B.C, it slowly expanded southward until it took its present shape during the late nineteenth century.³⁶ As shown above, although all land was considered property of the emperors, it was distributed to different users on different conditions. Hence, the land tenure system in the northern part of feudalistic Ethiopia may generally be classified as private holdings, church lands and state lands.

2.4.2.1 Private Holdings (*Gult* vs. *Rist* Land)

For centuries, Ethiopian rulers had been distributing land to the nobility and peasants in the form of *gult* and *rist* rights respectively. The natures of *gult* and *rist* rights are fully addressed by the definition that Hoben, an anthropologist, gives to the terms in his widely read book.³⁷ Hoben writes that *gult* rights entail “fief-holding rights” whereas *rist* rights confer “land-use rights.”³⁸ Other writers,³⁹ as well, agree that *gult* (fief) rights confer the ruling class (*bale-gult*) rights of collecting tribute, judicial and administrative powers as well as military mobilization over the people occupying the land. And those people who actually occupy and farm the land had a *rist* (use) right to the land.

The recorded history about *gult* shows that it started at least during the fourteenth century.⁴⁰ A lord who is provided a vast tract of land (3–4 square miles according to Hoben) as a *gult* will administer the people occupying it as holders of *rist*, collect tribute from them, adjudicate cases arising among them, and use the able bodies as soldiers during war times. He would retain part of the tribute as a fee for his services and fully use fees and fines he imposed in his power as a judge. However, the *gult* holder had no rights of produce over the land although he may cultivate part of the land for his private purpose using free local labor.

Referring to a 1917 book, *Handbook of Abyssinia*, written by an anonymous writer about the *gult* system in *Tigray*, the Northern part of Ethiopia, the historian Shiferaw Bekele describes the job description of *gult*-holder as follows:

³⁶ See for example Marcus, H. G. 1994. *A History of Ethiopia*, Los Angeles, University of California Press, pp. 10–11, it is said that the drive southward was characterized by the implantation of military colonies followed by feudal like social order, and priests and monks acted as instrument of pacification and acculturation.

³⁷ Hoben, A. 1973. *Land Tenure Among the Amhara of Ethiopia: The Dynamics of Cognatic Descent* Chicago, University of Chicago Press.

³⁸ Id., p. 5.

³⁹ See for example Markakis, J. 2006. *Ethiopia: Anatomy of a Traditional Polity*, Addis Ababa, Shama Books.; and Crummey: 2000, supra note 35.

⁴⁰ Taddesse-Tamrat, supra note 33, p. 98.

The gult-holder, assisted by the local official (shum-adi), fixes the proportion of the state due which each adi (parish) must pay; he also acts as a court of appeal in civil and criminal matters from judgments of the shum-adi; he is responsible for peace and order in his gult and is, of course, the military chief of the district. In return for this he (a) has his land cultivated free of charge by the ristenyatat (rist holders); (b) receives all of the fines which he may impose in his judicial capacity; keeps a part, generally one-tenth, of the tribute collected by him; and (c) receives certain presents, example a sheep from each parish at Easter.⁴¹

Since *gult* was a kind of public office instead of land right, as a matter of principle, it was not transferable by inheritance or by sale. Of course, when the ruler/emperor wishes, the office might be passed to descendants. As exception, however, the historian Donald Crummey argues otherwise, based on his study of the seventeenth century Gonderine era. Without abandoning the view that *gult* was essentially a tribute right, Crummey argues that *gult* rights were transferred by sale and inheritance without necessarily involving the state.⁴² This is, however, an exception to the Ethiopian history of property right.

Rist rights, in contrast to *gult* rights, were land-use rights. In principle, they were hereditary and could be held by lords and peasants alike. *Rist* rights were land use rights claimed by a member of a kin from members of his/her generations of same ancestor. As described by Hoben, a single estate of *gult* land, comprising a few square miles, included within its boundaries strip fields, held as *rist* by scores or even hundreds of farmers. The *gult* holder might also hold some fields as *rist* within his estate of *gult* land.⁴³

For all practical purposes, *rist* land was like private ownership except the holder lacked the right to sell the land. The peasant could be able to use, rent, and inherit the land to family members. In exchange, peasants were obliged to make payment for variety land related taxes. Selling the land to non-family members was prohibited. Land was then transferred in the form of inheritance from family to children for generations, which over time reduced the size of the farm lands.

In north Ethiopia, the *rist* land may have originated with ancestral first holders through government grant for a loyal service, clearance of forest, or perhaps purchase. Then, the land remained within the family forever and descendants would get a share of it irrespective of their presence or absence in the area. This land was held communally by the lineage and was not subject to sale and alienation. It was a common custom in many places that a person wishing to sell his share must transfer it to one of the lineage members; outsiders were not allowed to buy the land. In the north, thanks to this kind of land-holding system, a peasant could claim a plot of land as long as he could trace his descent. Tenancy in this part of the country was very minimal compared to the southern part. Some argue that the use-right was secured in the sense that political authorities, including the Emperor, or landlords

⁴¹ Shiferaw-Bekele 1995. The Evolution of Land Tenure in the Imperial Era. In: Shiferaw, B. (ed.) *An Economic History of Ethiopia: The Imperial Era 1941–1974*. Dakar: CODESRIA, p. 97.

⁴² See generally Crummey: 2000, *supra* note 35.

⁴³ Hoben, *supra* note 37, p. 5.

refrained from interventions. As a result, “there was less tenure insecurity or fear of being evicted from the *rist* land.”⁴⁴ The other character of *rist* in the north was that the land became highly fragmented because of the ad infinitum division of family land for many generations. Land disputes related to *rist* land claims were rampant in that they constituted 45 % of civil cases in court.⁴⁵

The obligations of the *rist* holders were mainly two. The first was *giber* (land tax), which mostly amounted to one fifth of the produce or some form of fixed obligation delivered in kind that would be shared between the local *gult*-holder and the central state; and second, *asrat* (tithe) in which one-tenth of all crops grown had to be paid to the state.⁴⁶ These are the two known legal obligations of the peasants although there were other informal obligations claimed by the nobility.⁴⁷ According to the historian Bahru Zewde, the peasant’s “control over his produce and labor time, was limited by the claims of the nobility, both lay and clerical.”⁴⁸ The peasant was forced “to undertake *courvée* (forced labor) such as farming, grinding corn, and building houses and fences that claimed up to one-third of his time.”⁴⁹ The *rist* holder or the peasant was also known as *gabbar* (which comes from the root word *gibir*, tax/tribute) which means tribute/tax payer.

2.4.2.2 Government Land

In the socio-political system of the time, institutions did not have any mechanism of collecting tributes in kind or cash and redistributing them to their staff in turn. What was done was to parcel out the land and give it to the individuals who would keep the institution going.⁵⁰ As we shall discuss below, land was distributed to soldiers, priests, local administrators, judges, and state servants at various levels as remuneration for their service throughout the country. Modern state machinery with salaried soldiers and civil servants is of recent origin; it came after the Second World War. Therefore, land owned by the government was distributed to different people on the condition of serving the state at different levels. Such land might be reverted to the state in the event of non fulfillment of the obligation by the holder of the land.

⁴⁴ Clapham, C. 1988. *Transformation and Continuity in Revolutionary Ethiopia*, Cambridge, Cambridge University Press.

⁴⁵ Ministry-of-Information 1968. *Yemeret Yizota be Hibretesebawit Ethiopia (Land Possession in the Republic of Ethiopia)*, Addis Ababa, p. 51.

⁴⁶ Hoben, *supra* note 37, p. 77.

⁴⁷ For instance Gebre-Wold-Ingida work, *infra* note 52, p. 306, listed down 24 types of duties paid or carried out by the peasant to the state or local authorities. Some of those duties had been abolished during the early 21st century.

⁴⁸ Bahru-Zewde 1991. *A History of Modern Ethiopia, 1855–1974*, Addis Ababa, Addis Ababa University Press, p. 14.

⁴⁹ *Id.*, p. 15.

⁵⁰ Shiferaw-Bekele, *supra* note 41, p. 94.

Shiferaw Bekele⁵¹ argues that the whole land tenure arrangement was designed on some kind of implicit condition. Peasants were obliged to pay tax and to render manual services to the local gentry in exchange for the land rights they received. A peasant who failed to pay tax would lose his land. Church land had been distributed among members of the clergy and lay people on the condition that they would serve the church in different capacities, and failure to fulfill these obligations would cause the forfeiture of the land rights. Government land had also been distributed among different people on condition that they would continue to serve the state. The grand design in the whole property arrangement was that land was serving as a means to run the state functionary. In the old days since gold and silver was not found in abundance,⁵² the government had heavily relied on the land under its control to run the state.⁵³ This is done in two ways, by giving land in lieu of salary to those who directly serve the state and by collecting tax tributes in kind from those who farm the land, which it may use for different purposes.

Generally speaking, state land is one which is categorized neither as private *rist* land nor church land. The two Ethiopian writers on traditional land tenure, Mahteme-Sellassie⁵⁴ and Gebre-Wold-Ingida Work,⁵⁵ provided us with various types of state land tenure. The list is long but, here, we reproduce few of them in order to show its nature. As stated above, land was provided to different people based on the service they rendered to the state and the names given to the land rights correlated to the obligations attached to them.

a. Melkagna Rist/riste-gult/iso-gult

According to this system, *rist* land was given to the *malkagna* or *balabat*, local gentry, because he cleared the forest and started to cultivate it. In other situations, a *balabat* who fought local tribes together with the king and brought about a lot of land to the state was given a *rist* as a reward, which should remain in his generation permanently, a semi-freehold right. In addition, such a person was also given a larger area as his *gult*. It means, out of the vast area of land given to him as his *gult* land, he also got some land as his *rist* land. Hence, the *rist-gult* holder would have the right to the whole produce from his land, and also a right to claim a third as tribute and a tenth (as tithe) from those who cultivate on the rest of his *gult* land.

b. Maderia Land

Maderia land was land granted for life, mainly, to government officials, war veterans, and other patriots in lieu of a pension or salary, but the state possessed a

⁵¹ Id., p. 94–96.

⁵² Gebre-Wold-Ingida, W. 1962. Ethiopia's Traditional System of Land Tenure and Taxation. *Ethiopia Observer*, 5, pp. 302–339.

⁵³ Shiferaw, *supra* note 41.

⁵⁴ Gebre Wold Engida, W., *supra* note 52.

⁵⁵ Mahteme-Sellassie, W. M. 1957. The Land System of Ethiopia. *Ethiopia Observer*, 1.; Mahteme-Sellassie, W. M. 1970. *Zekre Neger*, Addis Ababa, 2nd ed., pp. 107–119.

reversionary right over these land grants. In other words, it was temporarily given to government civil servants who were assigned to work in some locality in lieu of salary and it was returned to the state or given out to others when the civil servant was transferred or sometimes dismissed from his position.

c. Ginde-Bel Land

Ginde-bel Land is land given to persons who maintain government works of various types, such as *ye-zemach meret*, land belonged to soldiery, *beklo kelabi meret*, land given to those who look after government mules and horses, *dingay felach meret*, land given to those who work in the production of quarry for the construction of palaces, *medf chagn meret*, land given to those who carry and transport guns and cannons to battle front, *dinkuan chagn meret*, land given to those who carry and transport imperial tents, *atkilt tekay meret*, land given to those who plant trees and others in the compound of the royal palace, *postegna meret*, land belonging to those who transport mails and posts. These people were free from payment of land tax, but responsible for the *asrat* (tithe) one. The idea is that land was given for their services to the state and that they would be allowed to own it as far as they continue providing the services.

d. Were-genu, Balderas meret

Were-genu is land used for the raising of government cattle. The persons looking after such livestock were allowed to have *maderia* land of their own. In other words, the *Were-genu* land is dedicated to the feeding and raising of cattle and production of butter, both for the consumption of the royal palace. Similarly, *Balderas meret* is land held by peasants and reserved for the raising of government horses and mules.

e. Ganne-geb/maad-bet meret

Gann is a large container of Ethiopian local beer made of clay and *maad-bet* means kitchen, indicating that this type of land is related to the land selected for the production of food to the imperial palace. Since it was a custom for the monarchs to throw (hold) a big traditional feast (*gebir*) now and then, the palace needed a huge amount of food, either produced on such land or collected in the form of tax. Soldiers or peasants who worked on these lands were expected to supply the royal household with grains grinded once every year.

2.4.2.3 Church Land

The Ethiopian Orthodox Church had been the biggest beneficiary of state land grant since its establishment in the early fourth century at Axum (Ethiopian capital from 1st BC–8th AD). There is certain amount of evidence to suggest that the Cathedral of the Saint Mary at Axum, the monasteries of Abba Garima, and Debre Damo and

several other religious establishments received grants of land at this time from the state.⁵⁶ The traditional practice was for the sovereign to endow cathedrals, churches and monasteries with land as well as to give land to the ecclesiastics in attendance upon them.⁵⁷ The historical records also show that such grants continued well up to the 21st century. Until the coming of the revolution in 1974, the church was said to be controlling one third of the land in the country.

This generous benefaction of the state was later on incorporated into the *Fitha Negest* (Law of the Kings), which in Ethiopian legal history, was considered as the first written legal document.⁵⁸ Concerning land grants and the waiver of tribute/land tax, Section 40, No. 1540 cum. 1541 of the *Fitha Negest* reads as follows:

Let the king give honor to the order of the clergy, as did Constantine the Elect, faithful and righteous king; and as did others who followed him. Let the king be generous with his wealth. Let he give to each of them according to their ranks. First of all, the king shall give presents to the bishops; then to the priests, next to the deacons, and then to those who are below them. He shall exempt them from tributes, presents, and the other favors to be paid to the rulers. Let him assign something to the churches for the maintenance of the widows, the orphans and the poor, so that they may entreat God to reaffirm the true faith with the benefit in the Holy Trinity...⁵⁹

Church lands were thus the most privileged since they were free from payments of tributes and land taxes.⁶⁰ This doesn't mean, however, that the cultivators of the land would be exempted from payment of land tax; on the contrary, they were equally responsible like any other peasant. This means, tax and tributes collected from the person who cultivated the land would be going to the church coffer instead of that of the government. In this way, churches were expected to support themselves.

Usually, the land given to the churches and monasteries, as *gult* land, was vast⁶¹ and the church was not expected to cultivate it. Rather, the church land was

⁵⁶ Pankhurst: 1966, supra note 29, p. 22.

⁵⁷ Ibid.

⁵⁸ The *Fitha Negest* (Law of the Kings) is a sophisticated compilation of legal prescriptions concerning both religious and secular matters written in approximately the 13th century in Egypt as a guide to Christian population living within the Moslem society. Originally written in Arabic, and incorporating laws from Old and New testament, Roman law, and some Moslem principles and the proceedings of the early councils of Nicaea and Antioch, it is believed that it was translated to *Geez* (official state and church language of ancient Ethiopia) in the 15th century, during the reign of Emperor *Zera Yaqob* (1434–1468).

⁵⁹ *Fitha Negest* (Amharic and Geez Version). Addis Ababa: Tesfa-Gebre-Sellassie Printing Press. 44: 1540–1541, p. 380.

⁶⁰ Of course, this right was revoked in 1942 by Decree for the Administration of all Church Lands (Decree No. 2 of 1942), which ordered that church lands should pay tax (to the government) at the same rate as secular lands. See the full text in Mahteme-Sellassie: 1957, supra note 55, pp. 300, 301.

⁶¹ See for example, Crummey, D. & Shumet-Sishagne 1991. Land Tenure and the Social Accumulation of Wealth in Eighteenth-Century Ethiopia: Evidence from the Qwesqam Land Register. *The International Journal of African Historical Studies*, 24, 241–258, p. 247, where it is mentioned that Emperor Iyasu II (1730–1755) and Etege Mentewab, the dowager empress, granted

distributed among the people who served it. These people could be from among the clergy or lay men who supported and served the church in different capacities. Just like the peasant paid his tax to the government, they paid their taxes to be used by the church. The general name used for such type of tenure arrangement was *Samon* Land. Such land use was, however, as emphasized by Shiferaw above, conditional in that they had to continue to serve the church by themselves or through proxy. In most cases, priestly families had to see that one of their children became a priest. As Alvarez, the sixteenth century Portuguese traveler to Ethiopia, observed: “the sons of the priests are for most part priests...”⁶² This fact has survived even in modern history, as summarized by Markakis as follows:

There is a tendency among the clergy to preserve continuity and privilege within the family by passing on the priestly office from one generation to the next. A priest family will normally train one of its sons to enter the service of the church. Since the church provides traditional education, it is not difficult to get it. In this manner, the family preserves its rights over church land. Even if a family does not produce a priest from among its members, it seldom surrenders the land it holds under *Samon* rights; it simply arranges for a priest to discharge its obligations to the church, or may even pay a certain amount regularly to the administrator of the church in lieu of services.⁶³

Concerning the proxy service, Shiferaw, in his study of land grants of five big churches in Addis Ababa, discussed some interesting facts: that six of the holders of *Samon* land, provided to the church of *Enteto Mariam* were Moslems.⁶⁴ This means that although the original holders of the land might be Christians and probably priests, their descendants had changed their faith to Islam, and have continued to maintain the land by fulfilling their obligation to the church through proxy services.

2.4.3 Land Tenure System in Southern Ethiopia

The southern, south eastern and south western provinces of Ethiopia were brought under Emperor Menelik's rule during the last third of the nineteenth century, above all between 1875 and 1889,⁶⁵ and most land of the southern people was expropriated/confiscated and alienated to northerners. In areas where the people accepted Menelik's rule voluntarily, traditional chiefs were allowed to retain their position

(Footnote 61 continued)

to the Quesquam church in Gonder a sum of 755 *gashas* (1 *gasha* is 40 ha) of land to be distributed among 260 *debteras* (church scribes).

⁶² Alvarez, *supra* note 30, p. 57.

⁶³ Markakis, *supra* note 39, p. 123.

⁶⁴ Shiferaw, *supra* note 41, pp. 93, 94.

⁶⁵ Pankhurst: 1966, *supra* note 29, p. 136. These territories were, of course, under Ethiopian rule up to the 15th century. Then after, because of civil war and expansion of the Oromo people from the south, the emperors were pulling back to north and established their permanent city at Gonder.

and land.⁶⁶ Landed property continued to belong to the inhabitants exactly as in the older autonomous provinces of the northern part of the country.⁶⁷ The most successful, among these, were the present Wollega, Jimma, and Benishangul regions. On the contrary, the land of the rebels who resisted the entry of Menelik's forces, after being defeated, was confiscated and distributed to nobles, the church, Menelik's generals and soldiers, while the people remained landless *gabbars*.⁶⁸ The upper elites were empowered with appropriation of all taxes for themselves by passing a fraction of it to the sovereign. They were also given estates to cultivate for their own use.⁶⁹

Land acquired through confiscation was then distributed on three-thirds or four quarter basis. The new rulers took either two-third or three-quarters of the land and left the remaining fraction (one third or one quarter) to the local chief who was then known as *balabat* (gentry). This last part of land is known as *siso* (a third) land. The big portion of land taken by the new settlers was shared between the church and the military based on the same principle applied in the Northern provinces. The amount of land distribution was 1–3 *gasha* (1 *gasha* is 40 ha) for a soldier, 10 *gashas* for *hamsa-aleqa* (commander of fifty), 20 *gashas* for *meto-aleqa* (lieutenant), 30 *gashas* for *shamble* (captain)⁷⁰ and so on.

Such land was granted on the basis of different conditions or names. Some are given as *rist-gult* or *siso-gult*, such as those given to the local chiefs; some as *maderia* (in lieu of salary for civil servant, war veterans, on condition of serving the state in time of war), and some as *ginda bel*, on condition of carrying tents, cannons, guarding prisoners and so on. The land given to the church was parceled out as *samon* land in the same fashion as had been done in the north.

A major characteristic of the development was, thus, the allocation of land to the new administrators and their followers, while leaving the natives landless. People from the north were encouraged to settle in these new areas and became beneficiaries of land grant or land purchase. This was done for two reasons: first, to recompense for their service in the war, and second, in order to create "effective occupation"⁷¹ of the newly annexed territories.

The native people, who now became landless, were paradoxically given the name *gabbars*. This name did not connote the same meaning as it had in the north; in the north the name was given for a landed peasant who paid his tax, while in the

⁶⁶ The Ethiopian method for dealing with their enemies were based on the guidance offered in the *Fitha Negest*: "When you reach a city or a land to fight against its inhabitants, offer them terms of peace. If they accept you and open their gates, the men who are there shall become subjects and shall give you tributes, but if they refuse the terms of peace and offer battle, go forward to assault and oppress them, since the Lord your God will make you master of them." (Markakis, *supra* note 39, p. 131); *Fitha Negest*, *supra* note 59, 44:1552–1555, p. 383.

⁶⁷ Pankhurst: 1966, *supra* note 29, p. 136.

⁶⁸ Shiferaw, *supra* note 41, p. 151.

⁶⁹ *Ibid.*

⁷⁰ *Id.*, p. 104.

⁷¹ Crummey: 2000, *supra* note 35, p. 223.

south the person was landless. The *gabbars* in the south, rather, became servants of those who took their land.⁷² Quoted by Pankhurst, C.F. Ray, a traveler to Ethiopia by that time, reflected that the nobles and their followers had considerable dependents upon them. The *gabbar* was a tenant subjected to more onerous burdens than existed elsewhere. The *gabbar* was obliged to look after the settlers by cultivating their land, providing labor, building houses and so on for free.⁷³ The general practice was that a person who got land in the south, reserved some part of the land for his private use (cultivated by the *gabbars* for him), and distributed the remaining part of the land to his *gabbars* and collected tribute (one third for himself) and tithe (to the government) and allowed them to subsist on the remaining produce. A study made by Markakis on Kembata district in the southern provinces vividly shows the circumstances that existed at the time:

Kenyazmach (commander of right wing) Arado was allotted forty gashas (1,600 ha) of land for his service in Kambata district. He kept twelve gashas and distributed the rest among his lieutenants and soldiers. One of these, a man from Gojam named Ayele, was given a total of four gashas. The native people who found themselves on the land granted to Ayele became his *gabbars* (the total family member was 40 people). Ayele settled in the nearby town of Hosana, the capital of Kembata district. Ayele divided his land into *hudad* (good land reserved for him) and other which was distributed among the *gabbars*. The *gabbars* cultivated the *hudad* and delivered the entire produce to Ayele. Ayele also collected a third of the produce from the other land as a tribute for himself, and another tenth which he turned over to the state as tithe. The *gabbars* were also required to provide Ayele with firewood, to grind his share of the grain and deliver it to his home in town, and to repair his house and warehouses. In addition, they had to offer him obligatory gifts on Christmas, Easter, and Maskal. Ayele acted as the judge for his *gabbars*, and in his capacity imposed fines and collected fees. Whenever he visited his land, the *gabbars* were obliged to provide him with a feast.⁷⁴

On the other hand, the rights of local gentries were remained unaffected because of Menelik's decree passed in 1905 (1897 E.C), which declares that in every land allocation to northern nobles, a third or in some cases half of it should be kept to the local *balabat*, gentry.⁷⁵ This is, as already mentioned above known as *siso-gult*.

The other characteristic of the southern land tenure was that the introduction of private ownership of land tenure. It is generally held that private land ownership in the south evolved out of Menelik's expropriation and redistribution of land after his conquest.⁷⁶ Many evidences and the wordings of the then laws showed that land was transacted through sale from state to individuals and among individuals. Emperor Menelik also introduced new land measurement (*qelad*) and a tax system, based on the measured lands in the southern regions. The new land taxes imposed

⁷² Ibid.

⁷³ Pankhurst: 1966, *supra* note 29, p. 137.

⁷⁴ Markakis, *supra* note 39, pp. 162, 163.

⁷⁵ See as reproduced in Mahteme-Selassie: 1970, *supra* note 55, p. 109.

⁷⁶ Pausewang, S. 1982. *Peasants, Land and Society: a Social History of Land Reform in Ethiopia*, Munchen, Weltforum-Verlag, p. 36.

on *siso* land, *maderia* land and *rist* land were actually paid by the actual cultivator, the *gabbars*, instead of the owner of the land which increased yet the burdens of the *gabbars* and tenants.

2.4.4 Modernization and the Declining Role of Traditional Land Tenure System

The coming of Emperor Haileselassie I, in 1930, to the throne in the early twenty first century and his modernist approach of governance started to contribute to the declining role of the traditional land tenure system, especially to the abolition of the *gult* system in 1966. The traditional tax collection system (in kind) did not enable to generate enough money to the state to create the much needed modern state, with modern salaried military and bureaucracy. As discussed above, land tax in the form of tribute and tithe was collected by the *gult* holder in the northern provinces and the land owner/holder in the southern parts. Because it was difficult to find enough gold and dollars, tax was paid in kind⁷⁷ (grain, salt, honey, cattle and so on). As a result, government agents were forced to take it to market to change it to cash money. The system was not efficient and there was no strong bureaucracy to control its proper collection; land owners used to squander it. Studies show that the share of land tax was declining compared to indirect taxes (customs tax) throughout the 1940s–1970s.⁷⁸ To rectify such problem and in order to collect enough money from land, successive decrees concerning land tenure and land tax were promulgated well up to the 1970s.

As noted by Hoben, traditionally there was relatively little separation between political power, the control of land, and wealth. Men who enjoyed high positions of secular authority usually controlled much land. They were also at the apex of a redistributive economic organization. They collected tax and tribute from those over whom they held authority and expended a large portion of it again on the feasts and followers that were essential to the maintenance of their political power and their legitimacy in the eye of their subjects.⁷⁹ So, it was not easy for the government to weaken the power of the landed autocrats by eroding their traditional power of tax collection, administration and adjudication. That is why, as we shall see soon, the reformative process encountered strong resistance not only from the landed aristocrats but also, ignorantly, from the peasant farmers as well.

Hoben provides four reasons that weakened the traditional power of *gult* holders⁸⁰: the growth of bureaucracy that replaces their administrative power, tax reform

⁷⁷ Gebre-Wold-Ingida, *supra* note 52, p. 302, 303.

⁷⁸ See for example Gilkes, P. 1975. *The Dying Lion: Feudalism and Modernization in Ethiopia*, London, Julian Friedman Publishers.; Also see Crummey: 2000, *supra* note 89, p. 239.

⁷⁹ Hoben, *supra* note 37, p. 209.

⁸⁰ *Id.*, pp. 205–209.

that demands the direct payment of tax to government rather than to *gult* holders, emergence and establishment of modern court system that replaces their adjudication power, and finally the establishment of modern military that took away their power as collectors of local soldiers. In here, we will briefly look into the tax reform that had directly affected the land tenure system.

Before the Italian invasion and occupation of Ethiopia (1936–1941), the government tried to come up with two decrees⁸¹ that tried to reduce the burden of the *gabbars* of the southern people. Especially, a decree promulgated on May 9, 1935 tried to reduce the burden of the peasantry by replacing all duties with payment of 30 thalers per *gasha*.⁸² But, of course, this was the eve of the Italian invasion and the rule was not implemented. The government came up with series of laws related to land tax after the expulsion of the Italian forces (after the Second World War) which we shall see hereunder. The Italians, during their 5 years occupation, had abolished all informal taxes and burdens except the land tax (tribute) and the tithe (*asrat*). After liberation, the government took advantage of this situation and continued the process without restoring the previous system. The major laws enacted after this period are discussed below.

2.4.4.1 The 1941 Land Tax Decree

Shortly after he restored his power, Emperor Haileselassie passed a land tax decree⁸³ in 1941 that mainly contains three things: first, the law entitled all government officials and agents to salaries; second, all the taxes paid by the *gabbars* were to be sent directly to government treasury. In other words, it abolished the intermediary role of land owners and *gult* holders.⁸⁴ Land tax was to be collected by government agents rather than landlords. Thirdly, it abolished all ‘manual labor, firewood, grass and miscellaneous dues and taxes’ imposed on the cultivators. This did not include, however, *ginda bel* and *desta* in which tax was paid in the form of manual labor.

⁸¹ These are the law of September 1930 that deals with tax concerning excess land, and the law of May 1935 that established single land tax. Both are reproduced in Gebre-Wold-Ingida, *supra* note 52, p. 295–298.

⁸² Mahteme-Selassie: 1957, *supra* note 55, p. 297.

⁸³ As reproduced in Gebre-Wold-Ingida, *supra* note 52, p. 325.

⁸⁴ For example an Order passed by the Emperor after a year or two reads: “The Ministry of Finance has submitted that the *Asrat* and trade or marketing tax which has hitherto been collected by *rist-gult* holders shall in future be collected by officers of the Ministry of Finance, and that the *rist-gult* holders shall give to the Ministry of Finance any money they hold at present. These *rist-gult* holders must also submit in writing the amount left in their hands.” Gebre-Wold-Ingida, *supra* note 52, p. 331.

2.4.4.2 The Land Tax Proclamations of 1942 and 1944

Proclamation 8 of 1942,⁸⁵ promulgated on 30th of March 1942, but had been put into effect starting from 11 October 1941, brought one important change to the Ethiopian land tax system; it proclaimed that henceforth all land tax should be paid in Ethiopian printed dollars rather than in kind. Article 3(ii) of the proclamation put the amount of taxation based on the size of land area in *gasha* and its fertility rate. It classified the land into fertile, semi-fertile and poor, and imposed 15, 10, and 5 Ethiopia dollars respectively for each *gasha* land holding.

This proclamation lacked clarity in that it was confusing whether or not it replaced the previous two land taxes (tribute and tithe). In any case, a second proclamation (Proc. No. 70/1944) that repealed this proclamation was promulgated in 1944. This was also known as Land Tax Proclamation. This proclamation⁸⁶ under Article 4 provided a different tax rate for each of the three types of land fertility. Besides, it provided tax payments in lieu of tithe and tribute tax. For example for some provinces (Shoa, Arusi, Harar and Wollo) the amount set for fertile land was \$35 in lieu of tithe and \$15 in lieu of tax, for semi fertile land \$30 in lieu of tithe and \$10 in lieu of tax, and for poor land \$10 in lieu of tithe and \$5 in lieu of tax. In effect, this law had doubled the tax obligations of peasants as compared to the previous law. The other character of this proclamation was that it did not impose same tax rate for all parts of the country. The Northern provinces were even allowed to continue with their old system as their land was not yet measured in *gashas*. Once again, the law under Article 4 repealed “any other taxes, services and fees heretofore payable”.

2.4.4.3 Education Tax and Health Tax

In spite of the state efforts, the above two proclamations could not greatly enhance the revenues of the central government, although they did effectively eliminate the possibility of tax collection by organs other than the state. Hence, to increase the revenue from the land the government introduced Education Tax in 1947 (Proc. No. 94/1947) and Health Tax in 1959 (Decree No. 37/1959)⁸⁷ based on the amount and fertility of land holdings. This shows that the state was desperate to increase its tax collection from the land, which in turn aggravated the burdens of the peasant.

⁸⁵ Full text is reproduced in Gebre-Wold-Ingida, supra note 52, p. 327.

⁸⁶ Land Tax Proclamation, Proclamation No. 70/1944. *Negarit Gazeta*. Year 4, No. 2. Also available in Ewing, W. H. (ed.) 1972. *Consolidated Laws of Ethiopia, V. I*, Addis Ababa: The Law Faculty of Haile Sellassie I University, pp. 538–543.

⁸⁷ Both are reproduced in Ewing, W. H. (ed.) 1972. *Consolidated Laws of Ethiopia, V. I*, Addis Ababa: The Law Faculty of Haile Sellassie I University, pp. 473 and 477 respectively.

2.4.4.4 Abolition of *Gult* and Tithe and Introduction of Income Tax

The government took things one step further to their logical conclusion, in 1966 and 1967, with proclamations which abolished both secular *gult* and tithe.⁸⁸ Proclamation 230/1966 that amended the previous land tax, proclamation 70/1944, clearly dictated those people who cultivate on lands subject to *rist gult* or *siso gult* directly to pay their tax to the Government treasury.⁸⁹ The same amendment eliminated the special tax status of those holding *rist gult* or *siso gult* rights with respect to land which they also own.⁹⁰ Since traditionally *gult* provides tribute collection power over *gult* holders, the transfer of the tribute collection power to other body eliminates the traditional institution of *gult* system. If a person whose land has been subject to *rist gult* rights had henceforth to pay the land taxes directly to the Government treasury, there was nothing left for the *gultenga*, the holder of the *gult* rights. His rights had, at a stroke, been eliminated. *Gult* holders were allowed to change certain part of their holding to private tenure and the remainder was divided among the *gabbars*.

The next step taken by the government was to amend the income tax in 1967 by introducing agricultural income tax. One of the characteristics of this proclamation was that it abolished the payment of tithe. As discussed before, cultivators used to pay a tenth of their produce to the government through the *gult* holder. Now the removal of this tax meant again eroding the power base of the *bala gults* and thereby reducing the burdens of the peasantry.

Although it cannot be denied that all these steps to some extent alleviated (especially the last two proclamations) the burdens of the peasantry of the south, they were not equally appreciated in the northern part of the country. For example, among the three peasant rebellions that took place in between 1940s and 1960s, the two that happened in the northern provinces of Tigray and Gojam were made against tax and land measurement activities of the state. Generally, the land tax proclamations and land measurements which were meant to enhance the amount of tax, initiated peasant rebellions in Tigray (1943), in Bale (1967–1970) and in Gojam (1968).⁹¹

⁸⁸ Crummey: 2000, *supra* note 35, p. 241.

⁸⁹ 1966. A Proclamation to Amend the Land Tax Proclamation of 1944. *Proclamation No. 230/1966*. Negarit Gazeta: Year 25, No. 9. Article 2(a).

⁹⁰ *Id.*, Article 2(b).

⁹¹ For more discussion on the subject, see Gebru-Tareke 1991. *Ethiopia: Power and Protest: Peasant Revolts in the Twentieth Century*, Cambridge, Cambridge University Press.

2.4.5 *The Question of Land Reform and Inadequate Government Response*

Over the years, the land holding in the southern provinces had slowly changed into private (freehold) holdings through different decrees. As opposed to the north, land in the south was freely transferable by way of sale. Like his predecessor, Haile Sellassie also continued to grant land to different groups. Immediately after the Italian war, he granted extensive land to patriots, exiles, soldiers and civil servants as private property. This policy, however, was of little benefit to tenant gabbars. Indeed, from the nearly 5 million ha of land allocated after 1941, only a few thousand reached the landless and the unemployed gabbars.⁹² The concept of rist, as lineage land property, was not known in this part of the country. Hence, in the 1950s and 1960s extensive land sale was witnessed, especially the transfer from land owners to new investors.⁹³ But the effect of such measures made the existing gabbars once and for all landless tenants. Tenants, thus, were forced to cultivate on share-cropping arrangement which was said to be unjust in that it claimed 75 % of the produce to the landlord.⁹⁴

As already mentioned above (Sect. 2.4.4), in spite of the fact that the government passed laws that forbid other burdens, tenants were subjected to feudal dues like working on the landlord's farm and giving him presents on special occasions for fear of eviction. Powerful lords of the land continued to confiscate peasant's property at will and to evict tenants arbitrarily even on the eve of the Revolution.⁹⁵ In addition to the fact that the system was seen as unjust, it was considered inefficient and unproductive for it did not give the tenants incentive to produce more because, it was alleged, they lost a lot of the increased produce to the landlord.⁹⁶ The most radical criticism of the land-tenure system came from the student movement, which, since the middle of the 1960s, made the slogan "Land to the Tiller" its main rallying call and the attainment of land reform its main target. When, as of 1969, the issue surfaced concerning whether the southern part of the country was not a case of settler colonialism by people from the north, and whether, therefore, the southern tenants were reduced to this status on land which had once been their own, land reform acquired a much greater political poignancy than ever

⁹² Bahru-Zewde: 1991, supra note 48, p. 191.

⁹³ Dessalegn-Rahmato 2006. From Hetrogeneity to Homogeneity: Agrarian Class Structure in Ethiopia since the 1950s. In: Dessalegn-Rahmato & Taye-Assefa (eds.) *Land and the Challenge of Sustainable Development in Ethiopia*. Addis Ababa: Forum for Social Studies, p. 9. During the 1960s land was transferred by sale to civil servants, small scale traders and the like who anticipate profit from export of agricultural products.

⁹⁴ For example, according to different studies, the tenancy rate was 75 % in Hararge, 67 % in Showa, 62 % in Kaffa, all from the south. On the contrary, in the north was 15 % in Begemder, 20 % in Gojam and 25 % in Tigre.

⁹⁵ Dessalegn-Rahmato: 2006, supra note 93, p. 8.

⁹⁶ Andargachew-Tiruneh 1993. *The Ethiopian Revolution, 1974–1987: A Transformation From an Aristocratic to aTotalitarian Autocracy*, New York, Cambridge University Press, p. 97.

before.⁹⁷ Also, academics, foreign governments and aid agencies were very critical of the existing land-tenure system and urged for some kind of reform to be adopted.

One of Haile Sellassie's government responses to these criticisms was the establishment of a Ministry of Land Reform and Administration to deal with the matter.⁹⁸ One notion promoted by that ministry, well before 1974, was the redistribution of individually owned land in excess of 20 ha. A draft proposal to that effect was shelved for lack of support in government circles. The fact that the government officials and members of parliament had their economic and hence political power based on land was often attributed as a cause for the obstruction of the adoption of the draft proposal. Harold Marcus, a prominent historian on Ethiopia, claims that after the 1960 *cope d'état*, the Emperor was forced to "rely increasingly on overt military power for authority and on the aristocracy and oligarchy for administrative support. Since the last two represented the property-owning classes, Haile Sellassie was unable to implement significant land reform, in the absence of which the intelligentsia and the students, at first quietly and then stridently, opposed the regime."⁹⁹

The emperor was generally said to be slow in taking a radical and important land reform that would have a socio-political effect. A contemporary researcher and professor at the then Faculty of Law at the Haile Sellassie I University, Harrison Dunning observed that:

Beyond the elimination of personal services, it is difficult to name an objective related to land and designed to improve the social and political position of the Ethiopian peasantry toward which even partial action has been taken in the past quarter century. Even public discussion of such objectives has not occurred. With guidelines so unclear, it is fruitless to attempt to evaluate the contribution which land reform could make in these areas of national development.¹⁰⁰

By way of conclusion, it can be said that the resistance of the peasantry population (because of ignorance on the advantage of land measurement and registration), internal resistance for land reform from the landed aristocrats, most of whom sat in both chambers of the parliament,¹⁰¹ and the lack of action by the government¹⁰² itself to bring about change in the tenure system were the reasons for absence of meaningful change in the property right arrangement during the eve of the downfall of the imperial regime.

⁹⁷ Ibid., p. 98.

⁹⁸ Ibid.

⁹⁹ Marcus, H., *supra* note 36, p. 173.

¹⁰⁰ Dunning, H. C. 1970. Land Reform in Ethiopia: A Case Study in Non-Development. *UCLA L. Rev.* 18, p. 306.

¹⁰¹ See Shiferaw, *supra* note 41, p. 128, who told us that bills concerning land reform tabled to parliament in 1963, 1970 and 1972 were rejected by both parliaments.

¹⁰² Dunning, *supra* note 100, at foot note 152, for example says: "Three draft proclamations had been submitted to the Council of Ministers by July 1, 1969: a Proclamation to provide for the Registration of Immovable Property; a Proclamation to provide for the Regulation of Agricultural Tenancy Relationships; and a Proclamation to provide for a Tax on Unutilized Land. As of October 1, 1970, none of these drafts had been submitted to Parliament".

2.5 The Derg Era: A Radical Shift in Land Policy

Frustrated by the lack of meaningful land reform and driven by the then Marxist ideology, practiced in some parts of the world, university students started demanding social, economic and political reforms with the leading motto “Land to the Tiller.” The demand for change got momentum when the general public and finally the military and police force followed suit and resulted in the 1974 revolution. The condition of the peasant and the need for radical change that was advocated at the time can be easily perceived from Dessalegn Rahmato writing:

How can the peasant change his condition? Will it be through better laws, clearer definition of tenure rights, or improved land registration and cadastral surveys? Can it be done by granting ownership right to tenants over government-owned land? Or will land reform, but of kind which does not disturb the equilibrium of the feudal system, provide the antidote?

The peasant problem is too fundamental to be resolved with such facile measures. It is not the deficiencies of the system that creates rural misery, but the system itself. Peasant servitude and deprivation will not be eliminated so long as the land-less are under the economic subjection of the landlord. Only when the direct producers toil for no other but themselves will they be able to attain emancipation, and to raise their standard of living to a level consistent with human dignity. In this connection the slogan LAND TO THE TILLER is indeed subversive.¹⁰³

The army, being better organized and having better gun power, took advantage of the situation and appointed itself as the agent of the people. A committee (junta) selected from all the army branches¹⁰⁴ was established to negotiate things with the emperor and to bring corrupt officials of the *ancient regime* to justice.¹⁰⁵ This committee (popularly known as Derg), a collection of junior officers, later on removed the Emperor from his throne in September 1974 and took power itself promising the election of a popular government in the future. The Derg established a “provisional military government.” Accordingly, until 1987, the country was administrated by the Provisional Military Administration Council (PMAC).

Following its assumption of power, the Derg, started to take radical socio-economic reforms which had Marxist ethos.¹⁰⁶ In the following pages we shall see the highlights of the rural land and urban land proclamations which were enacted by the Derg in a bid to transfer all rural and urban land and urban extra houses to state ownership.

¹⁰³ Dessalegn-Rahmato 1970. Condition of the Ethiopian Peasantry. *Challenger*, X. Quoted in Shiferaw, supra note 41, p. 124.

¹⁰⁴ With the highest rank of a Major, the army representatives were delegated from the air force, police force, navy, and ground forces. The would be president (Mengistu Haile Mariam) himself was a Major, representing ground forces from the city of Harar.

¹⁰⁵ For detail see Andargachew, supra note 96.

¹⁰⁶ It was on 20 December 1974 that the Derg’s first fundamental political and economic programme, ‘Ethiopian Socialism’, was issued. (Andargachew, Ibid, p. 86). The reforms were dealing with nationalizations of urban and rural land, financial institutions and heavy and light industries.

2.5.1 *Nationalization of Rural Land*

When the Derg revealed its ten-point program of “Ethiopian Socialism” on December 20 1974, it declared that “land would be owned by the people.”¹⁰⁷ And the “people” appeared to be identified under point No. 7 which stated that “the right to own land shall be restricted to those who work on the land”¹⁰⁸ which means that land would be privatized. Nevertheless, when the much anticipated proclamation¹⁰⁹ lastly came out on March 4 1975, the Derg ruled out for public/state ownership of all rural land.

The main reasons for the nationalization of rural land from the previous owners/holders and its transfer to state ownership are envisaged in the preamble of the proclamation. Without the need to reproduce the whole preamble, we pinpoint the main essence as follows:

Whereas, in countries like Ethiopia a person’s right, honor, status, and standard of living is determined by his relation to land;... that several thousands has of land was grabbed by insignificant number of feudal lords while the masses live under serfdom;... that it is necessary to change the past injustices and lay a base upon which Ethiopians may live in equality, freedom and fraternity;...that development could be achieved through the abolition of exploitation of many by the few;...In order to increase productivity by making the tiller the owner of the fruits of his labour;...to provide work for all rural people;...it becomes necessary to distribute land and increase rural income and thereby laying the basis for the expansion of industry.

To implement this objective, Article 3 of the proclamation clearly declared that: “all rural lands shall be the collective property of the Ethiopian people,” and it prohibits any person, business organization (company) or other organization from holding rural land in private ownership (Article 3.2 of Proc. 31/1975). By doing so, the law once and for all eliminated any private ownership of rural land, which had started to flourish in the southern part of the country, and it overnight abolished the age-old tenure system of the country in general. Further, the law denied any compensation for the loss of land and any forest and tree-crops thereon. On the other hand, it provided that fair compensation would be paid for movable properties and permanent works on the land (Article 3.3). Nonetheless, when it came to practice, the Derg paid no compensation at all to such properties across the country.

The proclamation, on the other hand, created free access to land to the many rural landless and tenants. Without discrimination of any kind, the law provided opportunity for any person, who was willing to cultivate, to get rural land sufficient for his maintenance (Article 4.1). The size of land to be allocated for a household was made to be, as far as possible, equal, and allowed for a maximum of 10 ha (Article 4.3). No person was allowed to use hired laborers to cultivate his land (except the weak, the sick, widows, and minors (Article 4.5).

¹⁰⁷ Andargachew, *supra* note 96, p. 99.

¹⁰⁸ Clapham, *supra* note 44, p. 45.

¹⁰⁹ Public Ownership of Rural Lands, Proclamation No. 31/1975. *Negarit Gazeta*. Year 34, No. 26. (Hereinafter cited as Proc. No. 31/1975).

Until land distribution was to be carried out, it was stated that all “tenants or hired laborer shall have possessory right over the land they till;” on the other hand, “a resident landowner who has leased out all his lands shall have the right to equally share to the land with his tenants” (Article 6.1). The proclamation also abolished any landlord-tenant relationship, and the tenant was made free from any rent, debt or any other obligation. Likewise, a landowner who gave his land as antichresis to his tenants would be free from payment of the debt (Article 6.3). All large-scale farms, held by private investments, were transferred to state ownership or cooperatives.

Since land became state/public property, it was also important to delimit the scope of rights to be given to individual peasants. In this case, it did not give much. Under a title “Prohibition of Transfer of Land,” Article 5 of the proclamation declares:

No person may by sale, exchange, succession, mortgage, antichresis, lease or otherwise transfer his holding to another; provided that upon the death of the holder the wife or husband or minor children of the deceased or where these are not present, any child of the deceased who has attained majority, shall have the right to use the land.

Thus, the proclamation completely prohibited any sale, mortgage, antichresis,¹¹⁰ lease/rent, inheritance (outside of family), donation, or exchange of any sort that affects the land. It seems the government was cautious not to create controversy with the church and the northern land holders since the proclamation did not say anything about church lands, and provided separate provisions related to “communal lands”, specifically *rist* lands. According to some studies, the total amount of land held by the church by the time was estimated to be 20 % of all arable land and 5 % of all the land in the country.¹¹¹ Concerning *rist* land, the proclamation under Article 19 provides “peasants in *rist* and *deffa* areas shall have possessory rights over the lands they presently till.” It denies any claimant thereafter to come up with new claims. However, unlike the southern parts, in the north, since every plot of land was held by peasants, there was no need for the proclamation to come up with such different provision.

In any case, Articles 3 and 5 of the proclamation had restricted the rights of transfer of land very much and this had a devastating effect to all the previous land owners in the south or *rist* holders in the north. This proclamation was, therefore, received with mixed sentiments across the country. For tenant farmers and landless peasants, especially of the southern part of the country, the abolition of land ownership removed a major source of exploitation in one case, and provided guaranteed access to land in the other.¹¹² Peasants of the north who owned their

¹¹⁰ According to the Ethiopian Civil Code (Articles 3041 ff and 3117 ff), antichresis is like a mortgage except that the former is created by contract. The main difference is that in case of antichresis the immovable (land or building) shall be temporarily delivered/transferred to the creditor, while in case of mortgage it has to stay in the hand of the debtor.

¹¹¹ Cohen, J. M. 1977. Rural and Urban Land Reform in Ethiopia. *Afri. L. Stud.*, 14, p. 14.

¹¹² Clapham, supra note 44, p. 47.

own *rist* land that gave them effective control over it were threatened by a measure which required their security and put them on equal basis with the landless.¹¹³ The *rist* holders of the north who considered their right to the land as coming from their family and no one else, considered it as encroachment in their God given rights. According to some studies, in the Northern Province of Tigray, farmers outrightly refuted the law and a war ensued immediately.¹¹⁴ Armed struggle was declared and carried out by supporters of the old regime and various student led movements against the Derg, the sole survivor being the present incumbent. Rebellious conflicts were also arisen in the other Northern provinces of Gonder and Wollo.¹¹⁵

The management and distribution of land was given to peasant associations (PA), which were formed to cover a minimum area of 800 ha (20 *gashas*) of land.¹¹⁶ The functions of the peasant associations were mainly to redistribute land, maintain common assets, resolve land dispute conflicts, enable development activities taking place in their areas and implementing villagization programs.¹¹⁷

The system, in a way, looked like the Chinese model where land was owned by the state and collectives and every village collective was given the power to own, administer, and lease out land to individual peasants.¹¹⁸ This fact is also observed by Dessalegn when he said: “the post reform agrarian policies were modeled in part on the experience of China and Vietnam.”¹¹⁹ Of course, in Ethiopia, it was not the peasant association that would give land by way of lease. The right was life time in that peasants were allowed to use it for life and even to pass it as an inheritance to their spouses and children. In the Chinese model peasants get the land on lease basis for 15 years (later on amended to 30 years) and the village collective should renew the contract after its expiry.

Assessment of the land reform carried out in the years that followed the proclamation has been made by many writers.¹²⁰ The general agreement can be summarized as follows in the work of Dessalegn Rahmato:

¹¹³ Ibid.

¹¹⁴ See generally for example Young, J. 1997. *Peasant Revolution in Ethiopia The Tigray People's Liberation Front, 1975–1991*, New York, Cambridge University Press.; Aregawi-Berhe 2008. *A Political History of the Tigray People's Liberation Front (1975–1991): Revolt, Ideology and Mobilisation in Ethiopia*, Amsterdam, Amsterdam University, p. 71.

¹¹⁵ See Dessalegn-Rahmato 2009a-a. Land and Agrarian Unrest in Wollo: From the Imperial Regime to the Derg. In: Dessalegn-Rahmato (ed.) *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s–2000s (collection of articles by same author)*. Addis Ababa: Addis Ababa university Press, pp. 111–182.

¹¹⁶ Article 8 of Proc. 31/1975.

¹¹⁷ See the detail under Article 10 of Proc. No. 31/1975.

¹¹⁸ See for example, Ho, P., *supra* note 20, pp. 5–10.

¹¹⁹ Dessalegn-Rahmato 1993. Agrarian Change and Agrarian Crisis: State and Peasantry in Post-Revolution Ethiopia. *Africa: Journal of the International African Institute*, 63, 36–55, p. 36.

¹²⁰ See for example Yeraswork-Admassie 2000. *Twenty Years to Nowhere: Property Rights, Land Management and Conservation in Ethiopia* Asmara, The Red Sea Press, Inc.

- Erroneous state policies (villagization, grain requisitioning, resettlement, agricultural, collectivization) which were not discussed with the people at grassroots level cost the country lots of energy and money.
- The peasant associations (PAs) which were given authority to redistribute land, maintain, common assets, resolve conflicts and enable development activities taking place in their areas were captured/hijacked by the state to do its 'political work', such as tax collection, maintaining order, channeling propaganda, requisition grain, and recruiting young men for the war.
- The land reform was successful in that it abolished the landlordism and tenantry in the country and created free access to land to all the landless, but it failed because (1) it defined land rights as usufructuary rather than private (2) the mandate given to the PA encouraged them to practice periodic land distribution, in consultation with local government agents, created tenure insecurity.
- By and large, it replaced the landlord with the state, providing the latter with direct and uncontrollable access to the peasantry. "In conclusion, the end product of the land reform was it failed where it succeeded."¹²¹

2.5.2 Nationalization of Urban Land and Extra Houses

2.5.2.1 Urbanization and Pattern of Urban Land Ownership

The second very important legislation enacted by the Derg was a proclamation that nationalized all urban lands and extra rentable houses.¹²² Before giving the details about this proclamation, however, few words need to be said about the pattern of urbanization and urban land right before the revolution.

Urbanization in Ethiopia is a recent phenomenon because of the historical factors in the country. Many of the middle sized towns in Ethiopia were founded during the nineteenth century for political-military reasons.¹²³ According to Donald Crummey, three major institutions shaped Ethiopian towns during the 19th and 20th centuries: palace, market and church, and these institutions played three roles: political, economic and cultural.¹²⁴ The establishment of the current capital, Addis Ababa, in 1886, is the third in line following Axum and Gonder in the ancient and middle age Ethiopian history respectively. Throughout most of its history, Ethiopia remained a

¹²¹ Dessalegn: 1993, supra note 119, pp. 36–40.

¹²² Government Ownership of Urban Land and Extra Houses, Proclamation No. 47/1975. *Negarit Gazeta*, Year 34, No. 41. (Hereinafter cited as Proc. 47/1975).

¹²³ Markakis, supra note 39, p. 197.

¹²⁴ Bahru-Zewde 2008a. The City Center: A Shifting Concept in the History of Addis Ababa. In: Bahru-Zewde (ed.) *Society, State and History: Selected Essays*. Addis Ababa: Addis Ababa University Press, p. 486.

land of small villages and isolated homesteads.¹²⁵ The reason for the absence of large settlement of urban areas in Ethiopia for a long time, according to Richard Pankhurst, was the continuous move of the royal camp. Middle age royal court was composed of immense agglomerations of population which consisted of not only of courtiers and warriors, but also numerous non-combatants, among them wives, servants and slaves, armourers, tent-carriers, muleteers, priests, traders, prostitutes, beggars, and even a few children.¹²⁶ On the other hand, some argued that there was a little need for urbanization, since it contradicted the existing self-sufficient peasantry life style; urbanization by its nature needs to transfer more land away from agricultural production to urban settlement.¹²⁷ And yet, it can be concluded that modern Ethiopian urbanization flourished during the 20th century because of political stability (especially during the reign of Emperor Haile Sellassie I), and the modernization of the country. Most cities in the country flourished around some economic center such as railway, factory, or trade route.

Addis Ababa was established in 1886 by Emperor Menelik II and it is said that in the beginning it was a collection of camps where the royal camp was located in a tent at the center of the high ground. The imperial camp was surrounded by the Emperor's servants, and other nobility were granted land for their own and their followers to construct houses. Over time, because of the insecurity they felt, the lords and foreign embassies made a request to Menelik for some kind of security over their holdings. Accordingly, the emperor promulgated a decree¹²⁸ in 1907 that recognized private ownership of land, and allowed its free transfer through sale (Article 3). The decree also created land cadastre system which enabled the registration of every sale of land and the giving of land ownership certificates to owners (Articles 5, 10, 11, and 14). Further, it gave a guarantee against arbitrary confiscation of land by providing compensation in the event of land expropriation for public purpose activities (Articles 25 and 26). This gave property holders greater security and a stake in the fate of the city. Not only did the land charter become the most prized certificate of any urban household but it also contributed to activating the urban economy through sales and mortgages.¹²⁹

A detailed study of earlier land tenure in the 17–18th century urban Gonder also shows that land was held in private hands and subjected to free sale and exchange.¹³⁰ Thus, urban land in Ethiopia, from the beginning, was held in private ownership. During the eve of the revolution, Addis Ababa was by far the biggest

¹²⁵ Pankhurst, R. 1990. *A Social History of Ethiopia*, Addis Ababa, Institute of Ethiopian Studies, Addis Ababa University, p. 275.

¹²⁶ Ibid.

¹²⁷ Molla-Mengistu 2009. The Ethiopian Urban Landholding System: An Assessment of the Governing Legal Regime. In: Muradu-Abdo (ed.) *Land Law and Policy in Ethiopia since 1991: Continuities and Changes*. Addis Ababa: Law Faculty, Addis Ababa University.

¹²⁸ See the full edict in Amharic in Mahteme-Selassie: 1970, supra note 55, pp. 166–171; or an English version in Pankhurst: 1966, supra note 29, pp. 156–158.

¹²⁹ Bahru-Zewde: 2008a, supra note 124, p. 490.

¹³⁰ For good explanation see Crummey: 2000, supra note 35.

city and center of economy and politics. The city grew fast, inhabiting a considerable population, which was estimated to be between sixty and one hundred thousand in 1910¹³¹ to about 1.1 million during the revolution in 1974.¹³² Other towns had insignificant population growth compared to the capital. For example, according to a 1970s estimate, out of the registered 268 towns, the eight biggest towns had a population of 25,000 each, while Addis Ababa at that time registered 800,000 inhabitants (one third of all urban inhabitants in the country).¹³³

Much of the land in the city was controlled by insignificantly few elites. Pankhurst has provided the figures based on the first reliable survey of the city's 212 km² made in 1961 as follows:

This survey showed that 58 % of the total area was owned by 1,768 large proprietors each with more than 10,000 m², or an average of 71,000 m² per owner, whereas 24,590 small proprietors owning less than 10,000 m² had only 7.4 % of the total, the average size of such plots being 150 m². 12.7 % of the land belonged to the Government and foreign embassies. A further 12 % belonged to the Church, while the remaining, 9.9 %...was a royal land.¹³⁴

It means 58 % of the surveyed land was held by 6.7 % of the population. An estimate made 5 years later, in 1966, showed that 5 % of the population in Addis Ababa owned 95 % of the land in the city.¹³⁵ Almost all the elites who controlled rural and urban land ventured in the construction of rental houses, which was an attractive investment at that time.¹³⁶ This ranged all the way from the appalling hovels (slums) of the urban poor to elegant villas which found a ready market among diplomats and expatriate experts in a city that headquarters international organizations.¹³⁷ Land value rose alarmingly from 0.25 birr in the 1950s to 200–300 birr per m² in the 1970s (1 USD was about 2 birr).¹³⁸

2.5.2.2 Nationalization of Urban Land and Extra Houses

As discussed above, when the Derg came to power, it first nationalized all rural lands and natural resources. Then upon the enactment of Proclamation 47/1975 it nationalized all urban lands and extra houses. The preamble of the Proclamation

¹³¹ Pankhurst: 1966, supra note 29, p. 154.

¹³² Lapiso-G-Delebo 1983 EC. *Ye Ethiopia Ye Gebar Sireat-na Jimir Capitalism: 1900–1966 (Ethiopian Gabar System and the Begining of Capitalism: 1908–1974)*, Addis Ababa, p. 267.

¹³³ Markakis, supra note 39, pp. 198, 199. This was based on the second census of the city.

¹³⁴ Pankhurst: 1966, supra note 29, p. 154.

¹³⁵ Mesfin-Wolde-Mariam. Year. Problems of Urbanization. In: Proceeding of the Third International Conference of Ethiopian Studies, 1970 Addis Ababa. Institute of Ethiopian Studies, Haile Sellassie I University, supra note 111, p. 25.

¹³⁶ For example, during the late 1960s, 60 % of the occupied houses in Addis Ababa were rental ones. (Cohen, supra note 111, p. 25).

¹³⁷ Clapham, supra note 44, p. 50.

¹³⁸ 1978. Urban Land and Extra House: From Yesterday to Today (Amharic). Addis Ababa: Committee established for the Fourth Anniversary of the Revolution.

47/1975 that nationalized “all urban land and extra houses”, justifies its nationalization of urban land on three main counts: to abolish the shortage of land and the soaring of prices caused by the concentration of land in the hands of a few feudal lords, aristocrats, high government officials and capitalists; to abolish the exploitation of the many by the few (through uncontrolled rent); and to abolish tax evasion. The proclamation also aimed to create credit access to the poor once they got the land and built their houses.¹³⁹

Like its rural counterpart, Proclamation 47/1975 under Article 3(1) declares that as of the effective date of the proclamation, all urban lands should be property of the Government; and no person, family or organization was allowed to hold urban land in private ownership (Article 3.2). Besides, all extra houses, houses other than one residential house and another business house were nationalized (Article 13). Houses owned by minors were immediately nationalized (Article 15) unless his/her parents did not own their own residential house. It further declares that no person would be compensated for the loss of urban lands (Article 3.3) although the loss of houses through nationalization was said to be compensable (Article 18.1). However, in reality no compensation was paid for the nationalizations of houses.¹⁴⁰ But, for those persons whose livelihood was depended on rent, collected from the nationalized extra-houses, government allowed payment of pension allowance (Article 21).

Since all urban land became the property of the Government, it was prohibited to transfer urban land through sale, antichresis, mortgage, succession or otherwise (Article 4.1). As an exception, however, a widow/widower or children are given the right to inherit the land. Instead of ownership, urban residents were given lifetime use right (usually referred as *permit system*) to the urban land except that holders of the land were obliged to pay urban land rent (Article 9) and housing tax (Article 11.4). Also, those who used to live in private rental houses were allowed to continue possessing the houses, but made to continue paying a reduced rent to the state. It seems, the state once again replaced the urban landlords in controlling urban land and houses and exacting rent therefrom. Landless people were guaranteed to get not more than 500 m² of land to construct a single dwelling house (Article 5.1). People became full owners of the houses they built on the granted land, and thus, were allowed to transfer it by way of sale, succession or barter provided that the government would have pre-emption right in case of sale (Article 12.1).

In the same fashion as had been done with the rural land, in here as well, any relationship that existed between urban landlords and tenants was abolished, and the tenant was made free from payment of rent, debt or any other obligation arising from the relationship to the landlord (Article 6.1). Further, the law allowed any tenant without any dwelling house to possess or retain the land he used to rent before the enactment of the law (Article 7). Creditors who possessed buildings as

¹³⁹ Preamble of Proc. 47/1975.

¹⁴⁰ According to Andargachew, *supra* note 96, pp. 94, 95, the government had paid compensation only to foreign investors who lost their assets to the government. The assets were mainly factories, large-scale farms, banks and insurances.

security for a loan were denied any right of attachment to a house. The house was either to be returned to the debtor (if he has no other dwelling house) or to be nationalized by the state. The creditor was just expected to search other ways to collect his money (Article 17). There is no doubt that creditors who lent money on this basis must have lost their money.

Upon the effective date of the proclamation, all people were prohibited from renting out their houses and receiving any rent accruing therefrom (Article 20.1). The state was the only legitimate organ allowed to let properties and receive rent. The arrangement set in the proclamation was for the state to replace all former landlords and to receive rent from the lessees. Of course, the amount of rent was reduced, ranging from 15 to 50 %, depending on the value of the properties. For instance, houses, which were rented out for 25 birr, had a 50 % reduction in rent, while for those houses rented out for 300 birr the reduction was 15 % (Article 20.4)). The administration of houses which rented 100 birr and below was given to local cooperative societies (later on known as *Kebeles*), while the administration of those houses that rented above 100 birr per month was given to the Ministry of Public Works and Housing (later became Housing agency) (Article 20.5; Article 2.15).

The low rental charges, however, left little room for investment in the *Kebele* houses resulting in physical and structural deterioration owing to the lack of appropriate management and maintenance.¹⁴¹ The idea is that people were encouraged to live in *Kebele* houses (because they were cheap) rather than constructing their own houses. Secondly, since all the rental revenue was transferred to central government, there was not much left for maintenance and construction by the *Kebeles*.¹⁴² Further, new land provision for construction was highly restricted, halting the expansion of the city, which only led the inner city to be densely populated. Later, squatter settlements and illegal land transactions intensified, and this forced the Derg to adopt self-help housing cooperatives that helped to tackle the problem.¹⁴³

¹⁴¹ UN-HABITAT 2010. The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme. Nairobi: United Nations Human Settlements Programme.

¹⁴² UN-HABITAT 2008. Ethiopia: Addis Ababa Urban Profile. Nairobi: United Nations Human Settlements Programme, p. 12.

¹⁴³ Feyera-Abdissa & Terefe-Degefa 2011. Urbanization and Changing Livelihoods: The Case of Farmers' Displacement in the Expansion of Addis Ababa. In: Teller, C. & Hailemariam, A. (eds.) *The Demographic Transition and Development in Africa: The Unique Case of Ethiopia*. London: Springer, p. 217.

2.6 The Current Land Tenure System

2.6.1 Land Policy: Two Debates on Ownership of Land

Immediately after the revolution and the assumption of power by the Derg and the subsequent land reforms conducted by it, various insurgent groups lifted arms against the Derg. The causes were multifarious, but they may be summed up into two. The earliest opposition was made by the landed nobilities of northern Ethiopia whose land was completely nationalized by the government. The second opposition had come mainly from contemporary university students, who believed that the revolution was betrayed by the Derg. This was because the Derg declared itself as the sole vanguard of the revolution and banned any form of political activity. And yet, there was no basic ideological difference between the Derg and the other student led opposition groups, as all of them claimed to believe in Socialism. One of the earliest student dominated armed groups in Ethiopia was the TPLF (Tigray People's Liberation Front) which during the late 1980s made a coalition with other groups from central (Amhara) and southern (Oromo) Ethiopia. This coalition became known as EPRDF (Ethiopian People's Revolutionary Democratic Front) which finally won the war and replaced the Derg in 1991. Since then, the EPRDF is the incumbent party in the Ethiopian politics.

The EPRDF conducted land reform activities during the struggle (1975–1991) in the area where it had effective control. The TPLF, a follower of Albanian type of Socialism and ardent enemy of the feudal nobilities who controlled large amount of land, carried out smooth land distribution in Tigray.¹⁴⁴ After the downfall of the Derg, in May 1991, the new Transitional Government disbanded all collectivization and villagization programs based on the consent of the people. Collective farms were privatized and the government stopped the grain requisition program, allowing peasants to sell their produce at market value. In December 1992, a new economic policy was adopted whereby the government declared that until a new constitution were in place, land would remain under state ownership.¹⁴⁵

Judging from the process of the 'post-socialist transition' that had been carried out by the Transitional Government, and above all the free market economy type of policy that it embraced, many hoped that the new constitution would allow private ownership of land. However, when it finally came out in 1995, it decided to keep all rural and urban land under public ownership. According to the FDRE Constitution, all urban and rural land is the property of the state and the Ethiopian people.¹⁴⁶ Accordingly, sale, exchange and mortgage of land are prohibited. As one writer commented, "by inserting the land policy into the constitution, the current

¹⁴⁴ For full discussion see Aregawi-Berhe, *supra* note 114, pp. 285–290; Young, *supra* note 114.

¹⁴⁵ Tamirat-Layne 1991. Ethiopian Transitional Period Economic Policy. Addis Ababa: Office of Prime Minister.

¹⁴⁶ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995. *Negarit Gazeta*. Year 1 No. 1. Article 40(3) (hereinafter FDRE Constitution.).

government has effectively eliminated the possibility of flexible application of policy.”¹⁴⁷

In many countries land ownership is not a constitutional issue, but in Ethiopia, because of its socio-economic importance, land ownership goes beyond being a mere policy matter. Rather, it is inserted in the Constitution and the issue of its ownership has become a settled subject. The argument forwarded by the ruling party for the continuation of land as public/state property rests mainly on two policy objectives: social equity and tenure security. The FDRE Constitution as well as other Federal and Regional Land Laws ensure the free access to agricultural land. The amount of land to be provided to peasant farmers, as far as possible, is made equal. Accordingly, the policy objective is to ensure equality of citizens in accessing the land. However, the weakness of this policy objective is that first, it does not address the urban land; Article 40 of the FDRE Constitution that deals with property talks only about rural land. Second, it is argued that since there is lack of arable land in the highlands of the country, equality of access to land is ensured through transfer of land from large holders to small holders and/or to new comers; the result being diminution of holding plots (0.5–1 ha). Social equality in Ethiopia is, thus, a costly one in that equality in privilege is tantamount to equality in poverty.¹⁴⁸

Tenure security is the other policy objective and concern of the state. As mentioned above, the FRDE Constitution prohibits any sale and exchange of land. State ownership of land is considered to be the best mechanism to protect the peasants against market forces. In particular, it has been argued that private ownership of rural land would lead to massive eviction or migration of the farming population, as poor farmers would be forced to sell their plots to unscrupulous urban speculators, particularly during periods of hardship.¹⁴⁹ The justification is that for large-scale modern farms, there is an abundant idle arable land in the low lands; both for rain fed and irrigation farming. Most of the farmers, on the other hand, live in the highlands where there is scarcity of land but large amount of accumulated human power due to high population density. Allowing the farmer to sell land here, would lead either to displacing the farmers or converting them to tenants. In both ways, large amount of capital and labor will be wasted.¹⁵⁰ This argument of the government is criticized for lack of corroborative evidence. Some researches show otherwise. Some conclude that farmers would not sell their land

¹⁴⁷ Samuel-Gebreselassie 2006. Land, Land Policy and Smallholder Agriculture in Ethiopia: Options and Scenarios. *Future Agricultures Consortium meeting*. the Institute of Development Studies, p. 4.

¹⁴⁸ Dessalegn-Rahmato 2009b. An Assessment on the Ethiopian Agricultural Policy. In: Taye-Assefa (ed.) *Digest of Ethiopian National Policies, Strategies and Programmes (Amharic)*. Addis Ababa: Forum for Social Studies and The European Union, p. 149.

¹⁴⁹ MOIPAD 2001. Federal Democratic Republic of Ethiopia Rural Development Policies, Strategies and Instruments (Amharic). Addis Ababa: Ministry of Information, Press and Audio-visual Department, pp. 67–90.

¹⁵⁰ Ibid.

wholly or partially if given the right to own their plots.¹⁵¹ Another study, conducted by the World Bank, reveals that most farmers would rather rent their land during stressful periods compared with any other alternative, such as selling it.¹⁵² The study concludes that the availability of formal land rental markets will serve as a caution to enable farmers to withstand unfavorable circumstances by temporarily renting their land rather than selling it.

The state ownership of land has been criticized by researchers and international donors who favor neo-liberal economic thinking. The usual argument forwarded by these people against the state/public ownership of land is one that focuses on lack of tenure security. For them, state ownership of land by default creates tenure insecurity since, they argue, the government may use land as political weapon by giving and taking it away as the case may be.¹⁵³ They argue that absence of tenure security for land users provides little or no incentive to improve land productivity through investment in long-term land improvement measures, increases transaction cost because of land dispute, and hinders the emergence of property market such as, credit availability/land mortgage.¹⁵⁴ However, the government rejects such fears as groundless; on the contrary, it claims that government provides better security as is now taken by regional governments. A good example is the land registration and certification processes which are being conducted in Tigray, Amhara, Oromiya, and the Southern regions which enable farmers to have a land certificate for their holdings. This gives protection and security to the holder.

The current practice of land registration and certification provides tenure security, according to a recent study made by the World Bank and others.¹⁵⁵ It is also believed that it brings “significant economic benefits” to users, mainly through rental as farmers feel secure when the agreement is registered.¹⁵⁶ Others, though, still do not

¹⁵¹ See EEA/EEPRI 2002. A Research Report on Land Tenure and Agricultural Development in Ethiopia. Addis Ababa: Ethiopian Economic Association/Ethiopian Economic Policy Research Institute.

¹⁵² Deininger, K. & Binswanger, H. 1999. The evolution of the World Bank’s Land Policy: Principles, Experience, and Future Challenges. In *Research Observer*, Vol. 14. No. 2. Washington DC, World Bank. Cited Ibid.

¹⁵³ Tesfaye-Olika 2006. Ethiopia: Politics of Land Tenure Policies Under the Three Regimes, a Carrot and Stick Rulling Strategy in Ethiopian Politics. In: Tesfaye-Olika (ed.) *Ethiopia: Politics, Policy Making and Rural Development*. Addis Ababa: Department of Political & International Relations, Addis Ababa University, pp. 1–25.

¹⁵⁴ Dessalegn Rahmato: 2006, supra note 93, p. 3; EEA/EEPRI, supra note 151, p. 29.

¹⁵⁵ See Deininger, K., Daniel-Ayalew, Holden, S. & Zevenbergen, J. 2007. Rural Land Certification in Ethiopia: Process, Initial Impact, and Implications for Other African Countries. *World Bank Policy Research Working Paper 4218*. World Bank, p. 14; Palm, L. 2010. Quick and Cheap Mass Land Registration and computerisation in Ethiopia. *Facing the Challenges—Building the Capacity*. Sydney, Australia: FIG Congress, p. 10.

¹⁵⁶ Deininger, K., Ayalew, D. & Alemu, T. 2009. Impacts of Land Certification on Tenure Security, Investment, and Land Markets: Evidence from Ethiopia. *Environment for Development, Discussion Paper Series, EfD DP 09-11* [Online]. Available: http://siteresources.worldbank.org/NEWS/Resources/land_eeegistration_in_ethiopia.pdf, p. 29.

have confidence on the land registration and certification process and conclude that the process has not brought about the feeling of tenure security. For example, Dessalegn argued that since the land laws do not avoid completely the possibilities of future land distribution and since government still possesses the power of taking land by way of expropriation, farmers could not feel secure on their holdings.¹⁵⁷

In general, the debates seem to be based on ideological differences rather than empirical studies. The private versus state ownership of land by itself is not as such a decisive factor. What is important is whether or not there are adequate measures and regulations in place to guarantee tenure security, such as land certification, just compensation in the event of expropriation, long duration of rights, good governance, absence of corruption, and easy access of courts. In the following discussion we shall highlight the rights provided to land holders and judge from there the protections accorded to the individual land holders.

2.6.2 Governing Land Laws

Ethiopia is a Federal State constituting two special administrative cities (Addis Ababa and Dire Dawa) that are accountable to the Federal Government and nine other administrative national regional states, which are autonomous in the administrative affairs of their people. The powers and functions of the Federal and Regional Governments are provided in the FDRE Constitution. The power to “enact laws for the utilization and conservation of land and other natural resources, historical sites and objects” is provided, under the constitution, to the Federal Government.¹⁵⁸ Regional Governments are empowered “to administer land and other natural resources in accordance with Federal laws.”¹⁵⁹ To this effect, the Federal Government enacted a “Land administration and Use Proclamation” (RLAUP) in 1997 (Proc. 87/1997), and then replaced it with the current legislation, proclamation No. 456/2005. Proclamation 456/2005 delegates regional states with the power to “enact rural land administration and land use law”¹⁶⁰ which is consistent with it (Proc. 456/2005) in order to implement the FDRE RLAUP at regional level. Besides, there are other legislations in Ethiopia related to land matters among which the Urban Land Lease proclamation (Proc. 711/2011) and the Expropriation Proclamation (Proc. 455/2005) are the main ones. Further, six of the regional states (Tigray, Amhara, Oromia, SNNPRS, Beni Shangul Gumz, and Afar) have adopted their own RLAUPs and Urban Lands Holding Lease Regulations in order to implement the Federal Land Proclamations.

¹⁵⁷ See Dessalegn-Rahmato 2009a–b. Land Registration and Tenure Security: A Critical Assessment. In: Dessalegn-Rahmato (ed.) *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s–2000s*. Addis Ababa: Addis Ababa University Press.

¹⁵⁸ FDRE Constitution, Article 51(5).

¹⁵⁹ Id., Article 52(2)(d).

¹⁶⁰ Federal RLAUP, 456/2005, Article 17.

2.6.3 *The Constitution*

The FDRE Constitution under Article 40, that deals with “Right to property”, provides details about property in general, and land ownership in particular. The Constitution under Article 40(1) guarantees for every Ethiopian to own “private property” with all its benefits. Private property includes “any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen” (Article 40.2).

Article 40(3) which is the relevant provision concerning land ownership in Ethiopia states that:

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.

Regarding its means of acquisition, Sub-Article 4 states that Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession. Likewise, concerning the pastoralists of the lowland areas, sub-Article 5 declares that Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their possession. Although the peasant is not entitled to private ownership rights to the land itself, he is guaranteed a “full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital,” and this right includes “the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it.”¹⁶¹ Thus, unlike the Derg era, peasants have the full right to their produce and can sell it at market value. Moreover, the Constitution guarantees peasants against arbitrary eviction by the state. The Constitution clearly says: “... the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.”¹⁶²

Concerning urban land, the Constitution said nothing about the acquisition and transfer of land by urban dwellers. Nevertheless, some interpret Article 40(6) that deals with “right of investors” to get land, as one that includes urban dwellers as well.¹⁶³ Article 40(6) of the constitution envisages that private investors may get land on the basis of payment arrangement. In other words, unlike peasant farmers and pastoralists, investors must pay a reasonable fee for the land they get from the state. Literally, an investor is a person who uses the land for business activities and his main objective is to reap profit. So, it is obvious that urban dwellers cannot be

¹⁶¹ FDRE Constitution, Article 40(7).

¹⁶² *Id.*, Article 40(8).

¹⁶³ This line of argument was supported by the claims of government officials who argued that the source of urban land law is Article 40(6) of the Constitution. This was said by officials of the Addis Ababa Municipality and the ministers of the Urban Construction and Development following the passage of the controversial lease proclamation in October 2011.

categorized as investors. Noticing this problem, it seems, some regional Constitutions replace the word “investor” by another word “proprietor.”¹⁶⁴ The effect of such change is that urban dwellers may be included in this definition, since the word proprietor may also include any person who owns a property.

The basic flow and a reason for controversy in the valuation and compensation of assets is that the disagreement between Article 40(3) that recognizes joint ownership of land by people and the state and Article 40(8) which gives compensation only to private property, fixtures on the land but not the land. The constitution seems to give a right to ownership of land on the one hand, and denies its benefits on the other.

2.6.4 Rural Land Laws

2.6.4.1 Access to Rural Land

Two years after the adoption of the FDRE Constitution, the Federal government enacted a Rural Land Administration and Use Proclamation (RLAUP) (Proc. 87/1997) that replaced the 1975 (Proc. 31/1975) rural land law. Proclamation 87/1997 was again itself repealed and replaced by the current RLAUP (Proc. 456/2005) in 2005. This proclamation follows the constitutional principle that creates free access to rural land. It declares that “peasant farmers and pastoralists engaged in agriculture for a living shall be given rural land free of charge.”¹⁶⁵ A person, above the age of 18 years may claim land for agricultural activities, and women who want to engage in agriculture shall also have the right to get and use land.¹⁶⁶

This principle of free access to rural land has also been reproduced in the regional rural land administration and use proclamations (hereafter Regional RLAUP).¹⁶⁷ The conditions attached to this right are, firstly, the person must want to engage in agricultural activities. In other words, agriculture must be his/her main means of livelihood or profession. Secondly, s/he must reside in the area where the agricultural land is located. Although this principle is not clearly seen in the Federal

¹⁶⁴ FDRE Constitution, Article 40(6).

¹⁶⁵ Federal RLAUP. Proc. 456/2005, Article 5(1).

¹⁶⁶ *Id.*, Article 5(2), (3); See also Article 5(1) of Oromia Rural Land Law that says “Any resident of the region, aged 18 years and above, whose livelihood depends on agriculture and/or wants to live on, have the right to get rural land free of charge.”

¹⁶⁷ See The Revised Tigray National Regional State Rural Land Administration and Use Proclamation, Proclamation No. 136/2007. *Tigray Negarit Gazeta*. Year 16 No. 1. Article 5(1) (hereinafter Tigray RLAUP); The Revised Amhara National Regional State Rural Land Administration and Use Proclamation, Proclamation No. 133/2006. *Zikre Hig*. Year 11, No. 18. Article 5 (2) (hereinafter Amhara RLAUP); Oromia Rural Land Use and Administration, Proclamation 130/2007. Article 5(1) (hereinafter Oromia RLAUP); The Southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Utilization Proclamation, Proclamation 110/2007. *Debub Negarit Gazeta*. Year No. Article 5(1) (hereinafter SNNRS RLAUP).

RLAUP, Regional RLAUPs have clearly envisaged it.¹⁶⁸ Thus, residency and profession are the two important conditions to get rural land in Ethiopia. The reason seems that since there is shortage of agricultural land in rural areas, because of population pressure, it is not advisable to give land to those who live elsewhere (absentee owners) and those who earn income from other professions.

The criticisms raised against this rule are first, the principle of free access to rural land has, in practice, not been working for shortage of land in rural areas and because the laws prohibit redistribution of land.¹⁶⁹ Second, because of the residency requirement in the law, peasant farmers are locked in on their land instead of searching for additional income by staying in urban areas for longer periods. Thirdly, regional states may abuse “residency requirement” by misinterpreting it as “nativity requirement” and deny land to those who come from other regions. This is true, for example, in what happened in February 2012 when the authorities of the SNNPS evicted about 20,000 peasants from a place called Gura Farda forcefully, who had migrated from the northern part of the country (Amhara).¹⁷⁰ The peasants claimed that they lived from 2 to 20 years, and finally they were evicted because their case was labeled as “illegal settlement.” The same incident was repeated in March 2013, when the Beni Shangul Gumz region evicted and expelled about 5,000 people because they were Amhara ethnic origin coming from Amhara Region.

2.6.4.2 Nature and Duration of Land Rights

Concerning the nature of right provided to the farmers, the Federal and Regional RLAUPs uphold the constitutional principle that denies private ownership to land. Rather, the RLAUPs provide farmers with a right termed as “holding right.” The Federal RLAUP defines the term “holding right” as right of peasants and pastoralists “to use rural land for purposes of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same” (Article 2.4). Similar definitions have also been adopted by the other regional RLAUPs. The general understanding today is that peasant farmers will have all the rights of an owner except sale and mortgage. They can use the land for agriculture production, have full ownership to the produce collected there from, have right to rent to fellow farmers (share-cropping), lease to investors, and inherit and donate (as a gift) to family members.

¹⁶⁸ See for example, the Amhara RLAUP that uses the phrase “any person residing in the region...” as a condition to get agricultural land (Articles 5(2), 6(1), 7(1)); The Tigray RLAUP uses similar words like “any resident of the region” (Article 5(1)).

¹⁶⁹ The Federal RLAUP simply says that upon the wish of the people land may be redistributed (Article 9); the Amhara RLAUP says, if 80 % of the people agree (Article 8); the Oromia RLAUP completely prohibits redistribution (Article 14).

¹⁷⁰ Daniel W. Ambaye, *Ethiopia Yemanat* (Whose land is the Land [Ethiopia]), News Paper, *Reporter Amharic*, March 28, 2012.

Peasants shall have such rights for lifetime and beyond, since they can donate and inherit it to others. It has been declared that "...rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit."¹⁷¹ In a way, this gives tenure security to the holder of the land as the right of using the land and the investments made thereon will not be threatened by time limitation. It must be noted that the longer the duration of rights of using land is the better in terms of ensuring tenure security.

The missing element in the Federal RLAUP is, though, the issue of pastoralist lands. The pastoralists are people who live in the lowlands of the country depending on animal husbandry. They do not have a plot of land like the highland farmers to settle on; they are always on the move in search of food and water for their animals. Now the point is that how could we define their right of grazing over vast territories of the lowland as holding right, a right that includes lease, rent and donation? The type of property regime dominating the areas is more of communal rather than private holding. The remedy would be for the lowland regions to come up with their own rural land laws that take into consideration the regional reality.

2.6.4.3 Means of Land Acquisition

There are different modalities through which a person may acquire land in Ethiopia. The Federal RLAUP recognizes the following ways for a person to get rural land:

a. Land Grant

As mentioned above, the constitution and the subsequent land laws have created a free access to rural land to whomsoever who wishes to engage in agricultural activities. Any person, who is 18 years and above has the right to get rural land free of charge. The government, through its different land administration apparatuses, is empowered to give land to those who are in need of it. Land grant may be made from unoccupied government lands, communal lands, land reserve (land left without heirs and claimed back by government, land claimed back by the state because the holder leaves the area permanently or neglect the land), and finally by conducting land distribution.¹⁷² Land redistribution, as discussed above, has less appeal to land holders who are supposed to give consent for its distribution.

b. Bequeath

The second means of acquiring land is through inheritance or donation. Any person who is a member of peasant family may have the right to get rural land from his/her family through inheritance or donation (Article 5.2 of Proc. 456/2005). A family member is defined as "any person who permanently lives with holder of holding right sharing the livelihood of the latter" (Article 2.5). Unlike the family members who are recognized by the FDRE Revised Family Law (RFC) as those who are

¹⁷¹ Federal RLAUP, Article 7(1); Amhara RLAUP, Article 5(3); Tigray RLAUP, Article 5(1), (b).

¹⁷² See Federal RLAUP, Articles 5(2), (3) and 9(1); Amhara RLAUP, Article 7.

related by marriage, blood and adoption, the Federal RLAUP follows a slightly different path. As can be inferred from the above cited provision, a family member is one who “lives” with the peasant who holds the land and “shares” his “livelihood.”

The requirements are basically two: residency and management. It means, first, the beneficiary must permanently live with the farmer under the same roof (residency element); and second, s/he must totally rely on the peasant farmer for her/his livelihood and has no other income of her/his own. S/he is under the control and administration of the farmer (management element). This means, the law does not specifically require marital or blood relations for a person to be considered as a family member. Hence, a laborer who has no alternative income of his own and lives with the farmer, without salary, under the same roof may be considered as family member and eligible for inheritance. The Amhara RLAUP even goes one step ahead by allowing inheritance of land by will to any farmer engaged in agriculture.¹⁷³

By contrast, it is not possible to inherit or donate rural land to one's children who live elsewhere or are engaged in other professions. The rationale behind such rule seems that since land belongs to the state and the people and not a private one, it has to be transferred to those who are in need of it, irrespective of their blood relations. Yet, the FDRE RLAUP, except the possibility of passing one's land to family members, presumably through expressed testament (will), doesn't tell the situation of inheritance during intestate succession. The assumption is that in the absence of legitimate will left by the deceased landholder, the rules of the RLAUP and the Civil Code succession part would be applied. Looking into this problem, the Amhara (ANRS) and the Benishangul Gumz RLAUPs included provisions to settle the issue. Regulation 51/2007 of the ANRS, for example, under Article 11(7) puts the beneficiaries of intestate succession in the following priorities: minor children, if not, family members; children of full age who have no land of their own; children of full age who have their own landholding; parents. In order to be a legitimate beneficiary to the intestate succession, all the above people must show interest to engage in agricultural activities and reside in the area.

c. Lease

The third modality to acquire land is government land transfer to private investors through lease contract (Article 5(4)(a)). This is the base for the current *large-scale agricultural land transfer* practice carried out in the country. Ethiopia is one of the countries that attract the interest of investors and sovereign states from different countries. In the past two decades, millions of hectares of land have been transferred to many foreign and domestic investors ventured in the flowering industry, bio-fuel, sugar, cotton, palm oil, tea production etc. The Ethiopian government has a favorable investment policy that attracts foreign direct investment in such sectors. It has been claimed that so far about 3.5 million ha of land has been transferred to

¹⁷³ See Article 16(1) of ANRS RLAUP. Whether or not this contravenes with the Federal Rural Land Law is debatable.

both foreign and domestic investors, and the government has still a plan to transfer the same amount of land in the coming 5 years.¹⁷⁴ The government, on the other hand, puts the figure at about 2.6 million¹⁷⁵ (2.2 million given by regional states and 380,000 given by the Federal Government). However, recent press and other reports¹⁷⁶ about actual or proposed large farmland acquisition by big investors have raised serious concerns about the danger of neglecting local rights and other environmental concerns. They have also raised questions about the extent to which such transactions can provide long-term benefits to local populations and their contribution to poverty reduction and sustainable development.

2.6.4.4 Transfer of Land Use Rights

As already mentioned above, land rights could be transferred permanently through inheritance and donation. Besides, there are other modalities through which land use rights may be transferred temporarily to others. We can call them commercial land transactions, to differentiate them from inheritance and gift. To be specific, the law recognizes rent and lease as the two possible ways to transfer land use rights temporarily. Sale and mortgage are not yet allowed. The FDRE RLAUP provides a general provision that allows rent and lease the details of which shall be decided by regional rural land laws. It generally says that peasants and pastoralists can “lease to other farmers or investors land from their holding of a size sufficient for the intended development *in a manner that shall not displace them*, for a period of time *to be determined by rural land administration laws of regions* based on particular local conditions [emphasis added]” (Article 8.1). It means, the law gives the discretion of deciding on the duration of the lease period and the amount of land to be leased out to regional governments. Another point is that the law uses only the term “lease”, and excludes the word “rent”, whereas regional RLAUPs give different meanings to the two terms.¹⁷⁷

Regional RLAUPs do not follow similar approach in the size of land to be leased out and the duration of the lease period. For instance, in Tigray, the peasant is

¹⁷⁴ Dessalegn-Rahmato 2011. Land to Investors: Large-Scale Land Transfer in Ethiopia. *FSS Policy Debate Series*. Addis Ababa: Forum for Social Studies, p. 5.; Daniel W. Ambaye Author. 2004 E.C. Sefafi ye Gibrina Investment le Ethiopia min Yifeyidal? (What is the Benefit of Large Scale Agricultural Investment for Ethiopia?). *Reporter*. Accessible at http://www.ethiopianreporter.com/old_ver/index.php?option=com_content&view=article&id=4934:2012-01-21-08-27-41&catid=303:commentary; See also an article published on Fortune News paper, <http://www.addisfortune.com/Published%20On.htm>.

¹⁷⁵ Interview with Ato Essayas Kebede, Director of the Agricultural Investment Directorate, Ministry of Agriculture, 2011.

¹⁷⁶ See for example, Horne, F. 2011. Understanding Land Investment Deals in Africa: Country Report Ethiopia. Oakland, USA: The Oakland Institute.

¹⁷⁷ For example in the Amhara and Oromia RLAUPs “rent” is understood as “transfer of land to fellow farmers for shorter period of time”, while “lease” is defined as “transfer of land from farmers to investors or from government to investors for longer period of time.”.

allowed to rent out up to 50 % of the size of his land for 20 years if the lessee uses modern technology, and 3 years if s/he uses traditional means of production (Article 6(1), (3) of Tigray RLAUP). In Amhara Region, renting land is allowed for a maximum of 25 years, although the size is not mentioned. There are practices in the region where farmers rented out the whole of their holdings to small scale investors. The argument for deviating from the Federal one (which says *in a manner that shall not displace them*) is one that depends on recognizing the rationality of the farmers; that farmers know better for themselves. The Oromia RLAUP follows the Tigray approach in terms of size and duration. The SNNPRS RLAUP follows a somewhat different approach. According to Article 8(1) of Proclamation No. 110/2007 of SNNPRS, the duration of land rented to a peasant by a peasant is 5 years, by a peasant to investor is 10 years, and by a peasant to those who cultivate perennial crops is up to 25 years.

Investors who rent land either from the government or peasant farmers have the right to mortgage their lease right as security to banks (Article 8(4) of Proc. 456/2005). Regional states have also reproduced this right in their respective proclamations. This implies that an investor may lease land from two sources: first from individual farmers, and second from the government. When we look the practice, it is the land which is rented from the government that is given as collateral to banks; not the one rented from peasant farmers. The reasons are firstly, the land rented from peasants is too small to pass it as mortgage, and secondly, the peasant may not agree that his land be given as collateral to banks.

Another recent development is that commercial investors who acquire land from clan chiefs in the lowland Afar Region complained that banks did not recognize the land deal and hence denied them loan by securing the land. In the nomadic areas of Afar and Somale Regions of Ethiopia, rural land is controlled and administered by clan chiefs rather than the state. Even though the Afar Region passed RLAUP and regulation, this law could not be implemented in the region because of the resistance it encountered from the clan chiefs.¹⁷⁸

This is because the land tenure in the lowlands of Afar and Somalie Regions is customary in nature. The people live by moving from place to place in search of water and food for their cattle. They have strong attachment to their clan chiefs than the government. It is the clan chiefs who effectively administer land in the sense of granting land for housing, defining communal grazing lands and enforcing rights as well as resolving disputes. It is even alleged that government authorities require the permission and approval of clan chiefs to expropriate land, and compensation has to be directly paid to clan chiefs.¹⁷⁹

But the Ethiopian legal system does not recognize the customary land tenure and land administration system operated in these areas. The existing RLAUP was

¹⁷⁸ *Ethiopian Reporter*, Amharic bi weekly, October 28, 2012.

¹⁷⁹ See for example Kabtamu, *supra* note 28, p. 128, 129. Kabtamu claims that government agencies, investors and others who want land in Somalie Region have to request to and negotiate with clan chiefs. Clan chiefs are also the ones who determine the amount of compensation and receive it in the name of the community.

enacted taking into consideration the highland sedentary life style which is governed by formal law. For this reason, any land negotiation and deal made with the clan chiefs is considered as informal and not acceptable by formal institutions, such as banks.

2.6.4.5 Termination of Land Rights

Rural land rights are not immune to government intervention. Hence, a farmer may be required by law to use his rights in some fashion than another. For instance, a farmer may not cultivate land having 30° slope, without putting terraces on the land (Article 13.4). Such restrictions are made for various reasons, such as environmental, equity, health and others. Violation of such obligations may render the loss of the land itself. Concerning the reasons of loss of the land rights, the proclamation does not as such give a coherent list. But, one may locate them in different parts of the proclamation. For instance, it is said that a holder of rural land “shall be obliged to use and protect his land. When the land gets damaged, the holder of the land shall lose his use right (Article 10.1).

In general, a review of the Federal as well as Regional RLAUPs reveals that the following may be considered as reasons for the loss or termination of rural land rights:

- Permanent employment of the farmer that brings him an average salary determined by government
- Engagement in professions other than agriculture and for which tax is paid
- Absence of a farmer from the locality without the knowledge of his whereabouts and without renting the land for more than 5 years
- Following the land for three consecutive years without sufficient reasons
- Failure to protect land from flood erosion
- Forfeiting land right upon written notification
- Voluntary transfer of land through gift
- Land distribution (the loss will be partial)
- Expropriation of land without replacement of another land.

2.6.5 Urban Land Law

2.6.5.1 Overview of Past Lease Proclamations

a. Proclamation 80/1993

It has been discussed that urban land was administered by proclamation 47/1975, which was adopted by the Derg in 1975. After the downfall of the Derg in 1991, the Transitional Government of Ethiopia (TGE) came up with a new urban land law. Unlike the permit system operational before it, the new urban land law follows a

lease system. So, for the first time a lease system was introduced in Ethiopia as a mode of urban land holding when the new law was adopted in 1993.¹⁸⁰ Since the lease system was enacted before the adoption of the Constitution, and since the constitution does not explicitly say anything about urban land allocation, it can be argued that this proclamation was the base for the current urban land holding system, although its constitutionality is questionable.

The objectives of the proclamation, as indicated in its preamble, were summarized as follows: to create equitable distribution of land, to control the growth of city centers, to increase urban revenue to finance urban infrastructure, to expedite construction of urban houses to alleviate the existing shortage, to provide land utilization value[market value of urban land] which was not in existence, to ensure transparency in land transfer and avoid land speculation, to promote the economic development of urban centers through involvement of investors, and to ensure tenure security by providing land rights of longer durations.¹⁸¹

Compared to the permit system of the Derg era, a significant characteristic of this proclamation is that it allowed a free transfer of lease right in the form of sale, mortgage and contribution in Share Company (Article 10.1 of Proc. 80/1993). Yet, according to sub-3 of same Article, the “lessee may not, on transferring his right of lease, collect income which is higher than the rent of land he paid; nor may he mortgage such right at a value which is higher than the rent.” Where the lessee collects or gains higher than what he actually paid as ground rent, he has the duty to pay back the difference to town administration (Article 10 0.4). The idea was that the increment in land value would be captured by the government rather than individuals.

b. Proclamation 272/2002

Proclamation 80/93 was repealed and replaced by the Revised Urban Land Lease Proclamation (Proc. 272/2002) in 2002.¹⁸² The objectives of Proclamation No. 272/2002 were mainly two: to collect income from land lease in order to assure fair share from urban land wealth, and to transform the holding system (permit system of the Derg era) into a lease system.¹⁸³ Compared to its predecessor, the objectives of the revised proclamation 272/2002 were few.

Proclamation 272/2002 offers two methods to get access to urban land, unlike its predecessor which says nothing about the subject. Article 4(1.a) of the proclamation recognizes “auction” and “negotiation” as the two modalities to acquire urban land.

¹⁸⁰ Urban Lands Lease Holding Proclamation, Proclamation No. 80/1993. *Negarit Gazeta*. Year 53, No. 40.

¹⁸¹ The Preamble of Proclamation 80/1993.

¹⁸² Re-enactment of Urban Lands Lease Holding Proclamation, Proclamation No. 272/2002. *Negarit Gazeta*. Year 8, No. 19.

¹⁸³ Mesganaw-Kifelew 2009. The Current Urban Land Tenure System in Ethiopia. In: Muradu-Abdo (ed.) *Land Law and Policy in Ethiopia Since 1991: Continuities and Changes*. Addis Ababa: Ethiopian Business Law Series, Faculty of Law, Addis Ababa University, p. 171; Also, see Preamble of Proc. 272/2002.

Nevertheless, sub-Article (1)(b) of the same Article empowers regional cities to come up with additional means of land acquisition. Accordingly, besides the two systems mentioned above, the Addis Ababa City Government and other regions came up with three additional methods: namely, lot, assignment and award.¹⁸⁴ Like its predecessor, this proclamation also allows the free transfer of lease right (Article 13). But as a significant development, unlike proclamation 80/1993, the revised proclamation did not require the repayment of an enhanced land value gained by the leaseholder during transfer of the lease right.

2.6.5.2 Current Urban Land Lease Proclamation

a. Background, Justifications and Objectives of the Proclamation

Ten years after the adoption of Proclamation 272/2002, the Ethiopian government was reconsidering the revision and change of the lease proclamation on account of reasons discussed hereunder. Accordingly, the FDRE parliament adopted a new lease proclamation in October 2011.¹⁸⁵ The proclamation was one of the most contentious legislations ever proclaimed as it sparked intense public debates following its adoption, and public officials were forced to give explanations almost every day for more than 3 months without interruption.

The reasons offered by government officials for the revision of the existing lease proclamations are, in fact, reflected in what was later enshrined under Article 4 of the proclamation as “Fundamental Principles of Lease”:

1. The right to use of urban land by lease shall be permitted in order to realize the common interest and development of the people.
2. The offer of lease tender and land delivery system shall adhere to the principles of transparency and accountability and thereby preventing corrupt practices and abuses to ensure impartiality in the process.
3. Tender shall reflect the prevailing transaction value of land.
4. The urban land delivery system shall give priority to the interests of the public and urban centers to ensure rapid urban development and equitable benefits of citizens and thereby ensure the sustainability of the country's development.

The first principle (Article 4.1) was represented, as we shall see soon, in different parts of the proclamation. The idea is that it should be the government, and by extension, the people, who should be benefiting from the lease system. One way to do this is by capturing the enhanced urban land value instead of allowing speculators to reap it. One of the arguments forwarded by government in the aftermath of the adoption of the proclamation was that speculators and urban brokers were the beneficiaries of the lease system. Urban speculators have been profiting by selling bare land (only lease right) without adding value to it. As noted above,

¹⁸⁴ Ibid., p. 173.

¹⁸⁵ FDRE Urban Lands Lease Holding Proclamation, Proclamation No. 721/2011. *Negarit Gazeta*. Year 18, No. 4.

Proclamation 272/2002, as opposed to Proclamation 80/1993, allowed free transfer of lease right with the full advantage of capturing the enhanced value of the leased plots. Proclamation 80/1993, on the contrary, required the lessee to pay back the difference in profit between what he paid as lease rent and the sale price. But, later on, when it was replaced by Proclamation 272/2002, this very provision was deleted. Because of this privilege allowed in Proclamation 272/2002, in the past 10 years, lessees and urban speculators were able to reap the benefit of enhanced urban land value, while the government was limited to insignificant tax premium. Government has been complaining that although it expected to generate adequate income for urban infrastructure from the lease system, it was somebody else who reaped that. For this reason, as we shall see below, the defunct rule of Proclamation 80/1993 that provides the enhanced value of urban land to government has been reinstalled in the new proclamation.

The other point addressed by Article 4(2), (3) is that urban municipalities became corrupt and inefficient in land delivery. Corruption, non transparency and injustice were reined in the system which created a safe haven for few urban speculators and brokers. The modalities of land delivery such as negotiation, award and lot were considered as non-transparent and sources of corruption. Lack of detailed rules in tender processes was also cited as another reason for corrupt behavior. Thus, the proclamation is also expected to be instrumental in efficient land transfer (Article 4(4)). It has been argued that demand for land in urban areas has been much greater than the supply of land made by the land authorities.

These principles are also encompassed in the objectives of the proclamation. The objectives of this new proclamation, as envisaged in the preamble, are two: to satisfy the growing urban land demand which resulted from the fast economic growth of the country; and to ensure good governance in the development of efficient land market and a transparent and accountable land administration system (Preamble of Proclamation 721/2011).

b. Application of Lease System and Fate of Old Possessions

Lease is the only means of land holding system in urban Ethiopia, and except for those lands which were acquired before the coming of lease system in 1993, it is prohibited to acquire land through modalities other than lease system (Article 5.1). However, as an exception, regional governments may identify urban centers to which this rule may not be applicable, although this may not be longer than 5 years (Article 5.4). In other words, as a matter of principle, lease shall be the cardinal tenure system for urban land holding, but in small towns where it is not yet possible to place leasehold system, other modalities of tenure system (perhaps permit system or rural holding system) may be used temporarily, for a maximum of 5 years.

What about old possessions? An “old possession” is “a plot of land legally acquired before the urban center entered into the leasehold system, or a land provided as compensation in kind to persons evicted from old possession” (Article 2.18). Thus, all land acquired and held during the imperial era, Derg era, and after that, outside lease system will be considered as old possession. Besides, replacement land given to owners whose land was expropriated may also be considered as

old possession since the land was given without lease contract. Although it is difficult to put the exact figure, the number of old possessions in Addis Ababa, for example, may constitute half of the total properties in the city. So what will be the fate of such properties?

As a matter of principle, all land in urban areas shall henceforth be transferred into lease system (generally see Article 5). But, concerning old possessions, it is said that their fate will be decided by the Council of Ministers upon detailed study to be made in the future (Article 6.1). In other words, all “old possessions” will not be converted in mass at once to leasehold. The law, however, requires the conversion of old possessions into lease system in one of the following events:

- Where a property attached on an old possession is transferred to a third party through any modality other than inheritance (Article 6.3)
- Informal settlements that have been regularized pursuant to the regulations of regions and urban administrations (Article 6.4)
- Where an application to merge an old possession with a lease hold is permitted, (Article 6.6)

Property transfer in this case includes sale, exchange or donation, excepting inheritance. It must be noted that since land is not saleable, the subject matter of “transfer” is not the land itself but the immovable on the land, i.e. building. Hence, whenever a house rested on old possession is sold, exchanged, or donated, the new owner shall possess the land on lease basis. The other situation is the “regularization” of informally held possessions. Land may be held and construction of houses may be carried out without the permission of the urban land administration offices. In Addis Ababa and many other urban city centers, there are lots of houses constructed in such a way. The usual measure taken in such cases is demolition of the informal settlement. But, sometimes, urban centers or regional governments may pass a specific regulation to regularize, formally register, the informal settlements. If an informal settlement is now regularized, then the new possession arrangements must be changed to lease system.

The third case in which an old possession should be converted to lease system is where old possession is to be merged or amalgamated with leased land. It means the old possession and the leased land must have been bordering each other and now have changed into one property. What about amalgamation of two old possessions? The law does not say anything about it, and the assumption is that unless it is clearly required by the law, it is not mandatory to convert them to lease system. In relation to this, a directive of the Addis Ababa City Administration says: “where old possessions are to be merged, they will be administered according to old possession tenure.”¹⁸⁶

¹⁸⁶ Addis Ababa City Administration 2004, *Land Delivery Service Manual*, No. 12/2004 E.C, Article 18.2.4.

c. Effect of Lease

Transfer of land holding into lease system means that all land in urban areas, after being identified and registered by the municipality, shall be known as lease land, and the holder shall enter with the government a lease contract that, among others, includes lease period and lease price to be paid (Article 16). The lessee will then be given a “Lease Holding Certificate” that shows the name of lessee, land size, location, land use purpose, lease price, lease period and so on (Article 17). The important effect of converting a possession to leasehold is through the payment of a specified amount of ground rent to the government. In the event of the above three situations, the lessee will pay “lease benchmark price” (minimum lease price), which shall be set by every urban center, multiplied by the area of the land size (Article 6.7). The calculation of this “lease benchmark price” takes into “account the cost of infrastructural development, demolition cost as well as compensation to be paid to displaced persons in case of built up areas, and other relevant factors” (Article 2.11). Currently, the capital city adopted a new lease benchmark price for various locations of the city and “the new prices range from 1,686 birr per m² designated as central market places to 191 birr that are grouped as expansion (suburb) places in the city.”¹⁸⁷ The initial payment will not be less than 10 % (Article 20.2) and the remaining will be paid over long period of time which will be decided in the contract. This is also true of land plots granted by “allotment” to those organs specified under Article 12. For others, the amount of payment shall be determined by the tender (auction) process.

When an old possession is converted to lease system, there is no guarantee that it will be maintained as it had been in the past. It means the land use (residential, business, building height etc.), land size, land shape, land rent/tax, initial lease payment, and so on shall be determined based on the current or existing rules (such as structural and local plans, land lease regulations, etc.)¹⁸⁸ This will, no doubt, cause a fluctuation in land size (large size of lands may be reduced and small plots may be enlarged) and the lessee will be compensated for any fixture on the land in case his land is reduced, and he is obliged to make lease payment for the addition in case his possession is enlarged (see Article 6.2 of Proc. 721/2011).

The other argument that can be inferred from this change is that this law will have an impact on the urban land market. The general idea is that the market price of urban land and housing will increase or decrease. For example, the price of urban real properties will be too much for the buyer (since he shall pay both the purchase price and the lease price) if sellers continue to demand the usual price; or it may be too small for the seller since the buyer by considering the lease price which he is supposed to pay, will make a smaller offer for the property. On the other hand, the

¹⁸⁷ See for example the news as published in a weekly news paper, *Capital*, of June 2012. Available: http://www.capitalethiopia.com/index.php?option=com_content&view=&id=1225:new-lease-tariff-for-addis&catid=35:capital&Itemid=27.

¹⁸⁸ See details under Article 6 of Urban Land Lease Regulation No. 49/2004 E.C of Addis Ababa City Administration; Article 7 of Model Urban Land Regulation of Ministry of Urban Development and Construction.

state will be in a safe position since its revenue will be increasing from every transaction and change made on the lease right.

Although it is not possible to conclude at this time, the early results on lease auction in the capital city show that land lease price has become very expensive. For example, in a land lease auction floated by the Addis Ababa City, on October 31, 2012, all the land found at the periphery of the city was sold at a price ranging from 10,000–14,000 birr per m². This shows an increase in three to fourfold.¹⁸⁹ As mentioned above, the initial bid price for these areas has been fixed as 191 birr per m².

d. Modalities of Land Acquisition

Tender

Previously, as mentioned above and stipulated by the federal and state lease laws, there were five modalities of urban land acquisition: auction, negotiation, assignment, award, and lot. Auction and negotiation were the two most important methods for cities to collect income from land lease transfers. In bigger cities, auction is still the most utilized method to transfer land from municipalities to investors. Land was also assigned to civic associations, charitable organizations, embassies, and international organizations. Award was the least utilized method of land transfer by urban land authorities to those who contribute extraordinary accomplishments. Lot or lottery was a mechanism by which urban land had been distributed to low and middle income citizens. This method was an extension to what had been exercised by the permit system during the Derg era.

Now, however, since most of the modalities are categorized as bad practices that opened the door for corruption, the government argued, the law recognizes only tender (auction) and allotment (land lease transfer without auction) as the two basic means of lease transfer from government to citizens (Article 7.2 of Proc. 721/2011). As a matter of principle, every land needed for residential, commercial (agriculture, industry, or service), and other purposes will be transferred by tender. Bidders will use the “lease benchmark price” as a base to offer their price, and the highest bidder will be identified based on the “bid price and the amount of advance payment he offers” (Article 11.5). To make it more transparent, accessible and free from corruption, the law allocates more detailed provisions (Articles 8–11) to the tender process.

Allotment

As exception, however, city municipalities may give land by allotment to selected bodies which have paramount importance to society. “Allotment” is defined in the proclamation as “a modality of land use right transfer applied for providing urban lands by lease to institutions that could not be accommodated by way of tender” (Article 2.10). Whether or not allotment requires payment of the minimum lease bench price is not known. But, at least, in some cases (such as replacement land

¹⁸⁹ This piece of news was published in the English weekly, *Capital*, Year 14, No. 726 of Nov 4, 2012.

given to expropriated person and land required for religious worship) it is not feasible to expect payment. What is clear is, though, those listed under Article 12 (3), (5) are expected to pay a lease bench mark price, as we shall see below. The following list includes entities or persons eligible to get land by allotment (Article 12 of the proclamation):

1. (a) office premises of budgetary government entities, (b) social service institutions run by government or charitable organizations, (c) places of worship, (d) public residential housing construction programs and government approved self-help housing constructions, (e) use of diplomatic missions and international organizations, (f) manufacturing industries, and (g) projects having special national significance and considered by the president of the region or the mayor of the city administration and referred to the cabinet (Article 12.1).
What is interesting among the list is “d”. Under Article 12(1)(d) the beneficiaries are government condominium housing projects and “government approved self-help housing constructions.” As discussed above, the land assignment to self-help construction is something that is maintained from the past. This is the same with the lot (lottery) type of land allocation that had been applied. This is the only provision that accommodates the cheaper and/or equitable land transfer to urban residents. The idea is that since low income group people may not be able to compete in bidding for urban plots with higher income groups, a special land allocation system that accommodates their interest is fair and realistic. As mentioned above, whether or not the beneficiaries under this list are required to pay lease bench mark price is not known. But the assumption is that, in the absence of such clear requirement, payment should not be expected.
2. In addition to what we have under (1) above, a person who is displaced from his house/land (an old possession or leased one) as a result of urban renewal (like in case of expropriation) shall get a replacement plot by allotment. Under the FDRE Expropriation proclamation, one of the components of a compensation package is provision of replacement land (Article 8(4)(a) of Proc. 455/2005) for the person to build his house, and it will not be logical to expect payment of lease price for such land.
3. A lawful tenant of government or *Kebele* owned residential house outside Addis Ababa shall be entitled to allotment of residential plot of land at benchmark lease price if displaced due to urban renewal program. In Addis Ababa, he is entitled to purchase of condominium housing unit (Article 12(3), (4)).

The criticism that one may raise against this modality of land acquisition is that it will defeat the very purpose of the proclamation, discouraging speculators. This is because it will be again the rich people who can afford to pay the highest lease bid price and sell it at profit in the future. The majority of the poor will be excluded from the system. For example, as already mentioned previously, in the land lease bid floated on the 31st of October 2012, residential land area whose benchmark

(floor value) was fixed at 191 birr fetched exaggerated prices ranging from 10,000 to 14,000 birr per m².¹⁹⁰ The government tries to accommodate the interest of the poor and middle income citizens by providing condominium houses and other similar mechanisms. But the problem with such systems is that it is corrupt and inefficient. For example, the Addis Ababa City Administration that started condominium housing construction in 2004 said to be completed and transferred 97,000 houses (up to 2012) to residents, while around 350,000 people are still awaiting their chance.¹⁹¹ This shows that the performance of the past 8 years in construction and distribution of housing was not satisfactory.

It seems rather that people opted for illegal land grab (informal settlement) in the absence of efficient and equitable land distribution. Recent study conducted by the Addis Ababa city reveals that after the passage of the lease proclamation, massive land grab has been made by landless urban residents in the expansion areas of the city. The Addis Ababa City Administration has demolished 7,000 houses and claimed back 393.3 ha of land from illegal settlers in the six sub-cities of Bole, Yeka, Nefas-Silk Lafto, Akaki Kaliti, Kolfe Keranio, and Gulele. In connection with the incident 23 *Woreda* officials have been removed from their positions and another 163 are under investigation.¹⁹²

e. Transfer of Lease Right

Like any other property right, lease right is also freely transferable, although this time it is burdened with some restrictions. The new lease proclamation declares: “a lessee may transfer his leasehold right or use it as collateral or capital contribution to the extent of the lease amount already paid” (Article 24.1) In here, the phrase “to the extent of lease amount already paid” refers to the collateral and capital contribution, and partly, as we shall discuss below, to the sale of uncompleted constructions. Caution is necessary, though, in understanding its implication.

In the previous Proclamation No. 272/2002, there was no limit or restriction to such right. Lessees who had been transferring either the lease right (bare land) or lease right with construction (complete or incomplete) on it have been getting the full profit of the transfer without any restriction. Lots of urban speculators were said to be benefiting by capturing the full enhanced land value over the years and even abused it and became “rent collectors.” In other words, it is said that the absolute freedom, introduced by the previous proclamation, has created the problem of “rent

¹⁹⁰ See the weekly *Capital*, Sunday, 4, October 2012, Year 14, No. 726. The paper expresses its worry that the poor would be excluded from future dealings of such nature because of this unheard type of prices offered.

¹⁹¹ See for example a report made by the weekly English *The Reporter*, Saturday August 18, 2012.

¹⁹² An official press explanation given by Ato Getachew Ambaye, City manager of Addis Ababa City, December, 2012. See details *Addis Fortune*, Sunday Dec 2, 2012, Vol. 12, No. 657. Available: <http://addisfortune.net/s/an-unsettling-time-for-addis-abebas-newly-homeless/>; *Ethiopian Reporter* (Amharic), Wednesday Dec 5, 2012, available: <http://ethiopianreporter.com/news/293-news/8747-2012-12-05-06-21-18.html>.

seeking” activities. This means that speculators were encouraged to transfer lease right only, without any construction made on it. This generally did benefit neither the economy nor the people, since its purpose was filling the pocket of few people rather than alleviating the housing shortage that exists in the country. The value of urban land was unreasonably inflated for no reason other than speculation and confusion. There were ample experiences which show that in recent years, in the capital as well as in regional cities and towns, land value (bare land) has been increasing twofold every year without any value added on it.

For this reason, the government has been complaining that speculators purchase and transfer land without adding value to it. Among others, even real estate companies were said to have been transferring bare land (lease right to the space only) without building the necessary construction over it. Because of this, in 2010, the city of Addis Ababa had reclaimed more than 1 million m² of land from real estate developers on the ground that they had been transferring land without adding value thereto.¹⁹³ To fight this practice, the new proclamation introduces four strategies that limit the free transfer of lease right. The government argues, of course, that they were made with the intention of curbing speculative activities and boosting the state revenue.

Barring repeated transfer

First, the proclamation prevents people who repeatedly transfer leasehold right, without completion of construction, in anticipation of speculative market benefit, from participation in a future bid (Article 24.7). This means, the city administration can prevent selected people, who are identified in selling lease right or unfinished properties repeatedly from participating in future auctions. The reason behind such restriction is to discourage speculators who are engaged in the sale and transfer of unfinished properties; instead, the government wants to encourage them to complete the constructions before selling, and thereby alleviate the housing problems. The proclamation does not tell as to how many times people are supposed to transfer unfinished property before they get banned. The FDRE Model Lease Regulation (Article 43.1) and Addis Ababa City Directive, however, provide a clue in this regard. According to Article 56(1) of the directive “if the person transfers unfinished properties three times within 3 years, he shall be barred from any future bidding in lease for 2 years”.

Supervision of sale

Second, as per Article 24(2) of the proclamation, “If a lessee, with the exception of inheritance, wishes to transfer his leasehold right prior to commencement or half-completion of construction, he shall be required to follow transparent procedures of sale to be supervised by the appropriate body.” Note that this requirement is not necessary for the sale and transfer of fully completed properties. The implication of this provision is understood only after reading the next sub Article of this provision.

¹⁹³ Addis Fortune, weekly news paper, Vol. 11, No. 539.

The sub-Article points out that since the seller of the lease will not be entitled to the full profit of unfinished construction, it is necessary to involve a government agent to assess the value of construction and current land lease price.

Limitation on transfer of unfinished property

Third, transferring only leasehold right (bare land) or leasehold right with only half-completed construction gives no benefit at all to sellers. Previously, completed or not, lease holders used to reap the full benefit of enhanced land value during transfer of the lease right. Now, however, as a strategy to encourage completion of construction, to avoid rent seeking activities, and to rather capture the benefit by the state, the sale and transfer of half completed properties is not attractive. “Half completed construction” is defined under the proclamation (Article 2.16) differently for different types of constructions as follows:

- (a) In the case of a villa, completion of foundation, columns and top beam;
- (b) In the case of a multi-story building, completion of foundation and 50 % of the total number of floor slabs;
- (c) In the case of a real estate development, completion of the construction phase referred to, as the case may be, in paragraph (a) or (b) of sub-Article (1) of this Article relating to the entire blocks.

What will happen if a lessee wants to transfer half completed construction or bare land? The first requirement, as already raised above is, to invite municipal agent to oversee the sale process. Besides, the amount of money collected by the lessee is limited to the following items. According to the law, a lessee who wishes to transfer his leasehold rights before commencement of construction or half-completed constructions will get first, the effected lease payment including interest thereon, calculated at bank deposit rate; second, the value of the already executed construction; and third, 5 % of the transfer lease value (Article 24.3). This 5 % relates to the difference between the lease purchase price paid and the sales price; in effect, it must be referred to the gain or profit made by the transfer.¹⁹⁴

So far as the first two conditions are concerned, there is no problem in understanding the amount of lease price paid (plus the bank based interest rate), and the amount of money expended for the construction made. The difficulty lies in understanding the third point: how do we determine the *transfer lease value*? Are the lessee and the new beneficiary (e.g. buyer) supposed to deal in the open? What is the role of the municipality agent at this point? Details, similar in content, are provided in the Model Lease Regulation and the Addis Ababa City Administration Lease Regulation and Addis Ababa City Administration Lease Directive.

The Addis Ababa City Administration Lease Directive No. 11/2004 provides details as described below. As a matter of principle, it is the government, through

¹⁹⁴ Look to this type of argument in Mekasha-Abera 2012. *Ye Eethiopia Meseretawi ye Lease Hig Hasabochna Yemiasketlachew Chigroch (Fundamentals of the Ethiopian Lease Law and its Problems)*, Addis Ababa, Far East Trading, p. 79. The writer say that “If the lease sales value is more than the lease price paid at the beginning by the seller, then the seller will be entitled to 5 % of the difference and the rest of it will go to government.”

the supervisor mentioned above, that can decide the amount of transfer value (Article 51.1). The lease transfer value shall be the average value of the current/market tender value of the locality and the lease value by which transfer was made to the current lessee (Article 51.2). The government supervisor will take the average price of the current lease price of the area and the actual lease price for which the lessee (now seller) got the land. In the absence of an offer by the buyer, this average value will be the binding transfer value (Article 51.4). If, on the other hand, the buyer makes an offer that is equal or less than the average value calculated above, then the transfer is acceptable (Article 51.3). When the average value is less than the previous lease price, then the relevant body may either take one of the better values (either the previous or the current one) as transfer value (Article 51.5) or put the lease land on auction [to get better price] (Article 51.6).¹⁹⁵

To make it clearer, let's assume that Ms. A has bid 200 m² of land from the city municipality for 4,000 birr per m² (total 800,000 birr). Let us again assume that she has made a 10 % advance payment of 80,000 birr as lease price. Let's further assume that she constructed a foundation at a cost of 40,000 birr. Her total cost at this point amounts to 120,000 birr. For some reason, however, she now wants to sell the property after 1 year. The bank interest is 5 %.

A further assumption that is made is that the current lease value of land in a similar location is 5,000 birr per m² and this sums up to a total value of 1,000,000 birr.

Decision (Average value is 900,000)

1. The buyer shall pay birr 900,000
2. The seller (lessee) will get the following:
 - 2.1. 80,000 birr (lease price paid)
 - 2.2. 4,000 (5 % of 80,000)
 - 2.3. 40,000 (construction cost)
 - 2.4. 5,000 (5 % of 100,000 birr profit (900,000–800,000))
3. Total = 129,000 (net Profit for seller = 9,000).
4. Government profit = 95,000 birr.

On the other hand, if the construction is completed or becomes more than half, then there is no limitation as to the value of the sale price. Hence, the whole purpose behind limiting the right to the transfer of half-completed properties seems to encourage owners to complete construction and thereby alleviating the housing shortage.

The flaw of this provision is that it will not stop the connivance that might be made between buyers and sellers. It means that it would not be possible to avoid an under table (internal) agreement that might be carried out between the two. Secondly, even if it is possible to control the connivance, people will shift radically from selling unfinished properties to finished ones. For instance, for residential

¹⁹⁵ Ibid. Articles 41 and 44 respectively.

houses, half completed construction refers to construction of foundation, columns and top beam. Thus, if one puts a roof to the house, then it is considered as a complete one. As compared to sale price, the difference in cost is indeed very small. In this way, speculators will shift to this new way of trading properties. Thirdly, constitutionally speaking, this practice is against the property rights of property holders. Once the government gets its money from the lease price during original transfer, why is it that it again insists on sharing the profit from the appreciation of land value? Of course, the justification is to encourage people to put a building on the land before they sell it, and to add value to their holdings, but, this should not be done by violating the constitutional right of property which, among others, gives the right to collect the increment in property value.

Mortgage of leasehold right

As stated above, leasehold right is subjected to any form of transaction including sale, lease/rent, inheritance, donation, mortgage, and as capital contribution to a company. But again, as mentioned previously, the right to mortgage is limited to the “*extent of lease amount already paid*” (Article 24.1). This “already paid lease amount” may be the initial down payment and the yearly installment, if the lease agreement was made before a year and more. Under Article 24(4) the proclamation further introduces, as a fourth strategy, the following:

...where a lessee uses his leasehold right as collateral prior to commencement of construction, the collateral value may not exceed the balance of the lease down payment after considering possible deductions to be made pursuant to Sub-Article (3) of Article 22 of this Proclamation.

The deductions mentioned under Article 22(3) are “...7 % of the total lease price in addition to a lease amount that covers the period from the date he took possession of the land.”

The contents of the above Articles may be summarized as follows:

- Lease right may be mortgaged to the extent of lease payment already made (that includes down payment and yearly installments).
- If the lease right is without any construction on it, the mortgage value will be equal to lease payment already made, minus 7 % penalty and unpaid yearly installments.

To further elaborate this provision, let us closely look into the different sub-Article s of Article 24 mentioned in this section. Based on Article 24(1), as a matter of principle, lease right may be used as collateral when borrowing from banks or creditors in general. But, the amount of money the lessee may borrow against mortgaging his lease right is restricted to the amount of money s/he has paid so far, as lease price. This lease price includes the *down payment* paid at first (e.g. 10 %) and the following yearly *installments*. In other words, the land cannot give the lease holder a value which he had not made on it; what one can get from the land is what he “sows” on it. This is a radical shift from the previous practice where banks used

to give higher amount of value to location (to the land only).¹⁹⁶ Thus, for example, a person who had made a total of 100,000 birr lease payment may not borrow more than this amount by mortgaging his lease right. Of course, if there is a construction, banks may also consider the value/cost of such construction in their loan calculation. In other words, the market based location value which used to be given by banks during loan agreement (e.g. up to 4,000 birr per m² in *Piazza* and *Mercato*, prime locations in Addis Ababa, the capital city) will be reduced to a much smaller amount.¹⁹⁷

The other point that is incorporated in relation to mortgaging of lease right is envisaged in Sub-Article 4, which declares that if the lessee used his right *as collateral prior to commencement of construction*, then the amount of loan will be a much lesser one. It is declared that, this time, from the loan to be extended, a reduction of 7 % of the total lease price agreed in the contract and the total lease price unpaid (if any) starting from the time the land was delivered to the lessee shall be made.

To support this with an example, assume the lessee has got the land for a total of birr 1.2 million. He made a down payment of 10 % (120,000 birr) and continued to pay for the next 3 years, an annual lease rent of 40,000 (total of 120,000) birr. So far the total lease price paid is birr 240,000. Suppose also that there is no construction activity made on the land. If he wants to mortgage the lease right, what he can get is only birr 223,200 (i.e. 93 % of the total lease price paid). What about if a construction of some value is made on the land? Then the calculation will be completely different. He will get the whole lease price paid, i.e. 240,000 birr. The above calculation is mandatory. Concerning the valuation of the construction, complete or incomplete, made on the land, the right is given to the lending banks to make the valuation.¹⁹⁸

This rule will immediately cut down the amount of loan to an insignificant level. After the adoption of the proclamation, one of the stern complaints made on the proclamation was by the business community. Even if their properties (buildings) might be sold in the open for tens of millions for their location's sake, banks will not consider the market value of the property. The kind of valuation banks follow now is cost replacement; that is, construction value of the building only, which probably may be 10–20 % of the market value of the property. This means the difference between the sales value and the mortgage value of the property is extremely big, and this raises the question of sanity of the system.

¹⁹⁶ See for example Daniel-Weldegebriel-Ambaye 2009a. Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation *7th FIG Regional Conference*. Hanoi, Vietnam, 19–22 October 2009 FIG (http://www.fig.net/pub/vietnam/papers/ts04c/ts04c_ambaye_3753.pdf). It is said that before the coming of this lease legislations, banks used to give location value in the capital up to 4,000 birr per m².

¹⁹⁷ See details for example Ibid., p. 30.

¹⁹⁸ See Article 59.3 of the Addis Ababa Lease Directive.

f. Formation and Termination of Lease Contract

Formation of contract

Any person permitted urban land lease holding in accordance with this Proclamation shall conclude a contract of lease with the appropriate body (Article 16.1). The lease contract shall include the construction start-up time, completion time, payment schedule, grace period, rights and obligations of the parties as well as other appropriate details (Article 16.2). The assumption is that the general provisions of contract law envisaged under the civil code will be applied here as well. Chief among the elements of a lease contract is the lease period. The lease proclamation has set different lease periods for residential and other activities. As in the case of the previous proclamation, 99 years has been set for residential purposes and 70 years for industry, 60 years for commerce, and 15 years for urban agriculture (Article 18).

Termination of contract

The proclamation introduces three situations that may lead to the termination of the lease contract (Article 25.1):

1. failure to use the land in accordance with Article 21(1), (violation of contract)
2. expropriation of the leased land, and
3. expiry and non-renewal of contract.

The proclamation confirms that except in the case of the above three situations, “no leasehold land right may be terminated and the lessee cleared from the land” (Article 26.3). A brief analysis of the three situations is given below.

Violation of contract: According to Article 21(1)(a) “A lessee shall use the land for the *prescribed purpose* within the *period of time* stated in the lease Contract” (emphasis added). The law is concerned about two things: that the land must be used for the intended purpose (land use issue), and that construction must be started within the agreed time (avoiding delay). This means, if the person fails to use the land for the purpose for which it was designated (e.g. constructing commercial building instead of residential, building a house contrary to the agreed plan, use the land for agriculture rather than industrial, etc.), then the city municipality may terminate the contract. Similarly, failure to commence or finish construction and commencement of the business (for which the land was provided) may also be another reason for terminating the contract.

The “land use” obligation is mandatory to follow since the permit of the lease was made by considering the master plan of the city. Of course, if the master plan accommodates/permits, the land use may be converted upon the application of the lessee and an approval by the concerned organ (Articles 21.2 and 3). It must be noted that one of the purposes of leasehold is to manage urban growth through the

enforcement and implementation of urban land use regulations.¹⁹⁹ The effect of violating land use, as prescribed under Article 25(3) of Proclamation 721/2011, is retaking of the land and returning a paid-up land lease price, after deduction of costs and penalty.

The use of the land within the agreed time implies three things: commencement and completion of construction and use of land for the intended purpose. The first two have to do with the construction, while the third is concerned with the operational activities, such as starting the industry, business, agriculture, etc.

Any lessee must commence construction within the agreed time. This is not an innovation to this proclamation; it was also included in the previous proclamation. The difference is that, the current proclamation contains more harsh measures against those who contravene the lease contract. For example, if one fails to start construction on time, the land will be reclaimed by the city administration and some penalty or fee may be imposed on the lessee (Article 22).

Moreover, a lessee who got land by tender or allotment shall complete the construction according to the agreement. The law provides 24, 36 and 48 months to complete construction for small, medium and large scale construction activities respectively. Depending on the type of construction and regulation to be issued by each city administration, the period may be extended from 6 to 12 months. Where the lessee fails to complete construction within the agreed time, the contract shall be terminated and the land will be retaken by the city administration. The lessee is also obliged to remove any construction activity at his own cost from the land or else the city may transfer it by tender to another person or remove the property on the land and then claim the cost from the lessee (Article 23).

Expropriation: Article 21(1)(b) introduces taking of land for other public purpose activities (expropriation) as the second reason to terminate a lease contract. Unlike the above cases, the lease shall be compensated based on the relevant laws (Article 25.4). The details of expropriation of leasehold right are discussed below.

Expiry and Non-renewal of Contract: the “non-renewal of the lease period in accordance with Sub-Article (1) of Article 19” of the proclamation was given as a third ground to terminate a lease contract (Article 25.1.c). The lease period provided is different for different purposes. There is also difference between Addis Ababa and other cities/towns. In determining the maximum lease period of urban land lease agreement, the law classifies the cities into Addis Ababa and other urban centers. In both Addis Ababa and other urban centers, a maximum of 99 years is set for the use of land for residential housing, science and technology, research and study, government office, charitable organizations, and religious institution purposes. Besides, for all types of urban centers, the maximum period given for urban agriculture is 15 years (Article 18.1.a).

In the case of other land use purposes, in Addis Ababa, the duration given is 90 years for education, health, culture and sports, 70 years for industry, 60 years for

¹⁹⁹ One may also further study the contents of the FDRE Building Proclamation No. 624/2009 and FDRE Urban Planning Proclamation No. 574/2008 to see the land use regulations included.

commerce, and 60 years for others (Article 18.1.b). In other urban centers, a slightly higher period is arranged: 99 years for education, health, culture, sports, 80 years for industry, 70 years for commerce, and 70 years for others (Article 18.1.c).

What will happen after the expiry of the lease contract? The lease right may be renewed upon the application of the lessee, using the prevailing benchmark lease price of the time (Article 19). It seems the discretion of renewing the contract is given to the city administration; the city municipality may renew or refuse to renew the contract. Whether or not the city is required to give good reasons for not renewing the contract is not known. But, the reading of the FDRE Model Lease regulation gives a clue which may be used by city centers. Article 48(2) of the FDRE Model Lease Regulation provides three events in which the lease contract may not be renewed: change of structural plan, the need of the land for other public purposes, or the inability of change of the land to current land use purpose.

The effect of non-renewal of contract is that the land will be taken after the removal of any property erected on the land by the owner. There shall be no payment of compensation for any property loss caused to the owner. The municipality is empowered to “take over the land together with the property thereon without any payment where the lessee has failed to remove the property within the period” given (Article 25(5), (6)). The possible problem or criticism that may be forwarded against such provision is that it may create tenure insecurity and hysteria when the expiry date approaches.

g. Expropriation of Lease Right

Expropriation refers to taking of someone’s immovable property for public purpose and upon payment of compensation. The details of the concept and nature of expropriation are discussed in following chapters, and it is sufficient to mention here that “the appropriate body shall have the power, where it is in the public interest, to clear and take over urban land upon payment of commensurate compensation, in advance, for the properties to be removed from the land” (Article 25.1). The two most important points one may gather from this provision are that land may be taken *for public purpose* activities and upon payment of *commensurate amount of compensation*. Urban center may take urban land and any property thereon, if the land is needed for public purpose activities. A good example, of *public purpose* in urban areas may be roads, private investments such as hotels, commercial and industrial buildings. During such takings, the government is required to pay *compensation* commensurate to the loss of property on the land. This includes the replacement cost of buildings of any sort on the land and the market value of any other fixtures such as trees and fruits. The valuation and assessment of such properties shall be made based on the Expropriation Proclamation (455/2005) and Regulation (135/2007). Besides the compensation that is made in terms of cash money for the properties found on the land, the person who lost the land will also be provided a “substitute plot of land within the urban center” (Article 25.2).

The first procedure in the process of expropriation is provision of clearance notice to the holder of the land. According to Article 27(1) of the lease

proclamation, “the possessor of the land shall be served with a written clearing order stating the time the land has to be vacated, the amount of compensation to be paid and the size and locality of the substitute plot of land to be availed.” And this notice should be served upon the possessor of the land in not less than 90 days before the appropriation of the land by the city administration. Any person who believes that his interest is infringed as a result of the notice has the right to submit a grievance within 15 days to the appropriate body (Article 28.1). This person may be the owner of the property who has grievance on the amount of compensation or another third party who may claim the ownership of the land. The appropriate body (most probably the administrative body itself) will give its decisions after considering the application and evidences (Article 28.3).

The Proclamation further provides an opportunity for the aggrieved person to make an appeal if he was not satisfied by the decision of the appropriate body. The appeal will be made to an appellate tribunal which shall “be established by regions or city administrations” (Article 30.1). Thus, this body is outside the hierarchy of regular courts and is rather affiliated to the administration, since its accountability is to the region or urban center (see Article 30.3). Its power seems restricted to “urban land clearing and compensation” cases and “decisions of the Tribunal, except relating to compensation, on issues of law and facts including claims for substitute land shall be final” (Article 29.3). So the only appealable issue to regular courts is the complaint on the inadequacy of compensation, which for many critics is strange since issue of law is always appealable to higher court far up to the cassation court itself.

2.7 Summary

This chapter described the land tenure system of Ethiopia from the perspective of three historical periods. This time span covers from early times up to the current period. The three historical periods represent three different regimes having three different ideologies. In feudal Ethiopia (before 1974), land had been controlled by the elite, in that although peasants of northern Ethiopia were allowed to have usufructuary right (*rist*) on their land, they were encumbered with different obligations. The peasants of the southern part of the country, on the other hand, were evicted from their land during the nineteenth century and became landless *gabbars*, servants to the northern settlers who took their land. The Derg, which replaced the imperial regime, came to power accompanied by famous slogan “Land to the Tiller” with the objective of distributing land to the tiller, and thereby made the peasant the owner of the land and any produce wherefrom. However, the first thing the Derg did was nationalizing all urban and rural lands and extra houses in urban areas, without payment of compensation. The government replaced the previous land-lordism in all its forms and it became the sole renter and rent collector. The rural and urban land laws completely prohibited sale, mortgage, lease/rent, donation, and inheritance (except to spouse and children) of land. In spite of this, the measure had,

at the beginning, got great support from the rural peasantry, especially of the southern regions of the country. However, because of erroneous policies of the government that followed thereafter, and the repeated land distribution activities that carried out, the motto “Land to the Tiller” was aborted.

In 1991, the Derg, a Marxists government, was toppled by the current incumbent party, and a Transitional Government was established until the adoption of a new Constitution in 1995. The new FDRE Constitution maintains land ownership of the Derg by putting ownership of the land under public and state hands. Currently, there are other land related legislations in the country dealing with urban and rural lands and natural resources. According to the FDRE Constitution, all urban and rural lands and natural resources belong to the state and the public.

The rural land laws provide peasants with lifetime rights (holding right) to the land. This land right includes use, lease/rent, donation and inheritance rights. Sale, exchange (barter) and mortgage are not allowed. The rights of lease/rent, donation and inheritance are allowed, but their usage is restricted for different reasons. The rural land laws also create (at least in principle) free access to rural land although because of land shortage and restriction on land distribution, this right has not been realized.

In urban areas, land can be held only through lease system. According to the newly adopted urban land leasehold proclamation, residents are allowed to get land only through auction. It is only under exceptional circumstances that land may be given by allotment (without auction). Compared to the previous lease proclamation, the new one highly restricts access to urban land. The Constitution stipulates that land belongs to the “people and the state”, but there is no clue which shows that urban dwellers are as much owners of their land as their rural counterparts. Secondly, the different strategies included in the new proclamation restrict the free transfer of lease right. In the case of sale of unfinished properties, it is the government who shall take the profit. Land literally becomes valueless for mortgage purposes.

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