Rural Land Rights in Ethiopia: Law and Policy Analysis

by

Belachew Mekuria Fikre

Submitted for the degree of Doctorate of Philosophy

Faculty of Business, Economics and Law
University of Surrey

August 2014

© Belachew Mekuria Fikre 2014
Abstract

This thesis explores the critical shortcomings of Ethiopia's laws and policies relating to rural land rights which, if addressed, will contribute to the empowerment of the poor. Following the adoption of the 1995 Federal Constitution that decentralised, among other things, land administration, the country has been carrying out extensive reform measures affecting rural land rights together with the articulation of rights associated with land holdings. Even though the debate regarding private versus state ownership has long dominated the land rights discourse in the country, an investigation of the present land rights system reveals a number of shortcomings which have a direct bearing on rural poverty conditions and the poor's empowerment. Through an in-depth examination of the formalisation process that involves adjudication and certification of existing individual holding rights, the thesis identifies its adverse impacts on vulnerable sections of the society such as women and pastoralist communities. Moreover, within the existing legal framework that guarantees land use rights to individuals and communities, the thesis proposes a nation-wide recognition of the distinction, in law and practice, between 'land holding right' and 'land use right.' Drawing on the examples of two Regional laws that already recognised albeit nominally this distinction (Amhara and Benishangul Gumuz) the thesis explores the positive implications this robust approach of unbundling rights in land might have within the existing constitutional arrangement of state ownership. Apart from the shortcomings in the substantive rights that significantly undermine the poor's empowerment, the thesis also explores rural collective action institutions by examining the various challenges they face such as lack of autonomy, independence and access to finance. The comprehensive analysis of the laws, policies and strategies on rural land rights with a view to highlighting their shortcomings will inform future land reform exercises in the country.
Table of Contents

Abstract ................................................................................................................................. ii
Acknowledgments ............................................................................................................. viii
Acronyms ............................................................................................................................ ix
Glossary of Amharic terms ................................................................................................ x
Introduction ......................................................................................................................... xii
The research question ......................................................................................................... xv
Outline ............................................................................................................................... xv
Methodology and approaches ............................................................................................ xviii
  (a) A note on empirical data ............................................................................................ xix
  (b) Primary sources ......................................................................................................... xx
  (c) A note on language of legal texts ............................................................................ xx
  (d) Secondary sources ................................................................................................... xxi
Contribution ......................................................................................................................... xxii
Literature Review ............................................................................................................... xxiv
Chapter I. Rural land rights, collective action and empowerment of the poor ............... 1
  1.1. Introduction ................................................................................................................ 1
  1.2. Defining empowerment ............................................................................................. 4
      Participation and empowerment .............................................................................. 6
  1.3. Poverty and empowerment ....................................................................................... 9
  1.4. Empowerment as a process and/or outcome ....................................................... 18
Chapter II: The structures of ownership: economic and human rights views ............... 23
  2.1. Introduction ................................................................................................................ 23
  2.2. Structures of ownership ......................................................................................... 24
  2.3. The correct ownership right structure? ............................................................... 29
  2.4. The human right to property? ............................................................................... 34
      2.4.1. International human rights law and property rights ............................... 35
      2.4.2. Human right to land as a derivative right ............................................. 40
      2.4.3. Land rights of ‘indigenous’ people ......................................................... 44
      2.4.4. The African human rights system ......................................................... 47
Chapter III: Overview on Ethiopia’s land tenure policy ............................................................ 54
3.1. Introduction ....................................................................................................................... 54
3.2. Pre-1975 period ............................................................................................................... 54
3.3. The post-revolution period ............................................................................................. 58
  3.3.1. Rural land tenure ....................................................................................................... 59
  3.3.2. The 1975 land reform and its impact on urban land tenure ..................................... 62
3.4. Post-1991 Ethiopian land tenure ..................................................................................... 64
  3.4.1. Land administration under the Federal arrangement ......................................... 67
  3.4.2. Brief overview of the property rights structure ..................................................... 70
3.5. Urban land holding system ............................................................................................ 77

Chapter IV: Rural land administration laws and policies: Regional States’ experience .......... 80
4.1. Introduction: socio-political context .............................................................................. 80
4.2. Rural Land Administration and Use Proclamation ....................................................... 83
  4.2.1. Rural land use rights .................................................................................................. 87
    4.2.1.1. Rural land use ...................................................................................................... 92
    4.2.1.2. Rural land “holding rights” vs. rural land “use rights” ........................................ 93
    4.2.1.3. Rural land holding types .................................................................................... 103
        Private holding ............................................................................................................ 103
        Communal holding ..................................................................................................... 104
        State Holding .............................................................................................................. 106
        Investment holding .................................................................................................. 107
  4.2.2. Access to rural land ................................................................................................. 108
    4.2.2.1. Grant by the “competent authority” ................................................................... 110
    4.2.2.2. Access through transfer ..................................................................................... 125
        The right to transfer land holding and/or land use rights ........................................ 125
        Sale and mortgage of land use right? ................................................................. 125
    4.2.2.3. Access through inheritance ................................................................................. 128
        (i) General background to the Ethiopian law of inheritance ................................... 128
        (ii) Obtaining rural land holding right by inheritance ............................................. 129
            Member of a family ................................................................................................. 131
    4.2.2.4. Acquisition of rural land use right by donation ............................................. 140
            Circumventing Restrictions? ................................................................................... 143
    4.2.2.5. Acquisition of rural land use right through rent ............................................ 145
4.2.3. Loss of rural land holding and/or use right .................................................... 152
4.3. Security of tenure ............................................................................................................. 153
4.3.1. Legal guarantees on security of tenure ...................................................... 154
4.3.1.1. Duration of rural land holding rights ...................................................... 154
4.3.1.2. Holding rights certification ..................................................................... 155
4.3.1.3. Land administration institutions ............................................................. 161
4.3.2. Threats to security of tenure ....................................................................... 167
4.3.2.1. Expropriation ............................................................................................ 167
4.3.2.2. Basic laws on expropriation at the Federal level ................................... 168
4.3.2.3. The expropriation regime of the Regions ............................................... 175
4.3.2.4. Transfer of large-scale agricultural land for private investment ...... 178
4.4. Displacement in the name of development ............................................................ 186
4.5. Pastoralists: the silent victims ......................................................................................... 188
4.6. Rural land rights of women ............................................................................................. 195
4.6.1. Background ...................................................................................................... 195
4.6.2. Polygamy and rural land administration........................................................... 201
Chapter V: Enabling governance and institutional conditions for collective action ............. 209
5.1. Introduction ...................................................................................................................... 209
5.2. An enabling environment for collective action .............................................................. 211
5.2.1. Autonomy and independence ..................................................................... 214
5.2.2. Access to credit facilities ........................................................................... 221
Chapter VI: Conclusions and implications on law and policy ................................................. 225
6.1. Access to rural land ............................................................................................................ 227
6.1.1. Equity versus efficiency .................................................................................. 227
6.1.2. Lack of clarity on the residence requirement ................................................ 228
6.1.3. Redistribution/distribution/reallocation ......................................................... 228
6.1.4. Access through Inheritance ............................................................................. 229
6.1.5. Access through rent ......................................................................................... 230
6.2. Tenure security ................................................................................................................. 231
6.2.1. Rural Land Administration Committees ....................................................... 231
6.2.2. Politicisation of the Committees ................................................................. 232
6.2.3. Expropriation of rural land for ‘public purpose’ ........................................... 232
6.2.4. Absence of a judicial review on the expropriation decision ...................... 233
6.2.5. Agribusiness and tenure security ................................................................. 233

6.3. The certification process ...................................................................................... 234
6.4. Administrative versus market allocation of holdings ..................................... 235
6.5. Communal and pastoralist holdings ................................................................. 237
6.6. Land information system ................................................................................... 238

6.7. Women and rural land rights ........................................................................... 239
   6.7.1. Bigamy and Women’s Land Rights ............................................................ 239
   6.7.2. Gender equity in rural land administration institutions ......................... 239
   6.7.3. Lack of uniformity in issuing joint titles to a married couple ................. 240
   6.7.4. The “confirmation of exclusion” ............................................................... 240

6.8. Decentralisation in rural land rights administration .......................................... 241
6.9. Collective action and rural land rights .............................................................. 243
6.10. Conclusion ........................................................................................................ 244

Annex I: Southern Nations, Nationalities and Peoples’ Region Land Holding Certificate sample ................................................................. 246
Annex II: Oromia Region Rural Land Holding Certificate Sample ....................... 251
Annex III: Ethiopia’s core land and cooperative-related laws timeline .................. 255

References .................................................................................................................. 261
Domestic laws ............................................................................................................. 261
Cases .............................................................................................................................. 262
Books and Articles ..................................................................................................... 263
United Nations Documents ......................................................................................... 279
Regional Treaties ......................................................................................................... 280
Reports ......................................................................................................................... 281

List of Figures

Figure 1: Political Map of Ethiopia ........................................................................... 82
Figure 2: Urban rural population distribution .......................................................... 83
Figure 3: Rural Land Administration Objectives, Proclamation 110/2007 ............... 85
Figure 4: Access through redistribution/Reallocation ........................................... 117
Figure 5: Access to rural land through inheritance ................................................ 137
Acknowledgments

The journey leading to this day has been long, challenging and at times too frustrating. If it were not for some exceptionally devout hands of support, I surely would not have made it this far. My Supervisors Professor Alison Clarke and Professor Rosalind Malcolm stand tall among those to whom I remain eternally grateful. I am deeply humbled by their consistent guidance, professionalism, and critical insights that have raised my hopes of finishing the race when there have been so many reasons to think otherwise. Equally helpful has been the School’s Head of Doctoral Programmes Dr Jane Marriott to whom I had resorted to when staggered by life’s bumps and bruises, many of which were too personal that only a kind-hearted human being like Jane would have handled them with the level of attention they deserved. I would also like to acknowledge the University of Surrey for the Studentship award that enabled me to undertake this research degree. Moreover, the East Africa Researcher Fellowship award I was given around the end of my studies by the British Institute in Eastern Africa has significantly contributed to the successful completion of the research and I would like to specifically thank its Director Professor Ambreena Manji for all the kindness and understanding.

As I shuttle both physically and emotionally between home and School, I have extremely burdened my family who waited for my return with heavenly patience, love and encouragement. Dearest wife and lifelong partner Mintwab, my children Yedidyah, Hasset and Amen, I want you to know that I survived every second because of your glittering smile, love and embrace. For all what you have done, I only wish to serve you for the rest of my life with love, wisdom and humility that you all deserve. My brother Engida Mekuria, you continue to amaze me since childhood with your selfless character and unfailing will to do what is right. Like I have always said, words cannot even start to express the utmost gratitude I feel deep in my heart.

As I recall those living souls at the end of this challenging journey who have ushered in so much support towards me, I remain haunted by the loss I encountered in the middle of this lengthy process. My father, who holds a towering space in my heart and defined me in the way I claim who I am to be today, has departed from us for good. Dear Gashe I still have not come to terms with the fact of your being no more and I would like to let you know that I will
always treasure the trust you had placed on the power of education, never minding for a second the fact that you yourself had been barely ‘educated.’

**Acronyms**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAADP</td>
<td>Comprehensive Africa Development Programme</td>
</tr>
<tr>
<td>CPIA</td>
<td>Country Performance and Institutional Assessment</td>
</tr>
<tr>
<td>DfID</td>
<td>Department for International Development</td>
</tr>
<tr>
<td>ELTAP</td>
<td>Ethiopia Land Tenure Administration Program</td>
</tr>
<tr>
<td>EPRDF</td>
<td>Ethiopian People Revolutionary Democratic Front</td>
</tr>
<tr>
<td>FAO</td>
<td>United Nations Food and Agriculture Organisation</td>
</tr>
<tr>
<td>FDRE</td>
<td>Federal Democratic Republic of Ethiopia</td>
</tr>
<tr>
<td>GTP</td>
<td>Ethiopia’s ‘Growth and Transformation Plan’ 2010/11-2014/15</td>
</tr>
<tr>
<td>HPI</td>
<td>Human Poverty Index</td>
</tr>
<tr>
<td>IFAD</td>
<td>International Fund for Agricultural Development</td>
</tr>
<tr>
<td>IIED</td>
<td>International Institute for Environment and Development</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>MPI</td>
<td>Multidimensional Poverty Index</td>
</tr>
<tr>
<td>ODI</td>
<td>Overseas Development Institute</td>
</tr>
<tr>
<td>PASDEP</td>
<td>Plan for Accelerated and Sustained Development to End Poverty (2004/05-2009/10)</td>
</tr>
<tr>
<td>RAISE</td>
<td>Rural and Agricultural Incomes with a Sustainable Environment</td>
</tr>
<tr>
<td>SIDA</td>
<td>Swedish International Development Agency</td>
</tr>
<tr>
<td>SNNPRS</td>
<td>South Nations, Nationalities and Peoples of Ethiopia</td>
</tr>
<tr>
<td>SNNPRS</td>
<td>Southern Nations, Nationalities and Peoples Regional State</td>
</tr>
<tr>
<td>TPLF</td>
<td>Tigray People Liberation Front</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organisation</td>
</tr>
<tr>
<td>UN-HABITAT</td>
<td>United Nations Human Settlements Programme</td>
</tr>
<tr>
<td>UNRISD</td>
<td>United Nations Research Institute for Social Development</td>
</tr>
</tbody>
</table>
Glossary of Amharic terms

Kebele: The lowest unit of administration in the rural and urban areas that closer is to village in meaning. Historically, these administrative units came into being as following the Derg’s rural and urban land reforms that instituted peasant associations and urban dwellers associations, both of which came to be called Kebeles. (See Cohen and Koehn (1978) (n 321).

Woreda Regions are sub-divided into 'Woredas' which is the equivalent of district.

Kilil/Region Each of the nine ethnic-based political sub-divisions under the Ethiopian Federal system, and alternatively called also as States. There are a total of 9 Regions, namely, The State of Tigray (1), The State of Afar (2), The State of Amhara (3), The State of Oromia (4), The State of Somalia (5), The State of Benshangul/Gumuz (6), The State of the Southern Nations, Nationalities and Peoples (7), The State of the Gambela Peoples (8) and The State of the Harari People(9). In addition to these, there are Addis Ababa and Dire Dawa Cities as Federal City Administrative Units.

Kifle Ketema Sub-city.

Zone This is the name given to what previously were provinces and they are administrative units between the Regions and Woredas.

Awaj

Proclamation The highest domestic law that comes under the Constitution.

Denib/ Regulations Next to proclamations are Regulations that are issued by an organ deriving its mandate from and meant to implement Proclamations.

Meret Sefari An alternative name given to Land Administration Committee members, which roughly means a person that measures the land.
Baleyizota The equivalent of the civil law property law concept ‘possessor’, it means within the Ethiopian rural land rights context, a person with a ‘land holding’ right.

Yemeret Shigishig It roughly is translated in the laws as distribution of land holdings. This has been in some of the Regional laws (for example the Southern Nations, Nationalities and Peoples Region) is translated into English as ‘Re-allocation.’

Yemeret Dilidil This is the equivalent of land redistribution whereby a land holding is being redistributed which may involve the taking of land from existing holders and transferring it to new claimants.

Timad A local unit of land measurement with an equivalent of 4 timad to 1 hectares and its use has now discontinued.

Derg This was a short name for the Coordinating Committee of the Armed Forces that ruled Ethiopia from 1974 to 1987 that marked the promulgation of its short-lived People’s Democratic Republic of Ethiopia Constitution.

Zemecha An Amharic word employed by the Derg to connote ‘Progress through cooperation, knowledge and work’, and to which one may ascribe what the West would otherwise call ‘Campaign.’
Introduction

In many African states that are regarded as underdeveloped, understanding the challenges faced by the ‘poor’ segments of society requires an in-depth study of issues related to land rights, such as equitable access, the formulation and implementation of participatory land policies, the transferability of rights to land and security of tenure. The poor in society are typically constituted of highly marginalised groups such as women, minorities, indigenous peoples, the disabled and children. In addition, in most African states, society relies heavily on land as a means of survival, livelihood and economic gain. Accordingly, access to and security of rights with regard to land are determining factors in the status and welfare of the marginalised poor.

The structures of ownership, the frequency and adequacy of agrarian reform measures and how expropriations and other land seizures are carried out are all matters that are usually subjectively determined by the laws of a particular state,¹ and this diversity implies the potential for differing levels of respect for the human rights of individuals and groups as they relate to property rights. While it might not be possible to argue that a human right to property exists per se within the current international legal framework for human rights,² based on the concept of the interdependence of human rights,³ a property right to land may be considered to be an element of other fundamental rights and freedoms. The most pertinent of these are the right to adequate food,⁴ the right to adequate housing,⁵ minorities’ rights,⁶ the

---

¹ This fact has been reiterated by a resolution of the United Nations General Assembly stating, ‘...there exist in Member States many forms of legal property ownership, including private, communal, social and state forms, each of which should contribute to effective development and utilisation of human resources by establishing sound bases for political, economic and social justice.’ UNGA ‘Respect for the Right of Everyone to Own Property Alone as well as in Association with others and its Contribution to the Economic and Social Development of Member States’ (4 December 1986) UN Doc A/RES/41/132 para. 1.

² In this regard, van Banning’s contribution on the idea of the ‘human right to property’ is worth acknowledging, though he too admits that there is a failure on the part of the world community to give a normative recognition of such a right. Theo van Banning The Human Right to Property (Intersentia 2002).


⁵ Ibid. Art11 (1).

right to work,7 the right to development8 and the rights of women.9 Moreover, ‘a key principle which would apply to all types of legislation, policies and programmes in the field of land-related rights is the prohibition of discrimination.’10

Therefore, consideration of the issue of rural land rights such as equitable access, security of tenure, participatory land policy formulation and the transferability of land rights, from the perspective of human rights, is important. Specifically, there is a striking linkage between poverty and the lack of properly defined and secured property rights to rural land. Analysis of the World Bank’s Country Performance and Institutional Assessment (CPIA) ratings for 2005 indicates that, on a scale of 1 to 6 (with one being the lowest score), only five out of 76 developing countries scored at least 4 on an objective measurement of property rights and rule-based governance.11 The same report for 2009 emphasised the need for pro-poor growth strategies to focus on ‘sectors where the poor are and draw on the factors of production the poor possesses.’12 It went on to state:

The vast majority of the poor live in the rural areas, and a majority of them depend directly or indirectly on agriculture for their livelihood. The factor of production that the poor possesses and uses... is land. Therefore, pro-poor growth must focus on rural areas [and] improve incomes in agriculture.13

In research in India, Ravallion and Datt also found that rural growth reduced poverty in both rural and urban areas, while urban growth only had some impact on rural poverty.14 Thus, for most developing countries, and in particular for African states such as Ethiopia, consideration

---

8 The UN Declaration on the Right to Development specially Art 8(1) obliges States to 'undertake at national level all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources... which naturally includes land. UNGA, Declaration on the Right to Development, Res. 41/128 (4 December 1986) UN Doc A/RES/41/128.
10 Coomans (n 7) 10; see also Art 2 of ICESCR and Arts 2 and 26 of ICCPR, which prohibit discrimination on the grounds of, among others, property, gender and social origin.
13 Ibid.
of the land rights question is a basic developmental concern. Furthermore, hunger, the extreme form of poverty, is estimated to affect some 1.2 billion people, 75% of whom live in rural areas, and many rural people suffer from hunger because either they are landless, they do not hold secure tenure or their properties are so small that they cannot grow enough food to feed themselves. In other words, the issue of land rights underpins poverty reduction strategies, and, equally, considering the question of land as a human rights issue is another way of addressing development and poverty reduction concerns.

In Africa, the land question has multifaceted implications spanning the social, cultural, economic, political and religious spheres. For instance, the conditions of discrimination and exclusion experienced by women are closely linked to their being denied access to this resource. Furthermore, the issue of land has been a frequent source of conflict: it has been argued, for example, that policies that limited land sales, freedom of movement and labour opportunities contributed in important ways to discontent among Rwandans during the pre-genocide period. Moreover, ‘much, though by no means all, of the trouble in Darfur stems from resource conflict, in this case, conflicts over access to land.’ In Nigeria, Ethiopia and many other African states, many recurring conflicts have been linked one way or another with some form of resource conflict, particularly over land. The adoption of a rights-based approach to the land question, the formulation of tools for rule-based governance of this resource and the development and implementation of mechanisms for ensuring the progressive realisation of this right are matters that require scholarly research.

In this work, an attempt is made to explicate the crucial aspects of rural land rights laws and policies of Ethiopia. It seeks to set out the issues that underpin the rural poor’s land rights problems in a way which goes beyond simple concern with the privatisation of land ownership that has often dominated the debate in Ethiopia’s land policy discourses.

15 See in particular Hernando de Soto The Mystery of Capital (Black Swan 2000); see also John W Bruce and Shem E Migot Adholla (eds), Searching for land tenure security in Africa (Kendall Hunt 1993).
17 Van Banning (n 2) 340-41 correctly argues that discussing ‘property’ as a matter of right has been considered a taboo for a long period and rather than calling ‘a spade a spade,’ the word ‘assets’ are usually used by a number of World Development Reports.
The research question

The research ventures to respond to the following overarching question: what are the critical shortcomings of Ethiopia’s laws and policies relating to rural land rights that affect the empowerment of the poor? This broad question is addressed through the various chapters of this thesis, which are drawn up to respond to the following subsidiary questions and issues:

- In what ways can rural land rights systems contribute to the empowerment of the rural poor?
- What property rights system can be considered appropriate for Ethiopia?
- What is the rural land rights system in Ethiopia?
- What are the relevant legal and policy frameworks governing rural land rights in Ethiopia? What challenges exist affecting generally rural land holders, and some sections of the rural poor such as women and pastoralist communities, in particular?

Outline

A number of empirical works have emerged on Ethiopia’s rural land administration since the adoption of the 1995 constitution that decentralised legislative and administrative mandates relating to rural as well as urban land. In order to situate the thesis in its context, and to demonstrate how it builds on existing scholarship in the area, a brief overview of some of the relevant literature is provided in this introductory Chapter. Land rights being one among the many key factors in alleviating rural poverty conditions, the thesis begins with an examination of the concept of the empowerment of the poor and how this relates to rural people’s land rights and their opportunities for collective action.

Ethiopia’s land rights system has usually been discussed from the perspective of a call for land holding structures that favour private ownership, in complete disagreement with the government’s ruling since 1975’s major land reforms on the state ownership of both rural and urban land. Accordingly, the second Chapter examines ownership structures from both the economic and human rights perspectives. The central aim of this Chapter is to make a case

---


for the subjective character of determining ownership structures and also for the relevance, in an Ethiopian context, of multiple systems that combine private, state and communal ownership, depending on local conditions including land use pattern. The Chapter also addresses the land question from the perspective of human rights and examines how it is considered under international and African human rights frameworks. This is meant to underscore, among other things, the relevance for the rural poor of issues such as equality, non-discrimination, participation and guarantees against dispossession, as elucidated under various human rights instruments, and to argue that these are more crucial than the debates on structures of ownership.

In the first two Chapters, various secondary sources will be utilised. The meaning, features and elements of empowerment of the poor are examined in light of the socio-economic development literatures. Of particular importance is Amartya Sen’s capabilities approach that he has formulated in various publications, including his 1999 book, Development as Freedom. The second Chapter attempts to situate the concepts of property rights as they relate to the distinctions made on land holding systems, and it argues in support of the idea that there is no specific structure of ownership and holding types invariably applicable in all conditions and contexts. In this Chapter, the economic and human rights views on structures of ownership and how these relate to Ethiopia’s current land policy choice will be examined. This is aimed at calling for a shift of the debate from private versus state ownership structure to addressing more pressing rural land rights problems that are negatively affecting rural livelihoods.

The third and fourth Chapters examine Ethiopia’s land tenure system, with a focus on rural land and how its structures, institutions and administration impact the poverty conditions of the rural community. The third Chapter provides an overview of the political, economic, social and legal contexts of Ethiopia. The Chapter mainly focuses on national-level constitutional and policy guidelines that provide the framework for the legislative and administrative measures adopted by the Regional governments. The various laws as they relate to rural land holding rights are then discussed in the fourth Chapter, in which an attempt is made to evaluate critically both historical and contemporary legislation insofar as it relates to rural land holding and use rights. While this analysis proceeds mainly on the basis of primary sources such as laws, policies and legislative background documents, some

22 Amartya Sen, Development as freedom (OUP 1999).
empirical evidence with regard to redistribution, rural land access and women’s rural land rights will be looked at as part of the broader legal and policy examination. Part of the empirical work referred to in this Chapter was gathered under research carried out by the author and others commissioned by the Ethiopian Institution of the Ombudsman to study the state of rural land administration in two Regions, namely the Oromia and SNNPRS, for the purpose of assessing the extent to which women’s rights of access, security and equal rights of use of rural land are respected. Particularly, the section on rural women’s rights to land holding draws significant evidence from this study, which has been partly published.\textsuperscript{23} The thesis also looks at other recent empirical studies on Ethiopia’s rural land administration. The most important of these are Bezabihi et al. (2012), who assessed the role of land certification in bridging the gender gaps in rural Ethiopia\textsuperscript{24}, Deininger et al. (2008), who dealt extensively with empirical data gathered from the four major Regions of Ethiopia (Amhara, Oromia, SNNPRS and Tigray) regarding the effects of tenure security and other impacts of the rural land certification process, and the implications for other African countries\textsuperscript{25}, and the World Bank’s comprehensive report that outlines, on the basis of empirical evidence, the various options for strengthening land administration in Ethiopia.\textsuperscript{26}

The fourth Chapter also deals with some specific challenges facing the rural poor, such as large-scale agricultural land transfers as well as challenges that specifically affect sections of the rural poor such as women and pastoralist communities. One crucial issue raised in this Chapter concerning women relates to polygamy and its gendered implications in terms of access to rural land holding and use. Therefore, these topics, which cut across many of the research sub-questions, utilise both the doctrinal and non-doctrinal approach on the basis of empirical data, primary and secondary sources.


\textsuperscript{24} Mentewab Bezabihi, Stein T Holden, and Andrea Mannberg, ‘The Role of Land Certification in Reducing Gender Gaps in Productivity in Rural Ethiopia’ (2012), Norwegian University of Life Sciences, Centre for Land Tenure Studies. For a review of this literature, see notes 82 and 83 and accompanying texts.


The fifth Chapter deals with the subject of smallholder agricultural cooperatives and examines the need to strengthen the functions of rural cooperative societies by addressing some of the challenges identified in the Chapter. Particularly, the government’s four year strategy on agricultural cooperatives sets the policy agenda on the subject and the Chapter examines its content in light of the legal documents as well as international practices as outlined under the ILO Guidelines for Cooperatives Legislation. This is then followed by Chapter six which concludes the major findings of the thesis.

Methodology and approaches

The thesis, with the aim to examine and describe the various short-comings associated with rural land rights in Ethiopia that undermine empowerment of the poor, adopts mixed approaches of doctrinal and non-doctrinal research. The doctrinal research approach, as explained by Chynoweth, helps to ‘clarify ambiguities within rules, place them in a logical and coherent structure and describe their relationship to other rules.’ Accordingly, the various laws and policies on matters of rural land rights are examined with a view to identify and clarify the complex sets of rules within the Federal system and explain the hierarchical relations between the Federal and Regional norms on the subject. However, all these need to be put in context because, as rightfully pointed out by Ogden and Richards, within the realm of communication, ‘absent context, there is no real relationship between the bare word itself and what the listener hears.’ The non-doctrinal (or the law in context) method is therefore used with a view to putting those analyses in the social, economic and political contexts and to explicate how those legal texts interact and affect the rural community that includes special sections of the society such as women and the pastoral communities in Ethiopia. The thesis, by exploring the socio-political underpinnings of the laws and policies on rural land, attempts

---

29 These are the two widely applied methods in the legal research field Mike McConville and Wing Hong Chui (eds), Research Methods for Law (Edinburgh University Press Ltd 2007), pp 4-5.
to propose workable solutions to those shortcomings it identifies that are largely in line with those broad social, economic and political contexts.

Ethiopia’s decentralised system within a Federal arrangement functions under nine autonomous ‘Regions’ that are empowered to administer land and natural resources within their boundaries. There is a remarkable difference in terms of progresses made in rural land administration between the four major Regions of Amhara, Oromia, SNNPRS and Tigray and that of the ‘emerging Regions’ of Afar, Somali, Gambella and Benishangul-Gumuz.\textsuperscript{32} In these four major Regions, rural land administration has shown greater levels of maturity, both in terms of laying down the legal framework and the institutional set-up, with the emerging Regions being left far behind. Indeed, two of the Regions, Somali and Harari, are yet to come up with their own rural land administration law.\textsuperscript{33} The legal analysis and supporting empirical data in this research, therefore, rely largely on those four Regions of Amhara, Oromia, SNNPRS, and Tigray, although it makes passing reference to the legal provisions of those other Regions that have issued their own rural land administration laws. In addition, critical comparisons are made between the laws of the various Regions, to demonstrate the level of harmony or disharmony between them and to reveal the legal gaps that prevail in the complex and decentralised system of rural land administration in the country.

(a) A note on empirical data

Specific arguments and observations on the rural land rights-related laws and policies will be supported with relevant empirical data included particularly in Deininger et al.’s World Bank-commissioned research report that assessed the rural land registration and certification processes in Ethiopia as well as the researcher’s own work carried out in the SNNPRS and the Oromia Regions.\textsuperscript{34} In the latter case, a crucial element of the research project on rural women’s land rights problems has been dealt with by this author’s published work under the title “Bigamy and Women’s Land Rights”, and the complete research report, together with the data, exists on file at the Ethiopian Institution of the Ombudsman. These two reports are

\textsuperscript{32} The term ‘Emerging Regions’ is employed to refer to those Regions in Ethiopia that cover the two extreme ends of the country: the East, which is home to a predominantly pastoralist communities (the Regions of Somali and Afar) and the West which is inhabited by agro-pastoralist communities (the Regions of Benishangul-Gumuz and Gambella). The World Bank Report, Options for Strengthening Land Administration in Ethiopia, (n 26), p 4.

\textsuperscript{33} Ibid.

\textsuperscript{34} Deininger et al., (n 25) and Fikre (n 23).
particularly relevant, since each of the data they used was gathered at an interval of four years from each other, in 2006, 2010.35

These empirical data together with primary sources are specially employed in Chapter Four that examines extensively the various laws and policies relating to Ethiopia’s rural land rights with a view to explain the relevant legal and policy frameworks governing rural land rights and to point out those challenges affecting generally rural land holders, and some sections of the rural poor such as women, in particular.

(b) Primary sources

Analysing Ethiopia’s rural land laws, particularly on the basis of the doctrinal approach involves identifying, comparing and critiquing multiple legal texts by the Federal government as well as the various members of the federation relating to rural land rights. According to Ethiopia’s constitutional set up, the Federal parliament is to ‘enact laws for the utilisation and conservation of land […]’,136 while states are empowered to administer land and natural resources.37 Therefore, the thesis uses the Federal as well as the Regional Proclamations on rural land administration, poverty reduction plans and cooperative strategic documents as primary sources for the analysis. The critical review of present-day Ethiopia’s rural land rights structure (in Chapter Four) depends largely on primary documents that establish the country’s constitutional system, legal rights to land and institutions of administration and management. The minutes of the Constitutional Assembly Commission relating to the constitution-making process are examined to explain the bases of the present land rights systems at both the macro and micro levels. These primary sources are particularly used to answer the third and fourth subsidiary research questions of the thesis.

(c) A note on language of legal texts

Laws of the Federal government, which, together with most of the Regions, are enacted in both English and Amharic, or alternatively where the Region has its own working language, laws are enacted in Amharic and that Region’s working language. For example, the Tigray Region’s rural land administration legislation does not have an official English version as its

35 Deininger et al. report on the basis of data gathered in collaboration with the Ethiopian Economic Association and the World Bank back in 2006, between July and August by a survey of 2,300 households. Deininger et al., (n 25), p 1790. And the findings in Fikre’s report are based on data collected in 2010.
36 Art 51(5) of the FDRE Constitution.
37 See note 408 and the accompanying text.
laws are published in Tigrigna and Amharic.\(^\text{38}\) This multiplicity of languages however creates problems, particularly in the form of discrepancies between two versions of the same law. Accordingly, in cases where the laws are enacted in Amharic and English and there is discrepancy between the Amharic and the English version, the Amharic version is to be given precedence.\(^\text{39}\) The work, therefore, provides some clarity on those areas where there are discrepancies or vagueness in the terms of the law, and where translations from the Amharic or other Regional languages of Ethiopia are made, they are declared expressly as 'own translation.'

(d) Secondary sources

Secondary sources are consulted extensively regarding the conceptual underpinnings of how rural land rights contribute to the empowerment of the rural poor as well as in identifying which property rights structures could be considered appropriate for Ethiopia. And to a large extent, the non-doctrinal approach is employed in navigating through those secondary sources. These include Sen's capabilities approach to development, in which he convincingly argues for linkages between development and freedom. Essentially, Sen's capabilities approach to development supports the empowerment concept that is defined as the 'expansion of assets and capabilities.'\(^\text{40}\) Moreover, in the last decade, the work of the United Nations Commission on the Legal Empowerment of the Poor has significantly enriched the literature on the subject through both theoretical and empirical analyses. The Commission, whose mandate ended in 2008, produced a number of reports on the subject of empowerment as it relates to property rights, labour, business and access to justice. Particularly, on the expiry of its mandate in 2008, it published a two-volume report with the title "Making the Law Work for Everyone", which summarised the outcomes of its work over the five years of its existence.\(^\text{41}\)

---

\(^{38}\) While Oromia (Art 5 of the Region's Constitution), Afar (Art 6(1) of the Region's Constitution) and Harari (Art 6 of the Region's Constitution) Regions have adopted their own language, SNNPR (Art 5(2) of the Region's Constitution), Benishangul Gumuz (Art 6(1) of the Region's Constitution) and Gambella (Art 6(1) of the Region's Constitution) Regions opted to use Amharic as their working language. Therefore, as Tigrigna is the working language of the Region, the Rural Land Proclamation 136/2000 E. C. is published in Tigrigna and Amharic.

\(^{39}\) Art 2(4) of Proclamation 3/1995.

\(^{40}\) See note 117 and the accompanying text.

The relevance of land rights structures for pro-poor growth strategies is considered from the perspective of economic theories of property rights, the international human rights framework as well as various donor agencies' policies and strategic documents. Of particular interest for these subjects is Hardin and Demsetz's assertions, on the economic theories of property rights, and Ostrom's work on common pool resources management. All of this literature, one way or another, supports the linkages between property rights systems or structures and improved conditions for the poor. Without the need to subscribe to private ownership of land or land holding type, addressing some of the critical challenges could contribute towards alleviating the conditions of the poor in Ethiopia. For instance, where land is held under undefined or unspecified title, or even if defined, this right is threatened by extensive risks emerging from expropriation and forced relocations for various purposes, in which case the proper use of the resource remains imperilled. In Ethiopia's context, though individuals are given indefinite rural land use right, the lack of clarity on some of the holding types, such as communal holdings, the various hurdles that affect rental and other modes of transfer of rural land holding rights, the continuous threat on security of tenure emerging from expropriation, including dispossession for the purposes of transferring the holdings to investors, forced relocations and other factors require policy consideration.

**Contribution**

The research offers useful insights by investigating the specific issues of land administration, institutional challenges and the vulnerability of particular groups in society, such as women and pastoralists, with regard to rural land holding rights as dealt with under the various rural land laws and policies of the Federal and Regional governments. The outcome of the analysis and critical examination of the Federal and Regional rural land administration systems will help, not only those Regions which are already implementing their laws, but also those Regions that are yet to undertake land policy reform and/or implementation.

Partly due to the decentralisation of rural land administration legislation, and partly because of the highly politicised nature of the subject, a comprehensive land law text does not exist in Ethiopia. In seeking to explore the various laws and policies as they relate to rural land rights, the work therefore attempts to provide a systematic account of the laws and navigate through the various materials and empirical evidence in order to describe, analyse and call attention to the shortcomings of those laws and policies and the areas that require reform.
The combination of multitudinous land laws, the dual legislative mandate in Ethiopia and poor legislative data storage and sharing systems make access to legal and policy documents very difficult. In some cases, it was also difficult to locate implementing legislation (called Regulations) unless one actually travels to a particular Region and a particular office that uses the piece of legislation. This was the case, for example, with regard to the researcher's efforts to find the SNNP Region's Rural Land Administration and Use Regulation 66/2007; the Amhara Region's Rural Land Administration and Use Regulations 51/2007; the Oromia Rural Land Administration and Use Proclamation 130/2007; sample certificates issued by the various Regions; and information on the number of people who have received first-level rural land holding certificates. The research involves the collection of legal documents, analyses of relevant theoretical literature and the substantial translation of legal texts, constitutional and other background documents, policies and strategies. The thesis therefore attempts to mitigate the problems of access to and understanding of the relevant laws by providing, for the first time, a systematic account of the land laws applicable to rural land administration in the country.

Finally, by analysing the contents of the various laws and policies on rural land rights, and by also navigating through the various Regions' laws on the subject, the work provides a comprehensive analytical tool for future research, both conceptual and empirical, which seeks to examine Ethiopia's rural land laws and policies. Particularly, a clearer understanding of the distinction between rural land holding rights and rural land use rights is provided, together with an examination of the implications of recognising these two as distinct rights. A legal recognition of the distinction between these two rights, which at present only exists in the Amhara and Benishangul Gumuz legislations, will also contribute to the development of the rental market, since people's understanding thereof helps to create confidence that renting one's use right does not necessarily mean losing one's holding right. For policymakers too, creating a window for the mortgaging of one's land use right on the basis of the land holding certificate largely depends on the notion that transacting with one's use right does not necessarily mean dispossessing of one's holdings all together. This form of detailed analysis of the nature of rural land holding and land use rights in Ethiopia within the existing state ownership structure has not been to the researcher's knowledge undertaken previously.

---

42 This is crucial in the sense that the government's insistence on banning the possibility of mortgage largely depends on the fear that the rural holders may, upon defaulting on their loan, end up being dispossessed of their holdings. See notes 666 and 667 together with accompanying text.
Literature Review

Consultations with the Poor\textsuperscript{43}

This was a study carried out to inform the 2000/01 World Development Report (WDR), entitled “Attacking Poverty”\textsuperscript{44}, and is part of the global consultations involving poor people in 23 countries. The Consultations with the Poor forms part of a larger World Bank publication consolidating all the field reports in two volumes, entitled “Voices of the Poor: can Anyone Hear Us?”\textsuperscript{45} and “Voices of the Poor: Crying out for Change”\textsuperscript{46}. The Voices of the Poor study was a reflection on the realities of over 60,000 poor people living in 60 countries and, according to the 2000/1 WDR, it establishes that ‘poor people are active agents in their lives, but are often powerless to influence the social and economic factors that determine their well-being.’\textsuperscript{47} In Ethiopia, the consultations were conducted in four urban and six rural sites located in Addis Ababa and two other Regions of the federation, namely Amhara and Oromia. The research found that rural poverty has its roots in a host of challenges that rural communities are facing, with the primary one being problems associated with land. According to the research, land-related problems are aggravated by the rapidly increasing number of landless peasants, shrinking farmland size, due mainly to the fragmentation of holdings, and the government’s poor land policies.\textsuperscript{48}

These land-related problems are shown to have a direct impact on the extent of poverty among the Ethiopian rural poor, because ‘for a culture that has depended on agriculture for so many centuries, the absence of land signifies the absence of livelihood.’\textsuperscript{49} Consultations with the Poor, coming at a time when the country is transitioning from a socialist economy to a market economy, and at an early stage of the implementation of the land reform, put into perspective the cause-effect relationship between the land rights question and poverty in Ethiopia. By directly speaking and listening to the poor, it unveiled the real perceptions of the subjects as to what, for example, they regard as living in poverty.

\footnotesize
\textsuperscript{44} World Development Report 2000/1, Attacking poverty (The World Bank 2000/1).
\textsuperscript{45} Deepa Narayan, Raj Patel, Kai Schafft, Anne Rademacher and Sarah Koch-Schulte, Voices of the Poor: Who can Hear Us? (OUP 2000).
\textsuperscript{46} Deepa Narayan, Robert Chambers, Meera K Shah and Patti Petesch, Voices of the Poor: Crying out for Change (OUP 2000).
\textsuperscript{47} World Development Report, 2000/1, p 3.
\textsuperscript{48} Rahmato and Kidanu, (n 43), p 12.
\textsuperscript{49} Ibid, p 71.
After the Derg: An Assessment of Rural Land Tenure Issues in Ethiopia

This landmark report, which came out when the drafting of the 1995 constitution was underway, presents a comprehensive analysis of options and suggestions on land tenure that the country might want to adopt. It was a joint assessment project carried out between March and April 1993 by a team of researchers from the Addis Ababa University Institute of Development Research, the Boston University African Studies Center and the University of Wisconsin-Madison Land Tenure Center, in cooperation with officials from the then Land Use Planning and Regulatory Department of the Ministry of Natural Resources.

The report was written on the basis of case studies on particular individuals, households and communities, with a view to obtaining a qualitative sense of the range of issues facing rural people and administrators in different Regions. Since the constitutional drafting process was underway, the presentation of the positions of stakeholders, such as economists, businesspeople and communities, regarding their preferred ownership structure options was very pertinent. The writers rightly pointed out the importance of instituting low-cost, locally managed systems of records of rights, which the country is now implementing in a move that is considered as yielding positive results.

The research also discusses competing claims on the Regionalisation of land policy and the required levels of autonomy in land tenure arrangements. It examines the positive aspects that come with Regionalisation in terms of accommodating local conditions and the dangers involved in creating economic disparities between the Regions. Its rich comparative analyses of the land tenure approaches of selected African countries, together with dispassionate suggestions made on which land tenure system the country may have to adopt, makes the report extremely useful for policymakers and researchers on Ethiopia’s land tenure. This report contained, therefore, an account of the various land tenure issues that faced Ethiopia, before any of the rural land administration laws analysed in this dissertation were promulgated.

---

50 John W. Bruce, Allan Hoben, and Dessalegn Rahmato After the Derg: An Assessment of Rural Land Tenure Issues in Ethiopia (Land Tenure Center, University of Wisconsin-Madison 1994).
51 Ibid, p xv.
Land Tenure and Agricultural Development in Ethiopia

When the 1995 Federal constitution once again declared state ownership of land but decentralised its administration, most of the literature of the time focused on discussions of private-state ownership structures. The literature that followed this endorsement of state ownership analysed the state versus private ownership debate, with the 2002 research report by the Ethiopian Economic Association (later, the Ethiopian Economic Policy Research Institute) gaining wide influence. This research was carried out with the objective of assessing the current land tenure system and its consequences and implications for the overall performance of the agricultural sector. The report was written on the basis of a survey of 8,540 farm households across all of the Regions of the federation except Gambella, as well as a survey of the opinions of professionals, experts, development/extension agents, politicians and other stakeholders. The household survey was conducted to document the views of farmers about the size of land holdings, farm and non-farm income, opinions about the current land tenure arrangements and their preferences, were they to be given the freedom of choice.

The findings of this report indicated a substantial preference towards private ownership. Moreover, based on the finding that 90 per cent of the households surveyed were not interested in selling their land, if they were allowed, the survey also discredited the government’s fear that in the event of privatisation, land would become concentrated in the hands of those who could afford to buy. Although this research examined Ethiopia’s land tenure from an economic perspective, and drew useful insights into the economic policy debates in the choice of the ownership structures, it does not provide adequate analysis of the existing land rights system from a legal point of view. Moreover, its primary focus on the ownership debate leaves out other equally important topics relating to the land rights system, including the articulation of rural land holding rights under the existing system of ownership structures. It is also important to note that since this report was first published, both the

---

54 Federal Republic of Ethiopia Constitution 1995 has, under Art 40(3), affirmed what had been declared under Proclamations 31/1975 and 47/1975 art 3(1) making all rural and urban land as being government-owned.
55 One important work in this respect was what we had referred to above. Bruce et al., (n 50).
56 Crewett and Korf (n 21); Government of the Federal Democratic Republic of Ethiopia: Rural Development Policy and Strategies (Ministry of Finance and Economic Development 2003) had devoted section 3 to discuss issue of land ownership with the aim to justify state ownership compared to privatisation.
57 Ibid, Executive Summary, p iv.

xxvi
Federal and most Regional governments have issued and/or reissued their rural land administration laws.

*Review of Land Holding Systems and Policies in Ethiopia under the Different Regimes*

When radical rural land redistribution was undertaken in the Amhara Region in 1996, one of the units of the federation, a number of research reports emerged that dealt with the social, economic and political implications of the measure, albeit without situating it within the broader land rights context. Svein Ege, for instance, made significant analyses of the socio-political antecedents to the land redistribution measure and how the implementation was shrouded by high levels of secrecy and manipulation. A later work, by Adal, also showed the continuity of policy directions between the present government and its socialist predecessor when it came to land redistribution and the resultant land fragmentation. This research was part of a broader undertaking by the Ethiopian Economic Association for a thorough and comprehensive study on issues related to land policy and its implications on agricultural performance. This had the objective of reviewing the existing literature on land tenure and identifying the gaps that required policy intervention. Adal’s research accordingly raises crucial questions that he deems require further investigation, including ‘what is the situation of land use and administration? Are there policies on land use and administration at the Federal and Regional level? If there are, are they appropriate? If not, how are land use and administration practiced and regulated? What are the available mechanisms of access to land and what are the problems in relation to land transfer? What is tenure insecurity? What is the situation of women in terms of land rights?’ Although there has been some further research after Adal’s, there has not been, to the author’s knowledge, any work that

---


62 The redistribution was undertaken on the basis of the Amhara National Region Re-allotment of Rural Land Possession Proclamation 16/1996.


65 Ibid., p 47

comprehensively analyses these and other questions relating to Ethiopia’s rural land laws and policies. Adal’s work, based largely on economic policy-oriented analyses of various regimes’ tenure systems, does not contain a detailed exposition on the legal regime applicable to rural land in Ethiopia. This thesis therefore attempts to address some of these important concerns in a more systematic manner and on the basis of the Federal and major Regional land use and administration laws issued before and after Adal’s research.66

**Land Rights and Tenure Security: Rural Land Registration in Ethiopia**

Following the land holding certification process carried out in Tigray, one of the members of the federation, in the late 1990s, three other Regions, namely Amhara, Oromia and Southern Nations, Nationalities and Peoples’ (SNNP) Regional States, started implementing the process on the basis of their own rural land use and administration laws issued in accordance with the Federal framework legislation.68 This process provoked a number of studies that looked at the certification exercise from three broad perspectives: its impact on the enhancement of tenure security, its impact on the formalisation of long-term investment in land and the gender implications of the certification process. Regarding the first of these themes, Rahmato and Deininger et al. each undertook empirical research which arrived at more or less similar conclusions.69 The book in which Rahmato’s report appeared contains 11 case studies from eight countries in Africa, Asia and Latin America, focusing on both agricultural and residential land use. These case studies examined the designs, justifications and objectives given by countries that underwent legalisation processes and the effects of those processes on tenure security. Rahmato’s Ethiopian study explored the implications of title registration on peasants’ security of rights to land, based on the findings of field investigations carried out in 2006 and 2007 in two locations in the southern and northern parts of the country. He observed that ‘the relationship between the state, which is responsible for formalisation, and the poor is a relationship of hegemony and subordination,
and this relationship will have to change to enable the poor to secure and defend rights to property.\textsuperscript{70}

\textit{Rural Land Certification in Ethiopia: Process, Initial Impact and Implications for other African Countries}\textsuperscript{71}

This study, which came out in 2008 after central government and most of the Regions had issued revised rural land laws, presented data from a large survey covering a number of topics related to rural land certification. With a view to assessing the overall performance of rural land certification, the research embarked on addressing three broad and interrelated topics: (i) an assessment of whether the certification programme met expectations regarding inclusiveness, fairness and equity, (ii) obtaining a sense of households’ subjective evaluation and willingness to pay for certificates and (iii) providing an estimate of its sustainability and impact on investment. In this research, Deininger et al. also conclude, as did Rahmato, that achieving the enhancement of tenure security through the certification process was highly dependent on a number of factors such as well-defined compensation in case of expropriation, protection against arbitrary expropriation and transferability of land use rights for longer time periods.\textsuperscript{72} These research reports made a significant contribution to bringing to the attention of policymakers some of the gaps and concerns in respect to the certification process. Because of their thematic focus on tenure security, however, they do not provide a solid basis for understanding the Ethiopian rural land rights system in its totality. Neither of these studies, for instance, makes reference to some of the implementing regulations issued by the Regional governments that further define, specify and expand the provisions included in their respective proclamations.\textsuperscript{73}

Having one’s holding right registered and certified has been associated for a long time with positive yields, by encouraging farmers to engage in short- and long-term investments in the land.\textsuperscript{74} In some situations, such as in Honduras, however, formal titling is believed to constrain land market transactions by increasing transaction costs for the circulation of land,

\textsuperscript{70} Rahmato, Ibid., p 93.
\textsuperscript{71} Deininger et al., (n 25).
\textsuperscript{72} Deininger et al., (n 25) p 1806.
\textsuperscript{73} Throughout Chapter Four of this thesis, both the Proclamations that establish the general rules as well as the implementing legislations issued as Regulations are consulted to provide a comprehensive and systematic analyses of the rural land laws and policies. For example, section 4.3 that examines the various legal rules applicable to certification of holdings as an element of land tenure security.
thereby reducing efficiency in resource use.\textsuperscript{75} The positive link of titling with investment has been proved partly to be the case in Ethiopia’s recent land holding certification exercise.\textsuperscript{76} However, this has been said to come only as an indirect effect of increased land rental market participation, specifically through women, as a result of certification.\textsuperscript{77} Accordingly, Deininger et al. conclude that more is required to be done to address the roots of tenure insecurity, in order for the certification to have a more direct and positive effect on investment.\textsuperscript{78}

\textit{Options for Strengthening Land Administration in Ethiopia}\textsuperscript{79}

This 2012 World Bank publication which was issued as a Policy Note in 112 pages examines the land administration system of Ethiopia in light of the current land reform, particularly the land registration and certification process. The report draws lessons both from Ethiopia as well as other countries in making specific proposals on how to improve Ethiopia’s performance with respect to rural and urban land administration. The three key areas that the report focuses on for the proposed improvements relate to the legal and regulatory framework, administrative capacity and organisational set-up and how to build on these improvements for the provision of efficient, cost-effective and sustainable land administration services and land management. The useful proposals made in these three areas by the report will no doubt contribute towards an improved land administration and land management in the country. This thesis will further build on those proposals based on a comprehensive and systematic analysis of the laws and policies specifically relating to rural land rights issues that affect the poor’s empowerment. Moreover, adding the ‘rights’ language, which does not largely feature in the report, is equally significant when it comes to Ethiopia’s land administration system on which the livelihoods of many poor people depend.

\textit{Pastoral Economic Growth and Development Policy Assessment, Ethiopia (Reports 1-4)}\textsuperscript{80}


\textsuperscript{77} Ibid., p 329.

\textsuperscript{78} Ibid.

\textsuperscript{79} World Bank Report, \textit{Options for Strengthening Land Administration in Ethiopia}, (n 26).

\textsuperscript{80} Peter D. Little, Roy Behnke, John McPeak, and Getachew Gebru, \textit{Pastoral Economic Growth and Development Policy Assessment, Ethiopia (Reports 1-4)}, (Future Agricultures 2010) available at XXX
This assessment report by ‘Future Agricultures’ written in four parts, provides a useful insight into Ethiopia’s pastoralists that also includes a retrospective review of Ethiopia’s pastoral policies and livelihoods. The first report, titled ‘Retrospective Assessment of Pastoral Policies in Ethiopia’ covers the period 1991 through 2008. This report explains the economic contribution of the pastoral community to the country which is known for its largest number of domestic livestock in Africa. By combining empirical evidence (gathered in various occasions between August and November 2009) and relevant literature, the work examines the evolution of the country’s policies relating to its pastoral areas. The second report was titled, ‘Future Scenarios for Pastoral Development in Ethiopia, 2010-2025.’ This latter report discussed the government’s policy that under-values the pastoralists’ contribution to the national economy and examined two sets of conflicting scenarios on future directions of the pastoralists that might lead to either positive or negative outcomes. The report, by examining some of the critical factors relating to, for example, irrigation and other land uses versus pastoralism, the pastoralist’s land tenure and the importance of mobility and flexibility and settlement and issues associated with pastoral sedentarisation, concludes that it is, to a large extent, the government’s policy choice in embracing either the positive or negative scenarios that the report identifies with respect to Ethiopia’s pastoralists’ future. The last two reports, titled respectively ‘Policy Options for Pastoral Development in Ethiopia’ and ‘Policy Options for Pastoral Development in Ethiopia and Reactions from the Regions’81, outline the various policy options and the trade-offs involved. While the first is a comprehensive analysis of those options as they relate to land use, land tenure, settlement and sedentarisation and trade, the last report reviews those options based on reactions to the previous three reports elicited in a series of Regional meetings conducted in Afar, Somali, Oromia and Southern Nations, Nationalities and Peoples Regions between August and September 2010. The proposed approaches and policy directions on how to address problems, in law and policy, in these reports highly complements the sections of this thesis dealing with pastoralists.

Reports on the impacts of land certification on gender equity
In respect to the gendered implications of certification, it has consistently been demonstrated that as a result of holders’ rights certification, the position of women vis-à-vis their male


81 In this last Report, Solomon Desta replaces Roy Behnke in the authors involved.
counterparts has improved. On the basis of evidence drawn from those women who have land holdings over which they manage to obtain land holding certificates alone or jointly with their husbands, conclusions have been made that underscore these positive outcomes. Particularly, Bezabih et al., based on two surveys conducted in 2005 and 2007 in two zonal districts of the Amhara Region (East Gojjam and South Wollo), conclude that the land certification program has enabled female-headed households achieve a relatively higher productivity particularly because of their increased participation in the land rental market following the certification. These reports provide only an inconclusive picture of the much bigger and complex challenges that rural women face, however. As pointed out by Lastarria-Cornheil, what formalisation does is only regularise what may be termed as the “pre-existing status quo” that has left many women landless. Or, as shall be examined in this thesis in greater detail, by issuing certificates to a person with more than one wife, the rural land administration institutions of some of the Regions have had the unintended effect of legalising polygamous relationships, which are otherwise regarded as criminal. The conclusions, therefore, only speak for those women who already hold land – who are by a large measure exceptions to the general rule. This thesis attempts to examine some of the underlying challenges that rural women face, both within the context of the certification process and more broadly as subjects of the rural land rights system.

Studies on large-scale agricultural land transfers

Apart from the certification project, which has been running for the last 15 years and which still remains a work in progress, the other subject of investigation by researchers and donor organisations has been the large-scale transfer of agricultural land to both local and foreign investors. This has become particularly topical since the global food price spikes caused a

---

82 Bezabih et al. (n 24); see also Stein Holden and Tewodros Tefera, “From Being Property of Men to Becoming Equal Owners? Early Impacts of Land Registration and Certification on Women in Southern Ethiopia,” (2008), United Nations Human Settlements Programme (UNHABITAT)-Shelter Branch Research Report; and also Holden et al., (n 52) p. 31.
83 Bezabih et al., (n 24), p 24.
85 Section 4.6. examines the various problems associated with rural women in Ethiopia.
86 This is because the process is yet to commence in four of the Regions, Afar, Somalia, Benishangul-Gumuz and Gambella. The World Bank Report, Options for Strengthening Land Administration in Ethiopia, (n 26).
wave of interest in land acquisitions in developing countries. Ethiopia’s land transfer deals have, as a result, triggered a number of studies attempting to observe the implications of those deals on smallholders and their livelihoods. Particularly, Rahmato’s (2009) work, titled “Land to Investors”, has, apart from the critical examination of the processes on the basis of empirical data, systematically compiled those civil societies and research groups that have extensively researched on this subject. In 2011, the Agricultural and Rural Development branch of the World Bank, together with the Food and Agriculture Organisation of the United Nations (FAO), the International Fund for Agricultural Development (IFAD) and the United Nations Conference on Trade and Investment published a comprehensive report on global farmland transfer deals, in which Ethiopia features prominently. The report formulated seven principles that need to be complied with for responsible agro-investment, relating to respecting land and resource rights, ensuring transparency, good governance and a proper enabling environment, respect for the rule of law and ensuring social and environmental sustainability. One of its critical findings suggests that ‘having weak land governance and poor recognition of local land rights is associated with increased investor interest in a country.’ In 2013, the World Bank’s Africa’s Development Forum published yet another book, Securing Africa’s Land for Shared Prosperity, which summarises the major challenges that African countries need to overcome, including land grabs, land vulnerability and inefficient land administration.

These and other research reports on the subject of large-scale agricultural land transfers underscore the need for improved governance in respect to land rights. In examining
Ethiopia’s land laws and policies, with a focus on rural land, this thesis aims to become a primary analytical tool for future studies in the areas of rural land policy that touch upon the topics outlined in this brief survey of the literature. The Regional comparison in this thesis will also enrich the analysis by bringing a new dimension to particular issues of discussion. For example, the Amhara Region’s succinct articulation of the land holding right and land use right as distinct legal constructs under the rural land administration system will undoubtedly benefit other Regions.\(^5\)

\(^5\) See the extensive discussion in Chapter Four, section 4.2.1.
Chapter I. Rural land rights, collective action and empowerment of the poor

1.1. Introduction

A large proportion of the world’s population classified as poor dwells in rural areas. According to a 2011 rural poverty report, out of the 1.4 billion people who live on less than a dollar a day, at least 70 per cent are rural.\(^6\) In a study conducted in Ethiopia as a background document for the 2000 World Development Report, the rural poor are shown to perceive the states of being poor and rich as having much to do with land and land-related concerns.\(^7\) According to this report, entitled *Consultations with the Poor*, rural households defined the rich in terms of the size of their land holding, the number of livestock which they possess, including plough oxen, cows, sheep and donkeys, and their material ability to buy agricultural inputs such as fertilisers and to lend money to the poor.\(^8\) *Consultations with the Poor* attributes the major cause of rural poverty largely to the condition of “landlessness”, which is created, among other things, by poor land tenure policy.\(^9\) The basic notion of rural poverty is therefore inextricably linked with access to land and land-related resources such as fertilisers, seeds and plough oxen, and generally the land tenure policy of the particular country. ‘Poor people,’ as pointed out by Deininger and Binswanger, ‘who do not have access to assets might remain impoverished not because they are unproductive or lack skills but because they never get the opportunity to utilize their innate ability.’\(^10\) One important platform through which the rural poor may realise their ‘innate ability,’ however, is through acting collectively in agricultural cooperatives as discussed in Chapter Five below. These forms of establishment have the capacity to facilitate broad-based economic empowerment, thereby eradicating poverty. The condition of being poor constitutes a denial of one’s capabilities in its various forms, including a lack of opportunities for collective action, and this condition, as discussed in the following section, leads to disempowerment. The 2013 Human Development Report also states that ‘inequitable access to wealth disempowers the excluded [and] rural poverty originates in insufficient access to land and water for less privileged segments of rural

\(^6\) International Fund for Agricultural Development (IFAD) (*n* 20), p 16.  
\(^7\) Rahmato and Kidanu (*n* 43).  
\(^8\) Ibid, p 29.  
\(^9\) Ibid, p 35.  
In this chapter, we shall first look at the meaning of empowerment and how this meaning relates to conditions of poverty, followed by an examination of how this concept of empowerment relates to rural land rights policies. Moreover, enabling collective action through the creation of just, participatory and inclusive institutions is also discussed as one element in the move to empower the poor. It is pointed out that rural institutions that enable collective action could have an empowering effect where the challenges they face in terms of lack of autonomy, independence and access to finance are adequately addressed.

The role that land rights play in the empowerment of the poor, and how this can best be enhanced in situations of collective action has recently been recognised by the World Bank. Since its 1975 land reform paper, the Bank has put more emphasis on economic yields as the main aspirations that countries' land reform agendas should pay attention to rather than, say, equity. It particularly praised land reform initiatives of Japan, where measures of private titling were undertaken, as most successful. The Paper similarly commended the land reform measures of Mexico from Latin America and Kenya from Africa. This position has remained unaltered until the 2003 policy paper titled ‘Land Policies for Growth and Poverty Reduction.’ In this latest position paper, the Bank capitalised on the failures of the 1975 paper that devoted ‘little attention to the importance of land rights for empowering the poor.

103 Some of the critical short-comings as pointed out in Chapter Five relate to ‘patron-client relationships’ that the agricultural cooperatives are made to operate under in the context of rural Ethiopia, which, as stated also in the rural poverty report, do not advance the living standards of the poor. Ibid.
105 Ibid, p 34.
106 In Kenya, the land reform particularly involved the conversion of the customary holdings into freehold, which was started in 1954 by the colonial masters and further expanded by the government after independence in 1963. Ibid, P 71. This has however been criticised as it is said that ‘the official system of individual freehold titles poorly accommodates flexible and negotiable land rights and obligations associated with customary holdings’ that particularly was flexible enough to accommodate the size and fluidity of the extended family model. Angélique Haugerud, ‘Land Tenure and Agrarian Change in Kenya’ (1989), Journal of the International African Institute, Vol 59(1), 61, p 81. More recently too, McAuslan observed, quoting also Kanyinga et al, that the individualisation process had the effect of facilitating the ‘small political and administrative elite’s accumulation and appropriation of vast amounts of land at the expense of the ordinary peasant.’ Patrick McAuslan, Land Law Reform in Eastern Africa: Traditional or Transformative? A Critical Review of 50 Years of Land Law Reform in Eastern Africa 1961-2011 (Routledge 2013), p 49. See also Karuti Kanyinga, Lumumba Odenda, Amanor Kojo Sebastian and Sam Moyo ‘The struggle for sustainable land management and democratic development in Kenya: a history of greed and grievances’ in Kojo Sebastian Amanor and Sam Moyo (eds), Land and sustainable development in Africa (Zed Books 2008); Robert Home, ‘Colonial Township Laws and Urban Governance in Kenya’ (2012) Journal of African Law, Vol 56(2), 175.
and improving local governance.'\textsuperscript{108} After over three decades of experimentation, the Bank has, therefore, transformed its thinking in such a way that greater emphasis is now to be given to the links of equitable distribution of assets, particularly land, rather than mere economic considerations and that of ‘the empowerment of the poor and their resulting ability to have their voice heard and to hold accountable local institutions that often derive much of their power from the ability to control access to land.’\textsuperscript{109} Ethiopia’s rural land context is characterised by a high level of subordination between the local officials and the peasant landholder\textsuperscript{110}, which is further exacerbated by the unchecked state power on expropriation.\textsuperscript{111} The link among land rights, collective action and alleviation of poverty have best been described by Meinzen-Dick and Gregorio in the following terms:

Tenure security provides key assets for poverty reduction, allowing the poor to help themselves by growing food, investing in more productive activities, or using property as collateral for credit. Collective action can increase food security through mutual insurance. Both property rights and collective action are empowerment tools. Poor people often have difficulty making their voices heard. Interventions to strengthen their property rights or to help them participate in collective activities improve their bargaining positions. Security of rights and the capacity to manage local common resources allow people to make decisions while taking the future into consideration.\textsuperscript{112}

This work, therefore, by examining Ethiopia’s rural land law and policy, underscores the relevance of rural land right to the empowerment of the poor and how their bargaining power could be enhanced by establishing collective action institutions. As the concept of empowerment continually evolves, the exact meaning to be attached to it for our purpose shall be explained which is then followed by an examination of participation as an important determinant of empowerment.

\textsuperscript{108} Ibid, xlv.
\textsuperscript{109} Ibid, P 185.
\textsuperscript{110} Rahmato, (p 67). See also note 836 and accompanying text.
\textsuperscript{111} In Chapter Four we examine the failure of the legislature to come up with clear guide on the ‘public purpose’ caveat and absence of judicial review on the decisions to expropriate has enhanced the power imbalance between local officials and the rural landholders. See note 857 and accompanying text.
1.2. Defining empowerment

Empowerment as a socio-economic and political discourse represents a complex set of processes that awaken the human agency, or simply capabilities, of the most disadvantaged segments within a particular society. One’s ability to assert a right before public institutions, for instance, is determined by one’s social and economic conditions, and to the extent that these conditions are brittle and political rights are non-existent, the exercising of rights will remain wanting. This link between poverty and voicelessness very much conforms to Sen’s discourse on well-being and the agency to realise that well-being. In his work, “Inequality Reexamined”, Sen explains the link that permeates well-being and agency, and then well-being achievement and agency achievement.\textsuperscript{113} He reiterates the importance of interpreting a person’s agency achievement more broadly, to mean ‘the realisation of goals and values she has reasons to pursue, whether or not they are connected with her own well-being.’\textsuperscript{114}

In a way, this conceptualisation of ‘agency achievement’ as encompassing matters beyond the mere pursuit of well-being informs the meaning we attach to someone’s state of “poverty”. Sen wrote:

A person as an agent need not be guided only by her own well-being, and agency achievement refers to the person’s success in the pursuit of the totality of her considered goals and objectives. If a person aims at, say, the independence of her country, or the prosperity of her community, or some such general goal, her agency achievement would involve evaluation of states of affairs in the light of those objects, and not merely in the light of the extent to which those achievements would contribute to her own well-being.\textsuperscript{115}

Accordingly, the pursuit of well-being can be one of the many important desires of the agent, and ‘the failure to achieve non-well-being goals can lead to frustration and thus to a loss of well-being.’\textsuperscript{116} Understood this way, a person’s ability or inability to realise basic necessities will not in itself suffice to determine his state of well-being or being in poverty. Moreover, being empowered in the sense of “agency achievement” should mean more than being able to get fed, dressed and sheltered. When considered within the rural household’s condition, there

\textsuperscript{113} Amartya Sen, \textit{Inequality Reexamined} (OUP 1995).
\textsuperscript{114} Ibid., p 56.
\textsuperscript{115} Ibid., p 56.
\textsuperscript{116} Ibid., p 57.
is no doubt that the immediate desire and pursuit of a member of the rural poor is to sustain himself and his family. His primary source of livelihood being agriculture, it would be fair to assume that his agency achievement is determined by the level of command he exercises over the relevant inputs of agricultural production, one of which, and by far the most important, is the land on which he conducts his farming. Here, it suffices to state that one of the undercurrents of a rural person's conditions of poverty relates to the manner in which issues related to rural land rights, such as access, security of tenure and proper guarantees against dispossession are treated.

The oft-quoted definition of empowerment in the context of poverty alleviation is the one given by Narayan, which goes as follows:

Empowerment is the expansion of assets and capabilities of poor people to participate in, negotiate with, influence, control, and hold accountable institutions that affect their lives.117

This definition of empowerment is comprehensive enough to reflect the “agency achievement” and “well-being achievement” to which we briefly alluded above. Moreover, it embodies the role that both physical assets and non-physical conditions play in the poor’s realisation of their well-being needs. The condition of being poor, therefore, is not merely explainable by reference to a lack of physical assets; it also implies the absence of those non-physical determinants of well-being that one may generally refer to as “freedoms”. Narayan’s definition could therefore be dissected into those two determinants of disempowered poverty, namely “assets” and “capabilities”, with the notion of empowerment entailing the expansion of both of these factors. It is axiomatic that land, being a natural and physical asset, may not spontaneously increase, unlike what is implied by the enlargement of capabilities. It is equally self-evident, however, that the utility and asset generation capacity of land could be either expanded or reduced.118 The expansion of assets, therefore, must be understood to mean the unleashing of the embedded potentialities of, for instance, land, which is subject to less limitation than its ability to rise quantitatively. The resource generation capacity of land is also affected by how rights are defined, protected and enforced.

118 Here reference could be made to de Soto’s ideas of ‘dead capital’ in the sense that where the relevant rights-frameworks are lacking, land and other physical assets that many have within their possessions could be regarded as dead as they may not generate capital. See generally de Soto (n 15).
Support to this assertion could also be sought from Nussbaum’s work who, identifying Sen’s failure to provide ‘any official account of what the most central human capabilities are’, produces a working list on concrete human capabilities.\textsuperscript{119} She accordingly came up with a total of ten lists couched in human rights terminologies, of which one relates to control over one’s environment. According to Nussbaum, one is considered to have her/his capabilities realised where s/he has control both over the political, which implies the ability to participate effectively in political choices that govern one’s life; and over the material, implying the ability to hold property (land and movable).\textsuperscript{120} These two aspects of control over one’s environment are described under Narayan’s definition of empowerment as expansion of assets and capabilities.\textsuperscript{121} In examining Ethiopia’s rural land holding and use right together with the institutions of land administration that are meant to provide access to land, ensure tenure security and create an enabling environment for collective action by smallholder farmers, the thesis will demonstrate the extent to which the rural poor’s capabilities in Ethiopia are enhanced or undermined.

\section*{Participation and empowerment}

In contrast to physical land, an individual’s capabilities are expandable, both numerically and qualitatively. Viewed from this perspective, an agent’s state of empowerment will enable him to play a direct and instrumental role in achieving those goals and values that he considers worthy of realisation, or to take part indirectly in endeavours towards their realisation, for instance through elected representatives. In other words, participation, be it direct or indirect, enhances the capabilities of individuals, ultimately facilitating their alleviation from poverty. Pearse and Stiefel had explained this meaning of participation as having, apart from its developmental goals, an empowering effect on those who have previously been excluded in the following terms;

People are poor because they are ‘excluded’ and do not have the political and economic power to influence the forces which affect their livelihoods. Participation therefore, is the process whereby such people achieve influence and are able to negotiate access to the resources which can help them sustain and improve their livelihoods. Development implies negotiation and not merely the implementation of predetermined policy. In this

\textsuperscript{120} Ibid, p 288.
\textsuperscript{121} Narayan, (n 117).
analysis participation involves control, ownership and a sense of the empowerment of previously powerless people.  

Participation here implies informed, active, meaningful and effective participation by the subjects in decisions that directly or indirectly affect their well-being. This understanding of participation is normatively supported by the International Covenant on Civil and Political Rights (ICCPR) as well as the Universal Declaration on Human Rights (UDHR) articles 25 and 21, respectively. From a development perspective, there is now a considerable body of scholarship exploring the implications of the United Nations Declaration on the Right to Development on people's right to participation. It specifically regards participation as the linchpin that underpins development, which its preamble defines as:

[...] a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

As the basis of the right to development, therefore, participation is a key determinant of the extent to which the capabilities of its beneficiaries are enhanced. The opportunity for

---


123 Art 25 of the ICCPR states:
Every citizen shall have the right and the opportunity, without ... unreasonable restrictions:
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

And Art 21 of the UDHR provides:
(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives ... (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.


125 The Preamble to the Declaration on the Right to Development para 2.
individuals to ‘negotiate with, influence, control and hold accountable institutions,’ which one way or another affect their lives, can be afforded through various methods and at different levels of authority. For example, if one considers any particular decision vital to the well-being of the individuals which it affects, one can see that the entire process of that decision could range from its early inception up to its culmination and then through the undertaking of implementation and post-implementation measures of monitoring and evaluation. Both the qualitative and numerical aspects of individuals’ capabilities are directly impacted by the extent to which they are allowed to take part at every level of the decision-making process, be it direct or indirect. In rural resettlement programmes, rural land reform measures, land expropriations in the “public interest” and other related decisions that clearly have a significant impact on the well-being of the rural poor, consultation without the possibility of effecting real change is symptomatic of the denial of capabilities, both in terms of quality and quantity, and thus it contributes to disempowered poverty.

It could simply be expedient to “consult” the community concerned and move on quickly to the implementation of those measures based on well-reasoned policy documents that the political elites have formulated. In terms of economic dividends and social gains, this might also prove on paper to be a resoundingly positive sum game, as evinced by the numbers and explanations. Nonetheless, this marginalisation of the people’s agency, no matter how well-intentioned, significantly militates against their state of well-being. The fine distinction that Sen makes between ‘realised agency success’ and ‘instrumental agency success’ becomes crucially important in this regard. While discussing the levers that thread through ‘agency, instrumentality and achievement,’ he explains the distinction between the realisation of those goals and values that we hold dear for our well-being, with and without our participation, and refers to them as ‘realised and instrumental agency success.’ This distinction is important, because:

[...] to some extent the question is closely related to the nature of our values, i.e. whether what we value is the achievement irrespective of the instrumental process, or whether the valuation relates directly to the part we ourselves play in bringing about the results[...] The question of instrumentality relates closely also to the notion of the

---

126 Narayan, (n 117).
127 The resettlement projects in Ethiopia that are discussed in Chapter Four below exemplify this absolute lack of participation. The subjects for whose benefit the programme is designed are completely excluded from the decision making process and are simply asked to leave their ancestral lands. See discussions under section 4.4 below, and Rahmato, (n 90), p 9.
“control” that one exercises over the realisation of outcomes. In some views of freedom, definitive and great importance is attached to a person having the control himself in bringing about what he wants to achieve.\(^{128}\)

Therefore, apart from the possibility of not getting it right, plans made and executed on behalf of others by certain political cohorts run the risk of denying freedom of choice to those alleged beneficiaries. The instrumentality aspect is, in other words, as important as the outcome in terms of people’s well-being needs. This again pulls us back to the question of what poverty really means. A clear view on the determinants of the state of being in poverty would help us articulate what we refer to as empowering the rural poor. Overcoming poverty may not be realised through state and/or donor-led initiatives alone; however, rural people themselves must be made to employ their skills and potentials that could best be put into use through, among other things, collective action. In this regard, the state should create enabling policy and institutional arrangements that promote, rather than undermine, collective action by rural people.\(^{129}\)

### 1.3. Poverty and empowerment

Empowerment has long been associated more with the social science disciplines of organisational management and community psychologists and less with the development agenda. In those disciplines, empowerment is applied almost synonymously with participation, in that people’s participation, at both the community and individual levels, is said to enhance their empowerment and, to that end, barriers need to be removed and incentives put into place so as to make participation possible and worthwhile.\(^{130}\) Within the field of community psychology, critics of empowerment, however, argue that the focus of empowerment on individual agency, mastery and control tends to favour traditionally powerful social groups, i.e. the masculine, over the ‘feminine concerns of communion and cooperation.’\(^{131}\) Riger, a prominent critic, concludes that empowerment, as understood in

\(^{128}\) Sen, (n 113), p 58.


community psychology, is rooted in pure liberalism which, as a political philosophy, places primacy on individual rights over community rights, and she therefore calls for the realignment of agency with communion and empowerment with community.\textsuperscript{132} This undoubtedly raises questions not only for the individual empowerment agenda per se but also for specific group empowerment initiatives insofar as they relate to women and minority groups. The movement for women’s empowerment emerged from the underlying assumption of feminists that masculine domination had rendered women within society powerless and vulnerable. In this context, the empowerment of women means, according to Bookman and Morgen (1998), ‘a spectrum of political activity ranging from acts of individual resistance to mass political mobilisations that challenge the basic power relations in our society.’\textsuperscript{133}

Riger and other similar critics, of the type that questioned “Can’t we all get along?” and rejected the notion of women’s empowerment, misunderstood the concept of “power”. There is a need to understand power not simply as “zero sum”, in the sense that where women are empowered, men will necessarily have to be disempowered, or the opposite notion. The purpose of women’s empowerment, for instance, is not to ‘take power from men; [rather, it is] to develop their own power while respecting men for who they are.’\textsuperscript{134}

The empowerment of minority groups has also long been studied within the field of community psychology. Empowerment in this specific sense is defined by Solomon (1976) as:

The process whereby persons who belong to a stigmatized social category throughout their lives can be assisted to develop and increase skills in the exercise of interpersonal influence and the performance of valued social roles.\textsuperscript{135}

This form of understanding of the concept and its application has been criticised as a process that infuses the sense of “power” and “control” within those minority group members, without altering the attitudes of the dominant societal group. For critics like Friedman, therefore, those minority groups cannot be considered as being empowered, and ‘perhaps,’ he

\textsuperscript{132} Ibid., p 292.
\textsuperscript{134} Ibid.
wrote, 'political empowerment would seem to require a prior process of social empowerment through which effective participation in politics becomes possible.' The same typology is applied with regard to the empowerment of employees in the workplace, where the effectiveness of emerging employee-controlled organisations is hampered where there remains no significant change of attitude at management level.

Scholarly works on empowerment in the workplace and on empowerment as a politically-charged concept in the areas of psychology, feminism, minorities and the like, have contributed to the resurgence of the concept within poverty alleviation policies and the development agenda. In particular, the 2000/2001 World Bank's World Development Report, titled *Attacking Poverty: Opportunity, Empowerment and Security*, provided a basis for the subsequent analytical and practical engagement by development researchers and practitioners. As its fundamental building block, the report emphasised the urgent call for 'facilitating empowerment by making state institutions more responsive to poor people and removing social barriers that exclude women, ethnic and racial groups and the socially disadvantaged.' The report is particularly celebrated for its insistence on the correlation of the state of being poor and the corresponding state of voicelessness and exclusion, with the absence of pro-poor and accountable public institutions. Accordingly, subsequent literature has laid bare the multidimensional character of poverty to show that the features of empowerment must also be multifaceted. One may also point out that the aspects which underpin the concept of empowerment include the individual (involving a sense of self-confidence and capacity), the institutional and the relational (implying the ability to negotiate and influence relationships and decisions).

Above all, the concept of empowerment, derived from various disciplines and social groupings, has become more nuanced since its application to the development agenda. Cornwall and Brock, for example, describe this privileged position of empowerment compared to 'participation' and 'poverty reduction,' which together constitute the three prominent development buzzwords:

---

136 Lincoln et al., (n 133), p 276.
138 Ibid., See particularly PART III, Chapter VI which is entitled 'Empowerment: Making State Institutions More Responsive to Poor People' pp. 99-115.
Empowerment has a more curious history, having gained the most expansive semantic range of all, with meanings pouring into development from an enormous diversity of sources, including feminist scholarship, the Christian right, New Age self-help manuals and business management.\(^{140}\)

The discourse on empowerment within the development literature, therefore, is now becoming broader than its prior focus on women's empowerment, in order to apply more neutrally to all those individuals and communities that lack "power" as a result of their condition of being poor. When one examines, for instance, the rural community, and specifically those collectively referred to as being "poor" on the basis of various standards, this neutrality is called for because the "poor" are constituted of both men and women, young and old, landholders and the landless. In this work, too, therefore, the discussion on the empowerment of the rural poor is to be conceived of as referring to that collectivity where disempowerment and the conditions of being poor intersect.

The last two decades have seen a steady rise in developmental actors engaged in poverty reduction, women’s empowerment and rights-based approaches to development. This period had also seen the emergence of various poverty reduction strategy papers in most of the least developed countries, with the objective, among other things, of attracting funding and international technical and financial support.\(^{141}\) It is invariably alleged that the evil that underpins the poverty conditions of the "Bottom Billion" relates not so much to resource constraints but to how the available resources are distributed.\(^{142}\) This problem of distribution is blamed for subjecting segments of society to conditions of poor health, illiteracy and hunger, so that they are in consequence rendered voiceless and powerless. This understanding of poverty as a matter of distributive injustices rather than a total paucity of the means to provide for health, food, housing and other basic needs, including education, is crucial in looking at rural land rights structures and how these interact with matters of distribution. At a

---


\(^{141}\) These papers are meant to detail not only the poverty alleviation strategies but also the external financing needs as indicated under their World Bank definition. See Frank Ellis and H Ade Freeman, ‘Rural livelihoods and poverty reduction strategies in four African countries’ (2006) The Journal of Development Studies, Vol 40(4), 1, p 26.

more specific level, it is also relevant for identifying the key determinants of poverty, to see where empowerment factors in.

It is useful first to untangle the distribution-structure dichotomy as an element in the explanation of conditions of poverty. Another obvious structural issue relates to geographic and climatic vulnerabilities over which people have little control. Since some Regions are more prone to drought and consequent famine, it might be argued that conditions of poverty are explainable through these natural factors. Sticking to our thematic focus on the land rights issue, however, we will focus on structures which are under full human control, including how rural land rights are defined, institutionally protected and secured, the predictability of the procedures on expropriation that provide basic structures for participatory decision-making processes and the availability of adequate, prompt and effective compensation. Each of these greatly impinges on people’s freedom of action regarding the land they possess. It is, for instance, established that the unpredictability of procedures for expropriation discourages people from making long-term investments. Ayalew et al. (2005), for instance, have shown, based on village-level empirical evidence from Ethiopia, that the threat of expropriation has a negative impact on long-term investments in coffee plantations by rural farmers in the country. This does not affect the long-established right of a state to expropriate for reasons of public interest after effecting adequate compensation. Blackstone, commenting on the right to property, describes this ancient rule of takings by emphasising the restraints under which the measure should operate. Compelling a person to acquiesce to the seizure of his property for the ‘public good’ is possible, but:

[...] not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained. All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price, and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform.


In the absence of this power of eminent domain that characterises the modern state property system, infrastructure development in both urban and rural areas would largely have been impossible. When one speaks of expropriation as a risk that discourages long-term investment in land, therefore, it must be understood that we are referring to arbitrary expropriation that provides no or under-valued compensation and is conducted with little or no participation on the part of those affected by the decision.146

Turning now to how the structural intricacies of security of tenure guarantees against dispossession and related problems are distinguished from problems of distribution, the first-ever African Human Development Report of 2012 cautions that ‘crop failure and a lack of food,’ which are symptomatic of structural vulnerabilities (whether natural or human made), must not be regarded as the only causes of famine and hunger. It goes on to say that ‘more often, the challenge is uneven access to food, which occurs when people lack the means to acquire it.’147 In other words, the food-insecure poor are more challenged by distributive injustices in the means of production, such as land and capital, than by questions of structure. McAuslan discusses this distributional problem as one of the critical elements of land-related justice and explains it as meaning:

The fair and equitable distribution in space of socially valued resources and the opportunities to use them[...] or moving from the planners’ obsession with economic development to a concern with social equity.148

The African Development Report also directly tackles this distributional problem as the underlying factor inhibiting human development, in contrast to economic development, in Africa. After ascribing to Sen’s articulation of development as ‘enlarging people’s freedom to choose lives they value,’ it states:

[...] but in reality some people have more freedoms than others. Inequities in human development are often the result of uneven resource distribution and marginalization of groups because of gender, place of residence or ethnicity. Some groups have more control than others do over productive resources such as land and water. Some have better access to information and markets, increasing

148 McAuslan, (n 106), p 7.
their bargaining power. Some are favoured by law and customs. And some have more influence over policy. These and other inequities limit progress towards food security in Africa.\textsuperscript{149}

It is a combination of these two factors (i.e. structural and distributive inequities), therefore, that underpins the challenges facing the poor.

To consider now how we understand poverty itself, the dominant development discourse has shifted from regarding "income deprivation" as a measure of poverty to Sen's view of the 'deprivation of capabilities' as being the vital determinant of poverty, in which income is considered merely as instrumental. Sen wrote extensively on the capabilities thesis in the early 1980s, culminating in the publication of his seminal book \textit{Development as Freedom}.\textsuperscript{150}

In one of those early writings, Sen pointed out 'the thematic deficiency of traditional development economics' in its:

[c]oncentration on national product, aggregate income, and total supply of particular goods rather than on "entitlements" of people and the "capabilities" these entitlements generate. Ultimately, the process of economic development has to be concerned with what people can or cannot do, e.g. whether they can live long, escape avoidable morbidity, be well-nourished, be able to read and write and communicate, take part in literary and scientific pursuits, and so forth. It has to do, in Marx's words, with "replacing the domination of circumstances and chances over individuals by the domination of individuals over chance and circumstances".\textsuperscript{151}

In \textit{Development as Freedom}, Sen considers why capability matters when compared to 'adequate income.' It is important to note, however, that he does not reject the importance of income in the form of accumulation of wealth but, as he puts it, 'when it comes to health, or education, or social equality, or self-respect, or freedom from social harassment, income is

\textsuperscript{149} African Human Development Report, (\textit{n} 147), p 25.
\textsuperscript{151} Sen (1983a), Ibid, p 754.
miles off the target. He provides in his book three basic reasons as to why the capability approach to development is vital:

1) Poverty can be sensibly identified in terms of capability deprivation; the approach concentrates on deprivations that are *intrinsically* important (unlike low income, which is only *instrumentally* significant);

2) There are influences on capability deprivation – and thus on real poverty – other than lowness of income (income is not the only instrument in generating capabilities);

3) The instrumental relation between low income and low capability is variable between different communities and even between different families and different individuals (the impact of income on capabilities is contingent and conditional).

This conceptualisation was accepted by the World Bank which defined poverty in 1990 as 'the inability to attain a minimal standard of living.' This thinking has significantly influenced the major international development actors, including the United Nations Development Programme (UNDP), the World Bank (WB) and the International Monetary Fund (IMF). The previous categorisation of world countries into low and middle income has also slowly faded away and instead, acknowledging that poverty is multidimensional, it is now being measured on the basis of the Multidimensional Poverty Index (MPI). The recent human development report that introduced the MPI in an assessment of 104 countries explains how the MPI compares to previous measurement tools:

This new measure replaces the Human Poverty Index (HPI), published since 1997. Pioneering in its day, the HPI used country averages to reflect aggregate deprivations in health, education and standard of living. It could not identify specific individuals, households or larger groups of people as jointly deprived. The MPI addresses this shortcoming by capturing how many people experience overlapping deprivations and how many deprivations they face on average[…]

The MPI is the product of multidimensional poverty headcount (the share of people who are multidimensionally poor) and the average number of deprivations

---

152 Ibid., p 756.
153 Sen, (n 22), p 88.
each multidimensionally poor household experiences (the intensity of their poverty).\textsuperscript{155}

This shift in the conception of poverty and how we measure it helps development actors to focus their efforts on addressing the underlying causes that affect the capabilities of poor people. The worst form of poverty, therefore, is not so much the absence of the income necessary to, for example, attend to ill-health as a result of preventable disease; rather, it is the mind-set that one can do nothing about it. Where people’s capabilities are crippled, they become effectively reduced to a point in which they do not aspire to changes for the better. Again, Sen’s analysis of the Bengali famine in India (1943), the Wollo famine in Ethiopia (1973) and the Bangladeshi famine (1974) as representing failures of entitlement rather than a substantial decline in food availability is persuasive. He argues that crop failure that results in famine must not be diagnosed as a temporary ‘crisis of food availability,’ and ‘just moving food into such an area will not help the affected population.’ Rather, what is required, he suggests, is ‘the generation of food entitlement.’\textsuperscript{156}

Poverty as capability deprivation is intertwined with the idea of empowerment which, as we already mentioned, is meant to expand people’s capability. The 2010 United Nations Development Programme (UNDP) Human Development Report, which has already been referred to in this section, traces this meaning of empowerment to the Preamble of the UN Charter, where it describes one of its ideals to be the promotion of ‘social progress and better standards of life in larger freedom.’\textsuperscript{157} And the report goes on to state that ‘empowerment—an increase in people’s ability to bring about change—is central to the capability approach.’\textsuperscript{158} Therefore, endeavours to promote people’s empowerment interlace with poverty reduction, or in its direct sense with the promotion of people’s capability to realise those goals that they have reason to value.

Poor land policies have been identified in Ethiopia’s context to have impacted negatively the poverty conditions in rural Ethiopia as well as undermining their empowerment.\textsuperscript{159} Within the state ownership system of tenure, the titling process still remains largely incomplete as


\textsuperscript{156} Sen (n 150 1981b), p 461.

\textsuperscript{157} UN Charter, Preamble, para 4.

\textsuperscript{158} UNDP Human Development Report 2010, p 66.

\textsuperscript{159} Rahmato and Kidanu, (n 43) and see also note 99 together with the accompanying text.
communal and pastoral lands are not registered\textsuperscript{160}, it fails to take into account the past distributional inequities that had excluded women\textsuperscript{161}, and significantly enhances the local administrative officials’ power to expropriate as their decision is put outside the purviews of judicial review.\textsuperscript{162} Addressing these and the various problems relating to Ethiopia’s rural land laws and policies, as examined in this thesis, will contribute to the poor’s empowerment.

1.4. Empowerment as a process and/or outcome

If empowerment is regarded as a means of bridging the gap between a person’s capabilities and his entitlements, there remains a question as to whether this should be regarded as an end in itself or merely as a means to an end. This question is formulated by Khwaja as follows:

The distinction here is whether this effect is true by definition, that is, empowerment is defined as a component of an agent’s welfare or utility (empowerment as an end), or whether it is true by causation, that is, empowerment influences a component of welfare such as the agent’s income or health status (empowerment as a means to an end).\textsuperscript{163}

The debate is a long-standing one, usually presented in the sense of the complexities involved in the correct understanding of “power”, either to refer simply to “agency” or to the underlying “structure”, or both.\textsuperscript{164} The radical feminist view has consistently rejected the idea of female empowerment as simply being an alliance of power with an individual woman’s self-esteem and agency. Here agency, when applied to an empowered woman, refers to ‘her capacity to make the best of her own self.”\textsuperscript{165} From this point of view, a woman is empowered when:

\textsuperscript{160} It is discussed in this thesis that lack of registration and certification of communal and pastoral land is exposing the holders to un-compensated dispossession by the local officials and their land is being transferred to large scale agricultural investors. See notes 936, 937 and 954 together with 978 and accompanying texts. These forms of dispossession of communal lands without commensurate compensation had also been said to disempower rural people in Latin American Countries. Stephen Knack, ‘Empowerment as a Positive-Sum Game’ in Deepa Narayan (ed), Measuring Empowerment: Cross-Disciplinary Perspectives (World Bank 2005), p 369.

\textsuperscript{161} See note 808 and discussions in the accompanying text.

\textsuperscript{162} As discussed at note 855 and the accompanying text, a person aggrieved by the decision of the official to expropriate the land holding may not lodge an appeal to the ordinary courts on the ‘public purpose’ determination.

\textsuperscript{163} Asim Ijaz Khwaja, ‘Measuring Empowerment at the Community Level: An Economist’s Perspective’ in Narayan, (n 160), p 269.


\textsuperscript{165} Ibid.
she has literacy, education, productive skills, access to capital, confidence in herself, and so on. Then she can “get ahead” on the basis of her own qualifications and ability, and is said to be empowered.¹⁶⁶

This model, which Longwe calls the ‘self-reliance model,’ is limiting in the sense that by focusing on individual stature and achievements, it overlooks the underlying structures within which this woman has to operate. For this reason, the exceptional woman is often nicknamed an “honorary male” or a “token female” within the patriarchal system through which she strives to navigate, no doubt ably negotiating for her space. The crux of this debate, then, is rooted in the broader controversy as to whether change, for instance the alleviation of poverty, can be brought about or constrained by forces beyond people’s control (social structures such as class, religion) or through individual and collective action (agency).¹⁶⁷ In one of the Overseas Development Institute (ODI) papers, Luttrell and Quiroz provide an explanation for these two terms, namely agency and structure, to refer to, respectively: ‘the capacity of individuals to act independently and to make their own free choices; and the rules and social forces (such as social class, religion, gender, ethnicity, customs, clan association and the like) that limit or influence the opportunities that determine the actions of individuals.’¹⁶⁸

If, therefore, empowerment were regarded as a process, it would mean the “awakening of agency” in such a way as to provide enhanced capability to achieve goals that one has reason to value. In this sense, we could legitimately regard this process as relating simply to agency and, in consequence, as not having a bearing on wider outcomes in terms of transforming structures. Applying the female empowerment framework discussed above to our poverty paradigm, it can therefore be seen that the rejection of the “self-reliance model” is appropriate for our purpose as well, since this kind of agency-focused empowerment does not tackle the structural capability deficits in most societies that we would regard as poor. Empowerment activities focused on enhancing the agency/capability of specific groups among the poor are less likely to be able to deliver the structural change that will underpin benefits to those groups and to the poor more generally. While it might be self-evident that some are more exposed to conditions of poverty than others, this does not mean that

¹⁶⁶ Ibid.
¹⁶⁸ Ibid.
empowering only those segments of the community will lift the poor from poverty. A holistic approach to empowerment is suggestive of an enhanced individual and community agency with structural transformation that provides entitlements based on the ideals of justice and equity.

At the policy formulation phase for addressing poverty, the wide category of the ‘poor’ has to be dissected on the basis of the severity of deprivation and other factors. This is precisely because, as Sen puts it, ‘different groups sharing the same predicament of poverty get there in widely different ways.’\footnote{Sen (n 140 1981b), p 156} Rural poverty, for instance, at the ‘level of identification’\footnote{The identification of the poor is a level distinguishable from that of ‘measurement of poverty,’ as pointed out by Sen, which involves the task of determining the relative position of that poor vis-à-vis others. The latter takes ‘note of the extent and distribution of deprivation among the poor. Amartya Sen, ‘Sociological Approach to Measurement of Poverty: A reply to Professor Peter Townsend’ (1985) Oxford Economic Papers, Vol 37(4), 669, p 670.} must be considered to victimise all its members and to do so indiscriminately. Within this context, however, women are exposed to peculiar structural vulnerabilities emerging from laws, customs, traditional practices and religion that significantly limit their access to economic resources. As Narayan also stated, ‘in attempting to measure the empowerment of those previously excluded, it is essential to locate individuals within the historical, social and political context of their social groups.’\footnote{Deepa Narayan, ‘Conceptual Framework and Methodological Challenges’, in Narayan, (n 160), p 17.}

Acknowledging this stratification is helpful in adopting the correct measures to bring about structural changes as outcomes of the empowerment process. This means that, while empowerment as a process aims at enhancing the capabilities of those who live in poverty, a wider outcome in terms of the delivery of structural transformation is also equally important. The following quote from Arjun Sengupta, the UN Independent Expert on the Right to Development between 1999 and 2004, neatly concludes this chapter’s discussion by persuasively conceptualising empowerment, both as a process and an outcome:

\begin{quote}
The term “empowerment” means a dynamic process of the expansion of freedom of choice and action and ability to influence the behaviour of other agents and social arrangements. Such empowerment can be derived from ethical systems and social norms and traditions or the distribution of economic assets and resources[...]. Empowerment refers to both a process and the resulting outcome. The framing of laws and their application, in changing social norms, and
\end{quote}

169 Sen (n 140 1981b), p 156
redistribution of resources, contribute to the process of empowerment, and its exercise produces the outcomes to judge the effectiveness of such empowerment.\textsuperscript{172}

For instance, as discussed in the sections dealing with women's land rights as well as certification, the attempt to certify holdings thereby creating tenure security in Ethiopia has failed to take into account those historical problems of land distribution that marginalised women.\textsuperscript{173} In empowerment terms, though creating title to land rights is the right path towards the creation of tenure security, the failure to correct the distributional inequities renders empowerment impossible to realise. For instance, as shown in Figure 9 in Chapter Four, the percentage of women with land holding certificate in the six districts is only 20\% even if the number of men and women in those areas is almost the same.\textsuperscript{174} Therefore, empowerment as a process and outcome that enhances people's capabilities requires targeted measures to address these and other forms of historical inequities with regard to resource distribution. Moreover, the laws and policies should also address those problems that undermine collective action by which the rural poor's capability to guard against administrative excesses by rural land administration institutions and officials would be enhanced insofar as their rural land rights are concerned. In addition to influencing institutional decisions, by joining resources and power, the capacity of the rural poor to 'restrain the non-poor' that threaten the land rights will also be enhanced.\textsuperscript{175} Acting collectively through smallholder cooperatives, for instance, farmers could strengthen their bargaining power and skill to negotiate better deals for compensation in instances of land expropriation for investment purposes. However, the law must empower and permit this form of direct negotiation of compensation which, as the laws and policies stand now, is not made possible.\textsuperscript{176} This is because as discussed in Chapter Four, in cases of expropriation for purposes of private investment, it is the government that pays compensation and the holder, either individually or as a member of a collective group, is not allowed to negotiate directly with the private investor.\textsuperscript{177} Therefore, the state-sponsored enabling environment for

\begin{flushright}
\begin{footnotesize}
\textsuperscript{173} Kanji et al., (n 807) and accompanying text.
\textsuperscript{174} Figure 7 and also see note 933 together with the accompanying text.
\textsuperscript{175} Bruce H Moore, 'Empowering the Rural Poor Through Secure Access to Land' (2003) A Presentation to the GTZ-IFAD Forum, \textit{Institutions-The Key to Development: Building Alliances to Empower the Rural Poor} (Berlin, Germany), p 9.
\textsuperscript{176} See note 883 and accompanying text.
\textsuperscript{177} Rahmato, (n 67) and see also note 883 together with the accompanying text.
\end{footnotesize}
\end{flushright}
collective action not only facilitates the poor's empowerment, but it also strengthens the rural land rights of the same.

In Chapter Two, where the various structures of ownership and the human right to property are briefly examined, it is argued that irrespective of the rural land holding type, people could be enabled to have control over and benefit from the land under their possession, so long as there are clearly defined rules and guarantees to land use right.
Chapter II: The structures of ownership: economic and human rights views

2.1. Introduction

The end of the Second World War resulted in the wider articulation of substantive human rights and the institutionalisation of mechanisms for their enforcement, albeit with serious weaknesses. One of the constitutive purposes of the United Nations is the promotion and respect for human rights and fundamental freedoms for all, without distinction. It was based on these stipulations of the United Nations Charter that the Commission for Human Rights sought to provide a normative articulation of international human rights law, first through the Universal Declaration of Human Rights (UDHR) and then by the two Covenants. Even if most of the substantive rights enshrined in the UDHR have been transformed into the binding Covenants, the world community remains hesitant when it comes to a direct acknowledgement of the human right to property as envisaged in Article 17 of the UDHR. Nonetheless, developments in Regional human rights suggest a more robust approach to the matter, as can be observed primarily from the European Convention on Human Rights and the European Court of Human Rights’ jurisprudence.

Before examining the human rights discourses on property rights as reflected in the various global, continental and national human rights instruments, a conceptual prelude from an economic perspective on the right to property, with emphasis on structures of ownership, is in order. Depending on the nature of the right, property could be said to be owned in private, communally or by the state. The decision as to which of these three structures of ownership provides an economically efficient property rights policy varies from jurisdiction to jurisdiction. Even the ancient Greek philosopher Aristotle started his discussions on property by asking ‘What arrangements should be made about [property] if people are to operate the best possible constitution? Should it be held in common or not?’ before proceeding to explain his doubts about communal ownership, because ‘to live together and share in any human concern is hard enough to achieve at the best of times.’ Ever since this time, similar discourses on the private-public dichotomy have informed, to some extent, the development, or rather the under-development, of expositions on the human right to property.

178 Art I(3) of the Charter of the United Nations (adopted 24 October 1945) 1 UNTS 16 (UN Charter).
180 Ibid., p 114.
A review of the contributions of influential economic theorists and empirical researchers would suggest that there are no universally adopted prescriptions for ownership structures. The works of the likes of Demsetz, Hardin and Ostrom\textsuperscript{181} tend to present analyses on issues that are more far-reaching than simplistic proposals for the privatisation or public ownership of productive assets. From the human rights perspective, there is a need for the moral and legal accountability of the state, for instance, in respect to the arbitrary taking of one’s land holding, and in this respect a number of international and Regional human rights frameworks do exist. Moreover, the right to access property, such as land, is linked to other fundamental human rights such as the right to food and housing. Accordingly, global and Regional human rights systems are examined in this chapter with a view first to find the niche that property rights have within the existing normative framework of human rights, and secondly, to assert that states’ choices on ownership structures must be subjectively determined according to the context-specific character of land rights policies. Moreover, a pro-poor view of rural land policies reveals a more complex set of issues than simply having privately owned land.

2.2. Structures of ownership

Demsetz provides three forms of ownership under which property rights could be institutionalised, namely communal (which implies that the “community” denies to the state or to individual citizens the right to interfere with any person’s exercise of communally-owned land), private (which implies that the community recognises the right of the owner to exclude others from exercising rights over the land) and state ownership (which implies the state’s right to exclude all persons from being entitled to rights over property, based on politically recognised sets of rules and principles).\textsuperscript{182} It is only in his later work that Demsetz explains what he means by “community” for the purposes of understanding the first category of institutional arrangement. While examining the various economic problems affecting collective control of resources,\textsuperscript{183} he mentions ‘compactness,’ which implicitly defines community for the purposes of communal ownership. He writes:


\textsuperscript{182} Demsetz, Ibid, p 354.

Compactness is determined by the degree to which [members to a group] are knowledgeable about and, in one way or another, connected to each other; the connection is often biological, but it may also be geographic or social. In a compact setting, cultural customs are influential, people involved in interactions are identifiable, the effects of the interaction are known, and future, or past reciprocation by them is observable.\(^{184}\)

Therefore, community is meant as a group of people related by blood, geographic proximity or other socially defined interactions. Demsetz also clarified communal ownership as a system of property ownership whereby control is exercised collectively, which he considers as providing ‘an alternative to control exercised privately.’\(^{185}\) Feder and Feeny add to these three categories a fourth one, namely ‘open access,’ as is done by Berkes and others.\(^{186}\) Open access describes a situation where there are neither privately nor communally assigned rights to the property, and thus it ‘lacks any exclusivity, which implies the lack of an incentive to conserve.’\(^{187}\) Moreover, according to Feder and Feeny, ‘if private property rights are not viewed as being legitimate or are not enforced adequately, de jure private property becomes de facto open access.’\(^{188}\) Most economic analyses propound the “Western-style” private property rights systems as being preferred to communal or state ownership systems.\(^{189}\) The 17th-century English philosopher John Locke was a proponent of private ownership. Locke began by renouncing the assertion that ‘it is impossible that any man, but one universal monarch, should have any property upon a supposition that God gave the world to Adam, and his heirs in succession.’\(^{190}\) He rather believed that human beings are given, together with the

\(^{184}\) Ibid, p S661.
\(^{185}\) Ibid, p S658.
\(^{187}\) Feder and Feeny, Ibid, p 137.
\(^{188}\) Ibid.
\(^{189}\) Demsetz considers private ownership as the preferred mode of ownership over that of communal for various reasons that include minimizing externalities and transaction costs. Demsetz (n 181), p 355. Leblang too makes a case for private property rights as having the potential to provide for production and exchange [and] stabilize individual expectations about the behavior of others.’ David A Leblang, ‘Property Rights, Democracy and Economic Growth’ (1996) Political Research Quarterly Vol 49(1) 5, 7. With respect to why the private is preferred over that of the state ownership system, Shleifer points out that this provides ‘a case for capitalism over socialism explaining the ‘dynamic vitality’ of free enterprise.’ See Andrei Shleifer, ‘State Versus Private Ownership’ (1998) National Bureau of Economic Research (NBER) Working Paper Series, 6665, 1.
\(^{190}\) John Locke, The Two Treatises of Government: An Essay Concerning the True Original, Extent and End of Civil Government (Blackswan 1689), p 244.
common world, individual faculty of reason to make use of it to their best advantage and convenience. Then he went on:

Yet being given for the use of men, there must, of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial to any particular men. The fruit, or venison which nourishes the wild Indian, who knows no enclosure, and is still a tenant in common, must be his, and so his, i.e. a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life.

Locke proceeds to acknowledge everyone’s exclusive right to keep private his own person and anything related to it. This is known popularly as the labour theory of property, according to which labour is unquestionably the property of the labourer: ‘no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others.’ Of course, Locke, being aware of the risks of excessive and unjust exclusion of others from land, carefully created exceptions to what one can rightfully possess, by mixing the ideas of labour and property. He asserted that ‘what a man carved to himself was easily seen; and it was useless as well as dishonest to carve himself too much and take more than he needed.’ Carter describes these two limitations as ‘the sufficiency limitation, which stipulates that there be enough of a good left for others; and the spoilage limitation, which stipulates that one must not take more from the common stock than one can effectively use.’ The sufficiency limitation in particular underpins Ethiopia’s policy of state ownership of land, as it is argued that if privatised, land would be accumulated in the hands of those who could afford to buy it, by ‘crowding out poor, destitute farm families from their land.’ The country’s rural development policy also points out the fear that if land were to concentrate in the hands of a few urban bourgeoisie, it would lead to widespread landlessness which in turn would give rise to wastage of capital and labour. However, the land concentration argument relies heavily on the unfounded presumption that people would tend to sell land if it were to be privatised, and, as noted by Bruce et al., there is a degree of paternalism at play.

191 Ibid.
192 Ibid., p 245.
193 Ibid., p 246.
194 Ibid., p 270.
196 Crewett and Korf, (n 21), p 203.
197 Rahmato, (n 58), p 11.
here that ‘dispenses officials to cast the state in the role of owner and trustee of land to allow it to watch over peasants’ interests.’\(^{198}\) Indeed, in a nationwide survey of 8,540 households conducted by the Ethiopian Economic Association, over 90% of the households surveyed indicated that they would not sell their land wholly or partially, if they were given the right to own their plots.\(^{199}\) The problem of landlessness that the government argues would result if land were to be privatised was also criticised on the basis that this continues to affect youth, irrespective of the structures of ownership.\(^{200}\) According to Rahmato, it is a recurring problem that every generation that comes of age is landless and thus demands land rights.\(^{201}\) The state has attempted to deal with this problem through continued redistribution, but this serves to fragment the land to a level of economically unviable plot sizes.\(^{202}\) Therefore, context-specific and varied forms of structures that combine state, private and communal ownership have been suggested for a good many years.\(^{203}\)

Apart from Locke’s moral justification in support of private ownership rights, writers have also posited the virtues of this form of ownership from an economic point of view. From this economic perspective, the implications of different structures and rules are assessed based on their associated costs and benefits, in particular the cost of owning a property in common compared to owning it in private. The widely discussed contribution in this regard is that of Garrett Hardin, who explains his thesis based on a metaphor of land used for pasture to arrive at his conclusion of ‘the tragedy of the commons.’\(^{204}\) Where there exists a pasture open to all, without any restrictive rules of use, every herdsman would be better off if s/he brings to the field as many cattle as s/he possibly can.\(^{205}\) Thus, there will be an increase in the herd, with no limit on land that is limited by nature. Thus he concludes that ‘ruin is the destination to

\(^{198}\) Bruce et al., (n 50), p xvi.

\(^{199}\) Ethiopian Economic Association/ Ethiopian Economic Policy Research Institute, Research Report on Land tenure and agricultural development in Ethiopia (2002) (EEA/EEPRI), iv. According to this report, only a slight percentage of 4.5% of the households indicated their interest to sell their land if they were to be given the opportunity. ‘The reasons provided for the unwillingness to sell land reveal a rational response on the part of farmers. The overwhelming majority of farmers (70%) will not sell their land because they have no viable alternative while a significant minority (17%) will never sell their land no matter what the circumstances.’ Ibid.

\(^{200}\) Ibid.

\(^{201}\) Ibid.

\(^{202}\) Ibid.

\(^{203}\) Bruce et al., (n 50), p 63.

\(^{204}\) Hardin (n 181), p 1244; nonetheless, one can trace this thesis back to 1957 to the writings of the prominent economist Demsetz who used communal land ownership to explain the high levels of externalities in comparison to private ownership.

\(^{205}\) This is because every additional herd brought in would bring a positive sum which is known compared to the damage it causes to the grazing, which is largely dependent on an unknown decision of the rest of the herdsmen adding more. Hardin, (n 181).
which all men rush, each pursuing his own interest in a society that believes in the freedom of commons; freedom in a commons brings ruin to all.\textsuperscript{206}

Demsetz also arrived at this conclusion when he wrote about communal land on which every person has the right to hunt, till or mine freely, without one having a right to exclude the other. According to him, this form of ownership does have high levels of externalities, as everyone would ‘tend to overhunt and overwork the land because some of the costs of his doing so are borne by others [and] the stock of the game and the richness of the soil will be diminished too quickly.’\textsuperscript{207} Both Hardin and Demsetz, therefore, argue that a communal form of ownership is non-optimal, inefficient and leads to over-use, dire externalities and/or under-exploitation.\textsuperscript{208} One possible solution to this dilemma is proposed to be a private property rights system which ‘makes men accountable for their actions,’ by making private owners account for any damage caused as a result of the manner of use.\textsuperscript{209} Moreover, it is said that ‘to the extent that owners of property are utility maximizing, property rights will be used efficiently.’\textsuperscript{210} Demsetz also recognises that ‘the reduction in negotiating costs that accompanies the private right to exclude others allows most externalities to be internalised at rather low cost.’\textsuperscript{211} In the case of Ethiopia’s land rights also, the efficiency argument may be presented to counter the equity-based state ownership system of land, since the latter ‘yields negative effects on land productivity and therefore produces lower efficiency levels than would be achievable with the working of a private land market.’\textsuperscript{212} On the basis of an assessment of market- and non-market-based transfers of land, a study conducted by the World Bank in Ethiopia has also asserted that both efficiency and equity objectives could be realised better under private systems of transfers, such as rent, rather than through administrative allocations.\textsuperscript{213}

\textsuperscript{206} Ibid.
\textsuperscript{207} Demsetz, (n 181), p 354.
\textsuperscript{208} Demsetz later compared the collective exercise of the right of ownership (as in socialism) with that of private ownership (as in capitalism) to conclude that because of ‘the reduced relevance of compact settings, the time-based improvements in productivity and the increased complexity of resource allocation problems’ private ownership is more favoured than a collective control system. Demsetz, (n 183), p S665.
\textsuperscript{211} Demsetz (n 181), p 357.
\textsuperscript{212} Crewett and Korf (n 21), p 206.
There are also a number of arguments in favour of private ownership, based on the individual liberty thesis. In this regard, mention should be made of Aristotle’s argument that the absence of private property denies individuals their liberty. He wrote in his *Politics*:

The abolition of private property will mean that no man will be seen to be liberal and no man will ever do any act of liberality; for it is in the use of articles of property that liberality is practised.

Blackstone, in his “Commentaries on the Laws of England”, also cited private property as one of the three ‘natural birthrights of the people of England,’ together with the ‘right of personal security and the right of personal liberty.’ In explaining the nature of these rights he wrote:

By the absolute rights of individuals we mean those which are so in their primary and strictest sense; such would belong to their persons in a state of nature, and which every man is entitled to enjoy, whether out of society or in it.

### 2.3. The correct ownership right structure?

From those early writings of Aristotle and John Locke to some of the more influential economic theorists such as Demsetz, as well as the doctrines enshrined in English law on the rights of persons, we see that a private property rights system is considered to be the preferred mode of ownership structure for economic development. As explained above, this has its roots in the moral theories of labour, economic efficiency and in the human rights discourse relating to individual liberty. However, this insistence on private property rights has been heavily criticised as unwarranted and counterproductive, and instead a more nuanced approach is suggested, so as ‘to craft successful development policies regarding property

---

214 One proponent of this is Nozick who is ‘of the opinion that one is at liberty to appropriate as long as in doing so one does not reduce the condition of another to one worse than that found in the state of nature.’ Carter (n 191), p 44.
216 Blackstone (n 145), p 128.
While each of the foundations for a doctrine of private property has been criticised from different perspectives, we shall focus here particularly on those critiques that are founded on proposals to have a combination of all the three modes of ownership, depending on local conditions.

Full private ownership with rights of exclusivity, transferability and alienability may not be the most appropriate option in all contexts. As pointed out by Feder and Feeny, even if the formal legal system permits full alienability, 'the transfer of land to persons from another clan or ethnic group may represent a violation of cultural norms.' It may also not always be correct to presume the private-efficiency nexus, since some resources could be more efficiently managed through other systems than privately assigned rights of ownership.

The labour theory of private property rights, especially where land is concerned, has been challenged by many, in the sense that if what brings something under my exclusive prerogative is the fact that I laboured on it, then there still remains a part of the natural resources which are not the products of anyone's labour. While commenting on Locke's view, Kristin stated 'if labour puts the value on everything and if human labour did not create land, then human labour is able to put value only on the product of the land, not the land itself.' More or less similar criticisms were made by John Stewart Mill, who wrote:

The essential principle of property being to assure to all persons what they have produced by their labour and accumulated by their abstinence, this principle cannot apply to what is not the produce of labour, the raw material of the earth.

With regard to Hardin's tragedy of the commons, though, it has no doubt remained quite influential for a long time, as it was later interpreted as representing confusion between

---

219 Feder and Feeny (n 186), p 136.
223 It has obtained so much popularity in the scientific research community that one scholar was noted to have written 'Hardin's Tragedy of the Commons should be required reading for all students...and if I had my way, for all human beings.' Moore (1985) quoted in David Feeny, Fikret Berkes, Bonnie J McCay, and James M Acheson, 'The Tragedy of the Commons: Twenty-Two Years Later' (1990 Human Ecology Vol 18(1) 1, p 2.
common property and open access. To the extent that open access and communal or state ownership cannot be equated, building a tragedy out of the herdsmen’s situation, and then proposing to regard private property allocation as a preferred way to come out of the tragedy, is at best an unwarranted prescription. Hardin’s scenario is based on four core factors, as described by Feeney et al., namely open access, unconstrained individual behaviour, demand which is unmatched by supply and users’ incapacity/ inability to alter the rules of their use. In the presence of these four elements, it surely is impossible to expect the best out of the situation, and thus ‘the tragedy may start as in Hardin.’

The overall failure to conceptualise property rights as bundles of rights rather than as a single right has also contributed to the generalised assumption that if individuals do not have the right to sell their land, they do not have property rights. Individuals, for instance, may exercise a combination of five bundles of rights (access, withdrawal, management, exclusion and alienation of these four rights), as developed by Ostrom, over a single resource such as irrigable land or a grazing area, without the need to turn into a state or private ownership system. Approaching it this way, as commented by Clarke, will have the effect of making ‘the important point that non-alienable property rights are as deserving of protection as alienable ones, and likely to be discounted if the focus is on private tradable property rights.’ Therefore, the bundle of rights in ownership and Ethiopia’s path with regard to rural land holding rights could be looked at in this sense recognising the possibility that the rights in ownership can be usefully unbundled. Under this arrangement, individuals are given a perpetual land use right on the basis of a holding title that allows transfer through rent, inheritance and gift under restrictive conditions, heritable, but not to be alienated by sale or given as collateral to secure debts. In this way, property rights to land are conceptualised as ‘the formal and informal provisions that determine who has a right to enjoy benefit streams

---

224 'Open Access' is a situation in which anybody can capture the benefits of a resource with no individual (unlike private property rights) or group of individuals (unlike communal property rights) having an exclusive claim.
225 Feeny et al., (n 223), p 15.
226 Ibid.
227 Ostrom, (n 181), p 641.
228 Ibid.
230 See the discussion in section 4.2.1 below.
231 Art 2(4) of Proclamation 456/2005. Each of these modes of transfer are also discussed under section 4.2.2. below.
that emerge from the use of [land]' and not so much as to determine who 'owns' land.232 This thesis therefore approaches the discussions on the Ethiopian rural land rights system from a different perspective from that which characterises much of the preceding literature, with a focus on ownership structures and debates on privatising land ownership.

A change from customary holdings, which define most communal land holdings, to a private property rights system has also been found, in an African context, to affect women and other marginalised groups negatively.233 In the presence of socially rooted gender inequality, 'women's limited land rights may be ignored and consequently lost[...] under increasing transformation of customary tenure systems to market-based, individualised tenure systems.'234 This was the case, for instance, in Kenya, where a nationwide conversion of customary holdings to individualised private ownership was carried out in the 1950s.235 Individualisation, in the case of Kenya, 'wiped out not only the right of communities but those of wives and children in the holdings of their husbands, opening the way for alienation by the head of household.'236 Similar observations were also made by Meinzen-Dick and Mwangi, who stated that 'by collapsing all rights within the individual, formalisation programs have too often negated the distinct multiple (and cultural/historical) claims by women, youths, and seasonal users, among others.'237

This suggests that drawing up a single property rights system in a one fits all fashion is untenable. Both temporal and social conditions determine the structures that will be socially just and sufficiently flexible in particular circumstances. In this respect Rawls argued in his *Theory of Justice* that choices can be made subjectively from the systems of control, and none of them has any intrinsic flaws:

Which of these systems [private or public] and the many intermediate forms most fully answers to the requirements of justice, cannot, I think, be determined in advance. There is presumably no general answer to this question, since it depends

232 Crewett, Bogale and Korf, (n 65), p 2; see also Thrainn Eggertsson, *Economic Behavior and Institutions* (Cambridge University Press 1990)
234 Ibid., p 1329.
236 Bruce et al., (n 50), p 58.
in large part upon the traditions, institutions, and social forces of each country, and its particular historical circumstances.\textsuperscript{238}

In other words, rather than insisting on a particular form of property allocation, one should attempt to make rational choices based on the particular circumstances and by taking into account a wide range of factors. These could relate to the capacity of the state to enforce property rights through regulations and court systems, the type of resource itself, the relative scarcity attached to it and the cost of enforcing the right and the externalities involved thereto.\textsuperscript{239} These points were alluded to in one of the World Bank’s Policy Research Reports, where it is stated that since none of these factors is static, the most appropriate property arrangement would be one that ‘responds to changing conditions in predictable ways.’\textsuperscript{240}

Addressing the barriers that undermine pro-poor land policies does not require one to subscribe to any specific form of property arrangement. In other words, there is no one type of property right structure that necessarily guarantees improved conditions of the poor and their empowerment. Empowerment, which the 2010 Human Development Report succinctly defines as ‘an increase in people’s ability to bring about change,’\textsuperscript{241} when considered in light of land rights, is an aspect of capacitating the poor. This may be done by eradicating the hurdles that cripple tenure security, guaranteeing access without discrimination and, generally, by ensuring participatory policy design and implementation and by putting in place institutions for the purposes of accountability. Viewed from this angle, a combination of state, private and communal ownership of property may provide the required legal basis for pro-poor land tenure policy. As pointed out by Bruce et al., it is not necessary to choose one single option from amongst the three to be applicable across the country, and it is actually possible to ‘leave some land owned by the state and directly administered by the state, to retain state ownership of other land but to lease it out to private users, and to recognize rights of private property in still other land.’\textsuperscript{242}

The researcher also concurs with the tiered approach to land use right rather than putting a higher emphasis on the ownership structure, which could be regarded as providing the basis for an efficient exploitation of rural land. Viewed from this perspective, the Ethiopian land

\begin{footnotes}
\item[239] Deininger, \textit{(n 107)}, pp 34-5.
\item[240] Ibid.
\item[242] Bruce et al., \textit{(n 50)}, p 63.
\end{footnotes}
use right system, which stipulates state holding, private holding and communal holding rather than state-, private- and communally-owned land, confirms with what has been suggested by Bruce et al. As explored in the next section, from the human rights perspective, no preference is being attached to any of the ownership structures for us to say whether or not individuals or communities' human rights relating to land are guaranteed.

2.4. The human right to property?

As Feder and Feeny pointed out, property rights constitute an important class of institutional arrangement constitutive of a "bundle of characteristics of exclusivity, inheritability, transferability, and enforcement mechanisms." These aspects of property rights, as discussed in the previous section, do not necessarily require a specific ownership structure in the forms of state, private or communal. The human right to property, first in the sense of 'the right to own property,' and second in the sense of 'the right to peaceful enjoyment of possessions' has long been debated. Although whether or not there should be a human right to own property that could also ensure a state's obligation to provide access to resources such as land remains widely contested, the recognition of a human right to the peaceful enjoyment of property is less controversial. Tom Allen explains this distinction in the context of the European human rights system which, under Article 1 of the First Protocol to the European Convention on Human Rights, guarantees the right to the peaceful enjoyment of possessions. Allen describes the Convention as only recognising property and not

243 Feder and Feeny, (n 186), p 136.
244 This classification could be gathered from Art 17 of the UDHR that provides, in two subsections, first the human right of everyone to own property alone or in association with others, and second the right not to be arbitrarily deprived of one's property.
246 The provision states, 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The Preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.' See Art 1 of the First Protocol to European Convention on Human Rights. See Tom Allen, 'Liberalism, Social Democracy and the Value of Property under the European Convention on Human Rights' (2010) International and Comparative Law Quarterly Vol 59(4) 1655.
guaranteeing an 'entitlement to property' which, according to him, 'exists prior to any human rights law, rather than being constituted by State response to basic needs.'

Discriminatory access to rural land as observed in land redistribution measures carried out in the Amhara Region and tenure insecurity, for instance, are two of the most common and debilitating problems observed when it comes to property rights in most rural communities. In light of this idea, even though there is generally no human right to property in the sense of insisting that the state confers property rights on individuals, nevertheless prohibitions on discrimination may operate to require a state to have gender-neutral property allocation and/or distribution laws. Problems associated with laws of succession and the like therefore have a bearing on the human right to property, insofar as this aims at guaranteeing peaceful enjoyment, and on other cross-cutting human rights guarantees such as the right to be free from discrimination, the right to participation and to equality. More specifically, concern from the human rights point of view focuses on establishing 'sound bases for political, economic and social justice,' rather than a particular form of ownership. In this and the following section, therefore, we will discuss, firstly, the normative framework of human rights to property, and then we will attempt to identify its place within both the international and the African human rights normative frameworks. This will shed some light on the discussions in Chapter Three regarding Ethiopia’s constitutional guarantees to property rights.

2.4.1. International human rights law and property rights

International human rights law is one aspect of public international law that derives its sources primarily from treaties and customs. Accordingly, when we speak about the human right to property under international human rights law, both relevant multilateral treaties and customary international law in the area become pertinent. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are key international instruments that address property rights.

---

247 Ibid, p 1065.
248 See note 632 and accompanying texts.
249 See discussions in section 4.3.
250 UNGA 'Respect for the Right of Everyone to Own Property Alone as well as in Association with Others and its Contribution to the Economic and Social Development of Member States' (4 December 1986) UN Doc A/RES/41/132.
251 Though it does not specifically use the term 'source,' Art 38 of the Statute of the International Court of Justice is interpreted as listing out the sources of international law that are applicable in resolving disputes amongst states. See the Statute of the International Court of Justice, Art 38.
(ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) collectively constitute the International Bill of Rights. The emergence of human rights as part of a package of responses to the mass atrocities committed during World War II signified the commitment of the world community to international peace and security as well as the human worth. The United Nations, which represents a conglomeration of sovereign states, has been mandated to work towards the full respect and promotion of human rights and fundamental freedoms. It was in compliance with this duty that the Commission for Human Rights, acting within the Economic and Social Council, drafted, debated and presented for approval to the General Assembly the UDHR, which was passed by Resolution number 217 with votes of 48 to none, with eight abstentions, on 10th December, 1948.

One of the most debated points among the Commission members was the recognition of the right to property as a human right. At a time when the world was divided, on the one hand, into the socialist bloc with command economies as its guiding principle and, on the other, capitalist states with free market economies, the inclusion of the right to property in the UDHR was not an easy task. When the world community, acting through the UN, sought a stronger human rights commitment by upgrading the Declaration to a Covenant, the old debate on recognising the human right to property once again resurfaced, though this time with more fierceness because of the international politics of the Cold War.

This debate led, in part, to the classification of human rights into socio-economic rights, on the one hand, and civil and political rights on the other hand, resulting in the adoption of two separate Covenants despite the fact that the UDHR had insisted on the indivisibility and interdependence of human rights. The disagreement basically related to the nature of the

---

255 One other fundamental part of the package was the instigation of the Nuremberg Tribunal, which was established based on a Charter for the trial of those responsible for crimes against peace based on the London Agreement reached among the Allied powers during WW II. See the Charter of the International Military Tribunal, 8th August 1945.
256 The countries that abstained were Byelorussia, Czechoslovakia, Poland, USSR, Saudi Arabia, Ukraine, South Africa, and Yugoslavia. See United Nations General Assembly meeting records, A/PV.183, Plenary Meeting 183rd, held on Friday 10 December 1948, a continuation of the discussion on the draft UDHR: Report of the Third Committee (A/777), p 934; See also Mathew Craven, 'The International Covenant on Economic, Social and Cultural Rights: A perspective on its Development' (DPhil thesis, University of Nottingham 1992), p 14.
257 This was because the socialist bloc, headed by the Soviet Union, espoused public ownership of all factors of production whereas the capitalist bloc regarded public ownership as an anti-thesis to capitalism and free market ideals.
obligations of state parties emanating from these two types of rights and resistance to the recognition of socio-economic rights, particularly from the capitalist bloc led by the United States (US) which, until this date, remains a non-party to the ICESCR.\(^{258}\) While neither the ICCPR nor the ICESCR have provided for the human right to property, as was done under the UDHR, both do have a provision which is effectively identical and which, in Nickel’s words, speaks about ‘national property rights.’\(^{259}\) The common Article 1 of the two Covenants speaks about the collective right to self-determination of people, and its sub-article 2 states that ‘all people may[...] freely dispose of their natural wealth and resources[...] In no case may a people be deprived of its own means of subsistence.’ This paragraph of the two Covenants has been described as addressing the economic aspects of the right to self-determination.\(^{260}\) The reference in this provision to ‘a people’ makes it automatically inapplicable to individuals, a fact that has been repeatedly affirmed by the Human Rights Committee based on its mandate under the Optional Protocol.\(^{261}\)

Thus, what we have within the International Bill of Rights is Article 17 of the UDHR, the full text of which reads as follows:

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

This provision stands as neutral to economic systems and political ideologies vis-à-vis property, as it does not ascribe to any specific form of ownership, nor does it define property; rather, it approaches the matter with caution and pragmatism. As there cannot be a system in today’s world where we do not recognise private ownership of ‘personal property’ such as clothing, furniture, food and other household items, there should also be property that may be owned in association with others. Depending on the economic philosophy that a country may have opted to follow, the property to be owned in association with others could include all or


\(^{260}\) See for instance, the UN Human Rights Committee, ‘General Comment No. 12’ in ‘Note by Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (13 March 1984) UN Doc HRI/GEN/1/Rev.1, para 5.

\(^{261}\) *Mikmaq v Canada*, (1984), *Kitok v Sweden*, (1988), *Lubicon Lake Band v Canada*, (1990) in all of which cases the Committee declined from granting a violation of Art1 of the ICCPR merely because the Optional Protocol only permits submission for alleged violations of individual rights, while this provision is all about ‘a people’s right.’

37
part of the ‘productive property.’ Accordingly, the provision confers rights on everyone to the entitlement to both and prohibits arbitrary deprivation thereof.

In the early 1950s, when the two Covenants were being drafted, a number of texts were proposed based on this UDHR provision on the right to property. For example, one was made by the US, which stated that ‘no one shall be deprived of his life, liberty, or property without due process of the law.’ This was an attempt to align property with the three ‘natural rights’ that Blackstone discussed in his Commentaries mentioned above. It was also a proposal almost analogous to the US constitutional amendments V and XIV on property rights, which similarly provided it as a negative right by stating ‘No person shall be deprived of[...] property, without due process of law’ and ‘nor shall any State deprive any person of[...] property, without due process of law,’ respectively. Another proposal came from the French delegate in July 1951, who proposed the following text for discussion on the right to property:

The states parties to this Covenant undertake to respect the right of everyone to own property alone as well as in association with others. This right shall be subject to the laws of the country in which the property owned is situated. Expropriation may not take place except in cases of public necessity or utility in circumstances defined by law and subject to fair compensation.

This was also met by fierce opposition, and in each case this opposition was targeted at the issues of expropriation and the amount of compensation to be paid upon expropriation. After some postponements, the whole idea of including a text on property rights was rejected by a vote of seven to six, with five abstentions. Accordingly, the two Covenants were finalised, without acknowledging a right to property, which is the only substantive right not to succeed in being upgraded to a Covenant right from the UDHR. Van Banning treated this gap as a ‘failure’ of the world community acting through the UN, in the following words:

---

262 The distinction between ‘personal property’ and ‘productive property’ is made by Nickel (n 259). Before the writings of Nickel, this distinction was also made by Mr. Philip during the discussions of the European Convention of Human rights relating to the right to property where he used the distinction as ‘goods of personal use and goods of production.’ See Preparatory work on Art 1 of the first Protocol to the European Convention of Human Rights, CDH (76) 36 (Strasbourg, Le 13 Aout 1976), p 14.
263 UN Doc.E/CN.4/L.313.
266 Ibid.
The failure to include the right to property can be considered as a failure of the United Nations, particularly since there was limited opposition to its inclusion and since there was a majority for the various elements of a right to property.\footnote{Van Banning (n 2), p 46.}

Thus, we can say that at the international level, the human right to property as such cannot be clearly supported within the context of international human rights treaties.

The second source, customary international law, unlike treaties, is based on two stringent requirements rather than any specific meeting of minds among states. These two requirements are stated under the Statute of the ICJ as ‘international custom, as \textit{evidence of a general practice accepted as law}.’\footnote{The ICJ Statute, Art 38(1)(b).} Simply put, a state’s acts that are repeated over a long period of time, to the extent that the practice might be considered, as if it were, law, are what constitute customary international law. These two fundamental elements are also categorised as the \textit{objective} (state practice) and \textit{subjective} (the intent, i.e. \textit{opinio juris}) tests, as formalised in the decision of the Court in the \textit{Nicaragua case}.\footnote{Nicaragua v USA (Marits), ICJ Rep. 1986, 14, at 97.}

In the context of the right to land, the challenge is to try to establish whether these strict requirements for the status of customary international law are met by the human right to property, as defined under Article 17 of the UDHR. In the case of \textit{The Mayagna (Sumo) Awas Tingni Community v. Nicaragua}, the Inter-American Commission of Human Rights argued before the Court that the human right to property, in relation to land for indigenous peoples, had attained the status of customary international law. This argument was not expressly accepted by the Court, though it did decide in favour of the community’s right to their traditional lands.\footnote{In the case of \textit{The Mayagna (Sumo) Awas Tingni Community v. Nicaragua}, the Inter-American Commission of Human Rights in its submission to the Court of Human Rights stated that ‘there is an international customary international law norm which affirms the rights of indigenous peoples to their traditional lands.’ See Para 140(d).} However, the UN normative framework has developed since this decision, and now special significance is attached to recognising indigenous people’s rights to their lands, territories and resources.\footnote{UNG A, Declaration on the Rights of Indigenous Peoples, 13 Sept 2007, A/RES/61/295, Art 26. See also the discussions in section 2.4.3 on the land rights of indigenous people.} Accordingly, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has accorded a special place for Article 17 of the UDHR with respect to property rights to the land of indigenous people. However, for all other purposes, even though it could be argued that the UDHR is a codification of general
rules of international law, it is very difficult to convincingly argue that its Article 17 is one of those ‘fundamental principles, violation of which involves violation of general international law.’

2.4.2. Human right to land as a derivative right

One can infer a derivative right to property, however, from various provisions of the ICESCR and the ICCPR. Indeed, in relation to land, the existence of an indirect recognition within the global human rights regime of the right to property becomes quite explicit. The primary starting point is the right to self-determination, which stipulates the right of people ‘not to be deprived of its means of subsistence,’ which no doubt encompasses property. The principle of non-discrimination also underpins the right relating to property. Furthermore, one can adopt a derivative approach based on the conception of the interdependence of rights, and in this way a human right to land is derived as a consequence of other fundamental rights and freedoms. The most significant of these are the right to adequate food, the right to adequate housing, minorities’ rights, the right to work, the right to development and the rights of women. Moreover, ‘a key principle which would apply to all types of legislation, policies and programmes in the field of property-related rights is the prohibition of discrimination.’

The intrinsic nexus between land and the rights to adequate housing and to food are undeniable. While describing the interdependence of the right to food with that of the right to

---


274 Art 1(2) of ICESCR; see also Coomans (n 7), p 10.

275 Art 2(2) and 3 of ICESCR and Coomans (n 7).

276 See generally Vienna Declaration and Programme of Action (n 3).

277 This is as provided under Art 11(1) of the ICESCR.

278 Ibid.

279 Art 27 of the ICCPR; also see ILO Convention C169 Concerning Indigenous and Tribal Peoples (n 6); See also General Recommendation No 23 by the UN Human Rights Committee (n 6).

280 Art 6 of the ICESCR as ‘access to land enables peasants to exercise their right to work.

281 Declaration on the Right to Development, specially Art 6(1) which obliges states to ‘undertake at national level all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources...’ which naturally includes land.

282 Art 14(2) of the CEDAW.

283 Coomans (n 7); see also Art 2 of ICESCR and Arts. 2 and 26 of ICCPR, which prohibit discrimination on the grounds of, among others, property.
land at all the levels of state party obligations\textsuperscript{284}, the Special Rapporteur on the right to food wrote in his 2001 report:

[...]

Violations of the \textbf{obligation to respect} would occur, for example, if the Government arbitrarily evicted or displaced people from their land, especially if the land was their primary means of feeding themselves[...](Para 27) If the Government does not intervene when a powerful individual evicts people from their land, then the Government violates \textbf{the obligation to protect} the right to food[...](Para 28) \textbf{The obligation to fulfil} means that the Government must take positive actions to identify vulnerable groups and to implement policies to ensure access to adequate food by facilitating their ability to feed themselves. That could mean[...] introducing an agrarian reform programme for landless groups[...](Para 29)\textsuperscript{285}

In support of this linkage, the UN Food and Agriculture Organisation (FAO), in one of its guidelines, has stated that ‘in order to achieve progressive realisation of the right to adequate food in the context of national food security[...] states should pursue inclusive, non-discriminatory and sound[...] land-use, and as appropriate, land-reform policies, all of which will permit farmers, fishers, foresters and other food producers[...] to earn a fair return from their labour, capital and management[...]’\textsuperscript{286}. The guideline goes further to provide that ‘States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit.’\textsuperscript{287} This not only speaks of the guarantee of the right to property over land, but also

\textsuperscript{284} These levels are described as the obligation ‘to respect, protect and fulfil’ by the Committee on Economic, Social and Cultural Rights. See especially UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999.

\textsuperscript{285} Report of the UN Special Rapporteur on the Right to Food, Mr. J. Ziegler, A/56/210, 23 July 2001. This message has been reiterated by the current Special Rapporteur on the subject, UNGA ‘Report of the Special Rapporteur on the right to food Olivier De Schutter on access to land and the right to food’ GAOR 66th Session (A/65/281) (11 August 2010).


\textsuperscript{287} Ibid., Guideline 8B.
prescribes the particular ownership structure as the 'full right to own and inherit,' which might be a difficult goal to realise for many states.\textsuperscript{288}

Also, 'according to the UN Committee on Economic, Social and Cultural Rights (1999), the ability of an individual to feed himself/herself depends on the opportunity granted to him/her by society in terms of "exploiting productive land or other natural food resources, or by means of food distribution, processing and marketing systems that function adequately and are capable of transforming food from where it is produced to wherever the need may be".'\textsuperscript{289} Thus, the right to food intrinsically requires the guarantee of property rights.

Property rights may also be considered to form a central part of the right to adequate housing. It is clear that a secured right to housing can be realised where access to property, particularly land, is guaranteed. The Special Rapporteur on the Right to Adequate Housing expressed this interdependence in the following terms:

The Special Rapporteur[...] views land and housing rights as congruent entitlements. When housing is viewed as the right to a place to live in security and dignity[...] it necessarily encompasses security of tenure and equitable access to land resources. The violations that affect access and entitlement to land also have an impact upon housing security[...] The Special Rapporteur would like to argue that the two rights need to be viewed holistically[...] The denial of housing and land rights through the destruction of the natural resource base, the prevalence of forced evictions and the existence of inadequate resettlement and compensation policies reduces people and communities to a state of landlessness and homelessness that leads to hunger and malnutrition. The right to food is[...] therefore critically linked to the right to housing.\textsuperscript{290}

Subsequent reports of the Special Rapporteurs on the subject have also repeatedly asserted these apparent linkages and, especially in the latest report, it has been argued that the human

\textsuperscript{288} Such measures involve major reforms of property-related policies that are already in place and from the discussions of member states while adopting Art 11(2)(a) of the ICESCR, states had 'reserved the right to determine for themselves whether, and if so, to what extent, agrarian reform was necessary.' Craven (n 256), p 322.

\textsuperscript{289} La Via Campesina et al., ‘Agrarian Reform in the Context of Food Sovereignty, the Right to Food and Cultural Diversity: Land, Territory and Dignity' Civil Society Issue Paper Presented at the FAO Conference (Porto Alegre, Brazil 7-10 March 2006), p 7.

\textsuperscript{290} UNCHR (Sub-Commission), ‘Report by Special Rapporteur Mr. Rajindar Sachar 1995/12’ UN Doc E/CN.4/Sub.2/1995/12, Paras 54 & 55.
right to property is a ‘normative gap’ within the international human rights framework. In this report, Kothari comprehensively describes the importance of the human right to land, and thus property, as follows:

Without the adequate legal recognition of individual as well as collective land rights, the right to adequate housing, in many instances, cannot be effectively realised. The right to land, however, is not just linked to the right to adequate housing but is integrally related to the human rights to food, livelihood, work, self-determination, and security of the person and home and the sustenance of common property resources. The guarantee of the right to land is thus critical for the majority of the world’s population who depend on land and land-based resources for their lives and livelihoods. In the urban context legal recognition of land rights is often critical to protecting the right to adequate housing, including access to essential services and livelihoods, especially for the urban poor.

The United Nations Human Settlement Programme, UN-HABITAT, in its 2003 “Habitat Agenda Goals and Principles, Commitments and Global Plan of Action”, affirmed the Special Rapporteur’s position on the clear linkage between housing and land rights. It went on to state that ‘access to land and legal security of tenure are strategic prerequisites for the provision of adequate shelter for all and for the development of sustainable human settlements affecting both urban and rural areas.’ While it acknowledges that there may be variations in the choice of appropriate land policies at the national level, it makes clear that there still exists an obligation on all governments to show ‘commitment to promoting the provision of an adequate supply of land in the context of sustainable land use policies[...] and strive to remove all possible obstacles that may hamper equitable access to land and ensure

---

292 Ibid., para 29.
294 Ibid.
295 Ibid., para 75.
that equal rights of women and men related to land and property are protected under the law.\textsuperscript{296}

The United Nations Committee on Economic, Social and Cultural Rights, in support of the Special Rapporteurs’ works on housing rights, explained the meaning of ‘adequacy’ in the following terms:

The right to housing should not be interpreted in a narrow or restrictive sense which equates with, for example, the shelter provided by merely having a roof over one’s head. Rather it should be seen as the right to somewhere to live in security, peace and dignity.\textsuperscript{297}

For the fulfilment of these qualities of a secured, peaceful and dignified place of living, there is no doubt that having access to secured land is a prerequisite. It is only where the right to land, irrespective of how that may have been defined under national law (i.e. whether public or private ownership), is guaranteed that a person may have a secured and peaceful place in which to live. It is also true that ‘without adequate legal tenure [to land] the threat of eviction or displacement never ceases and possibilities for all sectors to exercise individual self-determination and plan for the future are severely curtailed.’\textsuperscript{298} It can be convincingly argued, therefore, that the human right to land does subsist as a derived right from the right to adequate food and housing, and that therefore individuals and communities’ rights to secure tenure, peaceful enjoyment and non-discriminatory access to land are properly placed within the international human rights law regime.

2.4.3. Land rights of ‘indigenous’ people

Where communities are concerned, international human rights law further recognises indigenous people’s special need for the protection of their traditional lands.\textsuperscript{299} According to Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous

\textsuperscript{296} Ibid.; the issue of gender biases in terms of access to land and other natural resources remains a significant area of research, especially when it comes to African land tenure systems. It will therefore be dealt with separately in subsequent Chapters of this research. For the moment I only make reference to a relevant Art by Renee Giovarelli, ‘Customary Law, Household Distribution of Wealth, and Women’s Rights to Land and Property’ (2006) Seattle Journal for Social Justice Vol 4, 834.

\textsuperscript{297} UN Committee on Economic, Social and Cultural Rights, ‘General Comment No 4’ in ‘Note by the Secretariat Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I) Para 135.


\textsuperscript{299} UNDRIP, (n 272).
peoples are guaranteed 'the right to the lands, territories and resources which they traditionally owned, occupied or otherwise used or acquired,' and states are obliged to protect the same with 'due respect to their customs, traditions and land tenure systems.' This special protection is justified, according to the Declaration, because of 'their political, economic, social structures and their cultures, spiritual traditions, histories and philosophies.'

The Declaration, however, does not contain a definition of 'indigenous people,' and according to the African Commission on Human and People's Rights, 'a definition is not necessary or useful, as there is no universally agreed definition of the term and no single definition can capture the characteristics of indigenous populations.' The Commission accordingly identified three constitutive elements that characterise indigenous populations and communities in Africa:

Self-identification; a special attachment to and use of their traditional land whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples; and a state of subjugation, marginalisation, dispossession, exclusion, or discrimination because these peoples have different cultures, ways of life or mode of production than the national hegemonic and dominant model.

It is important to note here that in the Ethiopian context, there are no references in the constitution or any other laws having a bearing on the subject of indigenous character. For example, the rural land administration laws, both at the Federal and Regional levels, do not make even a single reference to indigenous populations and/or their peculiar land rights. Although the constitution and the Regional laws speak of communal land rights, including those of pastoralists, 'they all failed to come up with clear and enforceable instruments for collective land rights of traditional communities.'

---

300 Ibid, Art 26(1) & (3).
301 Ibid, Preamble, para 7.
303 Ibid, Para 12.
304 Art 40(5) of the FDRE Constitution recognises the Ethiopian pastoralists' right to obtain grazing land freely and guarantees their right against displacement. See also Francesca Thornberry and Frans Viljoen, Overview Report on the Constitutional and Legislative Protection of the Rights of Indigenous Peoples in 24 African
policy justification for this silence ended with no concrete finding. Nonetheless, the African view on the conceptualisation of the indigenous population, which perhaps explains the Ethiopian position, is best described by the African Commission on Human and People’s Rights in the following terms:

[...] in Africa, the term indigenous populations does not mean “first inhabitants” in reference to aboriginality as opposed to non-African communities or those having come from elsewhere. This peculiarity distinguishes Africa from the other continents where native communities have been almost annihilated by non-native populations. Therefore, the ACHPR considers that any African can legitimately consider him/herself as an indigene on the continent.  

In line with this understanding, the Ethiopian constitution bestows sovereignty on the ‘nations, nationalities and peoples’ of Ethiopia as a whole, defined as ‘a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identity, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.’ Again, it does not recognise any indigenous status or minority status emerging from national, ethnic, religious and linguistic backgrounds. Therefore, when the law, for instance, refers to pastoralists in Ethiopia, what it implies is solely the type of livelihood as being dependent fully or partially on livestock production, without any special recognition of indigenous character.

---


306 Art 8(1) of the FDRE Constitution.

307 Art 39(4) of the FDRE Constitution.


309 Arts 2(8) and 2(9) of the Federal Rural Land Administration Proclamation 456/2005 define pastoralist and semi-pastoralist, respectively as meaning ‘a member of a rural community that raises cattle by holding rangeland and moving from one place to the other,’ and ‘the livelihood of himself and his family is based mainly on the produce from cattle; ‘Semi-Pastoralist’ means a member of a rural community whose livelihood is based mainly on cattle raising and to some extent on crop farming.’ See note 500 and the accompanying text.
2.4.4. The African human rights system

Article 14 of the Banjul Charter provides for the right to property as follows:\textsuperscript{310}

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

This is the first provision in the catalogue of socio-economic rights which is enumerated under the Charter.\textsuperscript{311} It is less clear whether we may accurately classify this right under economic, social or cultural rights, or civil and political rights instead. As a basic source of livelihood and income for many agrarian communities, though, it may well be said to fall under economic rights. On the other hand, property rights to land might also be considered as a socio-cultural right insofar as land and land-related practices may be an expression of societal values and the cultural ties of indigenous peoples to their land, as observed by the UN Human Rights Committee General Comment 23.\textsuperscript{312}

In describing the contents of Article 14 of the Banjul Charter, the African Commission enumerated its all-inclusive aspects in a way which makes a clear classification of the right to property rather harder than it already is. In the statement that followed its Pretoria Seminar, from 13-17 September 2004\textsuperscript{313}, the African Commission stated:

The right to property in Article 14 of the Charter relating to land and housing entails among other things the following:

- Protection from arbitrary deprivation of property;
- Equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women;
- Adequate compensation for public acquisition, nationalisation or expropriation;

\textsuperscript{312} UN Human Rights Committee ‘General Comment No 23’ in ‘Note by the Secretariat Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I) Para 7 that provides ‘With regard to the exercise of the cultural rights protected under Art 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples.’
\textsuperscript{313} Those Statements had been adopted and annexed to its Resolution no 73, The African Commission on Human and People’s Rights ‘Resolution on Economic, Social and Cultural Rights in Africa,’ 78.ACHPR/Res.73(XXXVI) (04 December 2004).
• Equitable and non-discriminatory access to affordable loans for acquisition of property;
• Equitable redistribution of land through due process of law to redress historical and gender injustices;
• Recognition and protection of lands to indigenous communities;
• Peaceful enjoyment of property and protection from arbitrary eviction;
• Equal enjoyment of housing and to acceptable living conditions in a healthy environment.

This authoritative interpretation of the Charter\(^\text{314}\) is quite informative in regard to the comprehensive nature of the right, and it accordingly demonstrates the difficulty in making this provision fit squarely into any one of the economic, social or cultural rights. Rather, it tends to confirm the observation made by Paul Hunt, in that ‘rights do not lend themselves to neat categorization; they do not form discrete and separate groups[...] A great deal of time and energy can be spent trying to distinguish one group of rights from another.'\(^\text{315}\) Some writers, such as Eide, however, have argued in favour of the fine categorisation of most of the rights, including the right to property. For Eide, the right to property constitutes an economic right having dual bearings, both as an entitlement necessary to ensure an adequate standard of living and also as a basis for freedom, since it guarantees for the bearer some form of independence.\(^\text{316}\)

Odinkalu,\(^\text{317}\) meanwhile, puts this right within the category of ‘new’ rights, together with Article 13 of the Charter relating to a series of entitlements.\(^\text{318}\) On the other hand, Oloka-Olyango has been very critical of the inclusion of this provision with no dynamism, in the sense that it failed to take into account the continent’s specific aspects such as its diverse customary tenure systems and colonial influences in land-related issues.\(^\text{319}\)

---

\(^{314}\) One of the Commission’s mandates as provided under Art 45(3) is to interpret all the provisions of the African Charter.


\(^{318}\) The African Charter Art 13(1), (2) & (3).

It is unfortunate that the African Commission has not yet had the chance to elaborate on the nature, content and scope of this right in relation to real-life cases. The few instances in which this provision has been invoked were not that detailed. For instance, in Communications 61/9, where Article 14 was invoked together with other provisions of the Charter, the Commission merely said that ‘the confiscation and looting of the property of black Mauritanians and the expropriation or destruction of their land and houses [...] constitute a violation of the right to property guaranteed in Article 14.’ And in relation to the Ogoni people in Nigeria, the Commission considered the right to property, among others, to be one of the bases for the right to housing, without again explaining in detail the contents and meaning of the right itself.

Neither of these instances gives much insight into the development of a working jurisprudence regarding the exact nature, content and scope of this right, with at least four points remaining unclarified from what is provided under Article 14.

First, it is difficult to understand what form of right is promised when it says ‘the right to property shall be guaranteed.’ The UDHR Article 17 is, however, clear on this point in the sense that the right to be protected first entails ownership of property, and secondly that the ownership could either be private or communal. And under the European system, it appears that possession is protected by the protocol.

The Commission has, in the statement quoted above, tried to address this same issue, but it is still not clear from the statement what form of right the provision is supposed to guarantee, i.e. whether there could be use, ownership or other forms of rights.

The second, and the most delicate, matter that this provision overlooks, unlike the European and the Inter-American instruments, is the issue of compensation. The provision is silent as
to whether or not individuals whose property rights have been encroached upon would be entitled to compensation. The Commission, in the Mauritanian case, after a finding of violation of, among others, Article 14 of the Charter, recommended that the Mauritanian Government provide for 'the restitution of the belongings looted from the [victims]; and to take the necessary steps for the reparation[...] of the victims; to take appropriate measures to ensure payment of compensatory benefits.' In the Ogoni case, meanwhile, the Commission went even further in recommending that the Nigerian Government not only paid compensation, but also 'adequate compensation.' The accepted principle of compensation for loss of property, however, is that compensation has to come before expropriation, and anything that comes after will be compensation for damage. Even this order by the Commission, for payment of adequate compensation after a ruling on Article 14, is subject to criticism, since state parties may legitimately resist this kind of interpretation, especially where it involves a discrepancy with the national standards.

Third, the grounds for limiting the right to property are not that clear. Expropriation is said to be justified where it is 'in the interest of the public need or the general interest of the community,' and it also imposes a legal requirement at the end of the provision by saying 'in accordance with the appropriate law.' It is not possible to deduce from this last part of the provision, however, whether the appropriate law also includes general principles of international law, or if it is limited to the domestic law of the particular state concerned. Thus, the provision opens up wider discretion in the sense that 'a decision as to what is permitted by this provision is clearly open to debate and competing interpretations[... and] would be subject to the prevailing political climate in the state that invokes this provision.'

In this regard, the approach that the Nigerian Federal Constitution has adopted is progressive, in that it enumerates all the conceivable circumstances in which public takings may be justified.

---

326 While the Inter-American Convention makes reference to 'just compensation' the First Protocol to the European Human Rights Convention rather stipulates more general conditions for expropriation by saying 'subject to the conditions provided for by law and the general principles of international law.'

327 Amnesty International v. Mauritania (n 320) Para 142.


330 Odynkalu (n 317), p 340.

331 Constitution of the Federal Republic of Nigeria, (1999), Section 44(2) (a)-(m) which enumerates 13 grounds that justify expropriation. The relevant provision reads as follows:
Finally, this provision could have been utilised to address the problems of gender equity and marginalisation experienced by African women with regard to access to, use and transfer of the right to land through such mechanisms as inheritance. Considering the sensitivity of this matter, the Protocol to the Banjul Charter on the Rights of Women in Africa has tried to address women’s problems relating to access to housing under its Article 16.\textsuperscript{332} This partly corrects the failures of Article 14 of the Charter.

The Ethiopian context in regard to human rights to property – and specifically the right to land – is discussed in the following Chapter in greater detail. It is important to point out here, though, that the constitutional principle on property constitutes the major part within the

Section 44(2) Nothing in subsection (1) of this section shall be construed as affecting any general law.
(a) for the imposition or enforcement of any tax, rate or duty;
(b) for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence;
(c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts.
(d) relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons unsound mind or deceased persons, and of corporate or unincorporate bodies in the course of being wound-up;
(e) relating to the execution of judgments or orders of court;
(f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
(g) relating to enemy property;
(h) relating to trusts and trustees;
(i) relating to limitation of actions;
(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;
(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
(l) providing for the carrying out of work on land for the purpose of soil-conservation; or
(m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

\textsuperscript{332} Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005). This protocol goes further in providing the right to food security and stipulating the duty of state parties to provide ‘women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.’ Particularly, access to land no doubt supports the right to property of women. See Art 15 of this Protocol.
catalogues of democratic rights. All the crucial aspects of property rights, including ownership structure, access, transferability, exclusivity and expropriation are discussed under Article 40 of the Federal Constitution.\(^{333}\) The constitution further regulates the specific mandates of the central and Regional governments with regard to land administration.\(^{334}\) When we read the right to property Article together with Article 35, which guarantees women rights of equality and non-discrimination, there is a clear indication that in respect to land, women must have equal and non-discriminatory access, enjoyment and rights of transfer.\(^{335}\)

In line with the government’s policy of formalising rural land use rights, certification processes are underway in many of the Regions, as discussed extensively in Chapter Four of this work.\(^{336}\) This process of formalisation, as pointed out by Bruce, results in ‘a tenure system created by statute,’\(^{337}\) which at times may not conform to customarily defined systems and modalities of use.\(^{338}\) In providing a legal basis through the formalisation of holding rights, the Ethiopian rural land administration has the unforeseen consequence of regularising the pre-existing and inequitable holding that for a long time favoured the male as the head of the family and was in disregard of constitutionally recognised women’s human rights to equality and non-discrimination.\(^{339}\)

Though there are various short-comings associated with the implementing legislations as discussed in Chapter Four, guarantees against arbitrary expropriation as a subject of human rights is another aspect that the Ethiopian constitution has recognised.\(^{340}\) As discussed under the section on security of tenure, however, this remains a subject that significantly undermines the right of individuals to the peaceful enjoyment of their land holding.\(^{341}\) The extensive measures taken to clear arable land, which are meant to cater for the needs of large-scale agricultural investors, have been questioned on the grounds that they are of no benefit to

---

333 Art 40 of the FDRE Constitution. See the text subsequent to note 400 in section 3.4.
334 Arts 51(5) and 52(2) of the FDRE Constitution.
335 Art 35(6) of the FDRE Constitution stipulates as follows: “Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.”
336 See the discussion under section 4.3.1.2. on certification of holdings in Chapter Four.
339 Detailed discussions on this subject are made in Chapter Four, section 4.6.
340 Art 40(7) of the FDRE Constitution.
341 Detailed discussions on expropriation and its impact on tenure security are made in section 4.3.2.1.
the public. These measures particularly affect pastoralists and communal holdings, ostensibly because these groups do not yet enjoy formal recognition through certification.

The following Chapters now move on to provide an in-depth discussion of the various specific legal and policy instruments that govern rural land in Ethiopia. In Chapter Three, Ethiopia’s land laws and policies are generally examined, in order to provide the context for dealing with more specific aspects of the rural land use system in subsequent Chapters.

342 Deininger and Byerlee, (n 87).
343 Darryl Vhughen and Aman Gebru, ‘Large-Scale Acquisition of Land in Ethiopia’ (2013), Focus on Land in Africa, Brief, p 6.
Chapter III: Overview on Ethiopia’s land tenure policy

3.1. Introduction

Land tenure, as a social construct and government policy agenda, is instrumental in explaining the socio-economic and political conditions of a particular society. Ethiopia’s land tenure system and governance is no exception to this assertion. Those in power have continually redefined land policies in such a way that the policies help them maintain their power balance, stability and legitimacy. The ‘political economy of land use,’ in the case of Ethiopia, has been described as the ‘processes by which the state has controlled the rural masses through agricultural policies, repression, and tenure systems.’ The societal responses to these processes also have not been easy to overcome for a succession of leaders.

The modern history of Ethiopia can be considered broadly to consist of three different periods, each representing distinct socio-economic and political phases in Ethiopian society. These are pre-1975 Ethiopia, the post-revolution period, characterised as the socialist era, and finally the present period, starting from the end of the Cold War, which marked the country’s transformation from a command to a free market economy. This Chapter examines the past and present land tenure structures of Ethiopia in more detail and considers whether there have been any significant changes in the nation’s land tenure system in tandem with these changes of political regime.

3.2. Pre-1975 period

Prior to 1975, Ethiopia was governed under a monarchical system, and land tenure was characterised by a system of socially constructed customary tenures, without any established

344 Donald Crummey, Land and Society in the Christian Kingdom of Ethiopia: From the Thirteenth to Twentieth Century (University of Illinois Press 1999).
346 The turn of events at the global level in the beginning of the 1990s had, no doubt, impacted the landscape of on-going intrastate conflicts in many countries since it marked the end of patronage for many of the warring factions from the two blocks who were fighting proxy wars. Charles Cater, ‘The Political Economy of Conflict and UN Intervention: Rethinking the Critical Cases of Africa’ in Karen Ballentine and Jake Sherman (eds.), The Political Economy of Armed Conflict: Beyond Greed & Grievance (International Peace Academy 2003). In Ethiopia also, the fall of the USSR marked the end of external support for Mengistu’s regime and the rise in power of the liberation movements that were embraced by the liberal democratic states.
formal legal framework for their regulation.\textsuperscript{348} When the country adopted its first written constitution in 1931, just a few years before the Italian invasion,\textsuperscript{349} land tenure was rather taken for granted, with only two direct references being made to the issue of property rights. Article 15 contained the Emperor’s prerogative to establish personal estates, known as \textit{gult},\textsuperscript{350} while Article 27 of the constitution guaranteed ‘except in cases of public necessity determined by the law, no one shall have the right to deprive an Ethiopian subject any movable or landed property which he owns.’\textsuperscript{351} \textit{Gult} was a tenure system of the Imperial period referring to property, usually in the form of large estates, ‘granted to members of the ruling aristocracy, [and] rights to \textit{gult} were granted to those who were recognised to have performed loyal service to the crown, and recipients were empowered to collect taxes or tribute from the people on \textit{gult} property and to exercise administrative and judicial authority in the area.’\textsuperscript{352}

During this period, therefore, the land tenure system was rather heterogeneous in the sense that the country had in its different parts embraced private, communal as well as state ownership structures. As has been discussed in the previous Chapter, this was not unique either for its time, or now, since many countries’ tenure systems exhibit this same trend.\textsuperscript{353} What made the period unique in the Ethiopian context, though, was a widely felt unfairness in the distribution of land holdings such that whole sections of society were effectively excluded from land ownership. It was this sense of exclusion which was a key factor in uniting those groups who were demanding change and which led them to success in assuming power late in 1974.

\begin{footnotes}
\item[348] It is worth noting, however, that there has been no comprehensive land legislation in the history of the country.
\item[349] The 1936-41 Italian occupation resulted in the suspension of this constitution even before it was widely known to exist, let alone properly implemented.
\item[351] Ibid., p 770.
\item[352] Dessalegn Rahmato, \textit{Agrarian Reform in Ethiopia} (Scandinavian Institute of African Studies, Uppsala, 1984), p 16.
\item[353] For example, the new Kenyan constitution declares all land to belong to ‘the people of Kenya collectively as a nation, as communities and as individuals.’ See Art 61(1) of the Constitution of Kenya, 2010; while the Ugandan constitution classifies all land in Uganda into customary, freehold, Mailo and leasehold system. See Art 237(3) of the Constitution of the Republic of Uganda, 1995. Mailo tenure was first introduced by the 1900 Buganda agreement by which land was divided between the Kabaka (King) of Buganda, other notables and the protectorate government. The basic unit of sub-division was a square mile, from which the name Mailo was derived. Originally, there were two categories of ownership under the mailo system (private and official mailo). Official mailo was transformed into public land in 1967. Under this system, land is held in perpetuity and a certificate of title deed is issued. See generally Simon Coldham, ‘Land reform and customary rights: The case of Uganda’ (2000) African Journal of Law, Vol 44, 65-77.
\end{footnotes}
The fertile southern part of Ethiopia was peculiar for its predominance of private ownership structures, while much of the northern and eastern parts were held by the ruling class via the tenancy system, which itself was characterised by absentee landlords who rarely actually farmed the land or actively controlled it. These forms of tenure structures were known as "rist-gulf". The state also exercised its own direct control over a substantial part of central and northern Ethiopia. This land was used to form reserves, to be granted as rewards to those citizens who had contributed to the country through the provision of military and other similar public services. The 1955 revised constitution, which made no fundamental changes to its predecessor, accorded under Article 31 the prerogative to the Emperor to make 'grants from abandoned properties, and properties in escheat for the purpose of recompensing faithful service to the Crown.'

The south-west and south-eastern part of Ethiopia was characterised by (as it still is) pastoral communities which, by their very nature, did not have a sedentary way of life and tended to follow a communal tenure system. Categorising this communal tenure system is not straightforward, however. The imperial constitution only recognised two forms of land ownership structure, namely private ownership and the so-called public or state domain. Furthermore, there are peculiarities between the pastoralist communities themselves. The pastoralists in Ethiopia can best be described more as semi-pastoralists in the sense that they combine a great deal of animal husbandry with agriculture. Moreover, they have a well-structured clan system that systematises the use of and access to pastoral lands within a confined community of their own. This kind of structured use of and access to resources is perhaps described more appropriately as combining some form of communal (in the form of hunting, herding and foraging rights) as well as private tenure insofar as the exclusive ownership of animals is concerned.

---

354 Art 31(D) of the 1955 Revised Constitution of the Empire of Ethiopia.
355 See note 492 and accompanying text.
356 While Art 44 of the 1955 revised constitution declares, 'Everyone has the right to own and dispose of property,' Art 130 stated 'all property not held in the name of any person natural or juridical, including land in escheat and all abandoned properties, whether real or personal as well as all products of the sub-soil, all forests and all grazing lands, water courses, lakes and territorial waters are State Domain.'
357 Dr Mesfin criticises the widespread misconception that the Ethiopian pastoralists are completely 'nomadic' (a term which itself is now being avoided as disparaging), although they are always on the move with their livestock. In his view, some '40-50% of the rural people in southeast Ethiopia are actually agro-pastoralists.' Tafesse Mesfin, 'An Overview and Analysis of the History of Public Policy Towards the Development of Pastoralism in Ethiopia,' in proceedings of the National Conference on Pastoralist Development in Ethiopia (2 Feb 2000), organised by the Pastoralist Forum Ethiopia, 33.
The church also played a significant role in the tenure system by acquiring huge tracts of land for the community that serviced it. Clergy, priests and other members within the Church leadership controlled a large proportion of *gult* land as a reward for their service. With regard to its relationship with the tenants who farmed this land, the Church was entitled to a fifth of its produce.

In this essentially feudal social structure, land played a pivotal role in governance, the economy and within the social sphere. It was an era characterised by a high concentration of land holdings in the hands of a few nobles and absentee landlords.

The adoption of the 1960 Civil Code, containing 3,367 articles, was the first modern and elaborate system of law to be introduced to the continent during the decolonisation process. With regard to property, the Civil Code’s 19th-century property concepts were derived from Roman law. Brietzke observed that in Ethiopia ‘[property] is seen as an inviolable extension of personality that has ideological as well as sentimental value.’ Accordingly, the Civil Code provided for individual ownership, with only a few exceptions. This normative recognition of private ownership further entrenched the concentration of land holdings in the hands of the few absentee landlords. The unfair exploitation of tenants by these landlords in fact became worse, because the Code had stipulated the right of a landlord to seek payment of up to 75% of the produce of the tenant, while in the absence of an express agreement to the contrary, the law presumed that a payment of half the agricultural produce should be given to ...

---

358 Crummey, (n 344), p 170; When the country entered into constitutional rule, it also gave express recognition to the Ethiopian Orthodox Church as the official religion to be followed by the Emperor. See Art 126 of the 1955 Revised Constitution. *Gult* together with *rest* constituted the two prominent property rights systems. *Gult* generally connoted the ruling class’s (including the Church’s) entitlement to claim some of the produce of the land from peasants. *Rest*, on the other hand, derived from inherited rights of ownership that were transferable from generation to generation but on land from which they would had to pay tribute to the *Gult*-holder. As Crummey rightfully stated, this constituted a property rights system that ‘that formed the basis for two distinct classes.’ Ibid., p 17.

359 Crummey, Ibid.


361 These particularly relate to the provisions on expropriation (arts. 1460-1488), public ownership of water bodies (1228-56), collective exploitation of land in conformity with tradition (1489-96) and areas restricted for town planning (1589-47) Ibid.
the landlord. This was in effect the revival of the right of servitude which the Code had previously expressly outlawed under articles 1359 and 1360.

Certainly, in suspending the application of any customary laws on matters that were covered by the Code, which presumably included the collective exploitation of land in conformity with tradition, there was an attempt to effect a total transformation to a new, normative life in the country. Indeed, with the introduction of this Code, in the words of its drafter Professor Rene David, 'citizens and judges [were] furnished with a manual cutting the uncertain contours of equity.' The land tenure system, however, was largely unaffected, because the Code provided legal recognition of landlords' private holdings, without any maximum limit, and thus it effectively continued the status quo. The monarchical discretion to dispossess a person also remained unchanged along with the existence of the provisions on expropriation, whose rules of procedure were not elaborated at that time. 'Land concentration in the hands of the absentee landlords and its underutilisation, unchecked and exploitative tenancy, tenure insecurity including arbitrary eviction, diminution and fragmentation of farm holdings' therefore remained the fundamental challenges during this period, and this continued even after the introduction of the Civil Code.

### 3.3. The post-revolution period

The transfer of power from monarchical to military rule happened with rather less damage than inflicted by the measures taken afterwards to maintain it. Driven by the socialist ideals of a command economy and centralised governance, the military regime declared two radical legislations in 1975. The first was Proclamation No 31/1975, which pronounced Government Ownership of Rural Land holdings. The second, entitled Proclamation to Provide for Government Ownership of Urban Lands and Extra Houses, resulted in the mass...
nationalisation of urban land and any extra houses above a single dwelling place per person/household. These radical measures were summed up by Cohen et al. as follows:

An official ideology of Ethiopian-style socialism has been proclaimed, the former landed aristocracy has been isolated, imprisoned or executed, many senior central government and provincial personnel have been removed, the constitution has been suspended, far-reaching urban and rural land reforms have been decreed, most major commercial and industrial enterprises have been nationalised, and a wide range of rural programs have been implemented which aim at mobilising the peasants, the foremost of which are the formation of peasant associations and the use of more than 40,000 university and high school students to help organise the peasantry and bring about improvements in the living standards of rural people.369

3.3.1. Rural land tenure

The effect of the rural land Proclamation was enormous in the sense that it redefined the pre-existing land property system in a fundamental way. In particular, it abolished the peasant/tenant-landlord relationship and empowered tenants in regard to their produce and land holdings. The powerful landlords were told by both the cadre members and the tenants themselves that they no longer had any right to the land that had been held by their tenants, and a maximum individual holding of 10 hectares was set. As a result, ‘landowners organised armed resistance against officials, students and peasants seeking to implement the provision of the land reform Proclamation.’370 The Peasants’ Associations, which later became integrated with the workers’ party at the centre, were entrusted with the power to administer the rural land. By ‘administration’ was meant the prerogative to determine, among other things, access to, disputes over and use of rural land. Membership of an association was essential for the rural poor, in order to gain access to the redistributed land that was vital for their survival. As Cohen and Koehn reported, membership of the associations grew significantly, because people had ‘joined to secure the rumoured 10 hectares of land said to go to each member.’371

371 Ibid., p 22.
The critical objectives of this paradigm shift from the old order were spelt out in the Preamble of the reform Proclamation. Among other things, the law's objectives were to:

- Fundamentally alter the existing agrarian relations so that the Ethiopian peasant masses, which had paid so much in sweat as in blood to maintain an extravagant feudal class, may be liberated from age-old feudal oppression, injustice, poverty and disease, and in order to lay the basis upon which all Ethiopians may henceforth live in equality, freedom and fraternity;372
- Institute basic change in agrarian relations which would lay the basis upon which, through work by cooperation, the development of one becomes the development of all;373
- Release the productive forces of the rural economy by liquidating the feudal system under which the nobility, aristocracy and a small number of other persons with adequate means of livelihood had prospered by the toil and sweat of the masses;374
- Distribute land, increase rural income and thereby lay the basis for the expansion of industry and the growth of the economy by providing for the participation of the peasantry in the national market;375 and
- Narrow the gap in rural wealth and income.376

The law made it very clear, therefore, that the feudal system would no longer continue to define the lives of the rural poor. It is equally clear that the indignation that was felt about the tiny minorities who had controlled the land, to exploit the majority under the tenancy system, was the main thrust of the reform agenda. The overall objectives, as stated in these and the remaining paragraphs of the Preamble, were summarised into three themes by Cohen and colleagues as (1) the redistribution of income and power, (2) the stimulation of agricultural production and (3) the stimulation of non-agricultural production.377 Thus, it was 'primarily intended to terminate the onerous tenancy patterns, absentee landowner practices and large estates of the southern provinces.'378 The law accordingly introduced radical changes by declaring all rural land to be the collective property of the Ethiopian people (Article 3(1));

---

372 Proclamation 31/1975, Preamble para. 3.
373 Ibid., para. 4.
374 Ibid., para. 5.
375 Ibid., para. 7.
376 Ibid., para. 9.
377 Cohen et al., (n 369), p 97.
378 Cohen and Koehn (n 370), p 5.
prohibiting private ownership of land by individuals or establishments and effecting an immediate expropriation, without compensation, of rural land, forests and tree-crops thereon (Articles 3(2) & (4); the law also prohibited any form of transfer of land by sale, exchange, succession, mortgage, antichresis, lease or other means (article 5); the Peasants' Associations were given the mandate to administer rural land that included such prerogatives as the power to distribute land use rights, to administer and conserve public property within the area especially the soil, water and forest, to establish judicial tribunals to hear land disputes, to establish marketing and credit cooperatives and other associations, which would help farmers to cooperate in manual and other work, to undertake villagisation programmes, and to exclude from distribution mining and forest land and places of historical and antiquarian significance (Article 10); the law also set 10 hectares as the maximum amount of land that a farming family could have under his/her possession and use (Article 4(3); and it also prohibited any able adult person from using hired labour to cultivate his holdings except for a woman with no adequate means of livelihood, or where the holder was sick or old, or where, upon the death of the holder, the surviving spouse did not have an adequate means of livelihood, and where minor children had taken over at the death of the holder(s) (Article 4(5).

Interestingly, only four out of a total of 33 Articles specifically addressed the issues related to the pastoralist communities which used to be known as “nomads”. The first of these provisions stated that nomadic people [to mean pastoralists] should have possessory rights over the lands they customarily used for grazing or other purposes related to agriculture. At the heart of these provisions was also the urge to establish pastoralist associations, which would encourage cooperation in the use of grazing and water rights. On the other hand, the government assumed by the terms of this law the responsibility to improve grazing areas, to dig wells and, above all, to settle the pastoralist people for farming purposes. While discussing the possible reasons why pastoralists had been put at the periphery of the land reform agenda, Helland stated:

---

379 Arts 24-27 of Proclamation 31/1975.
380 Art 24 of Proclamation 31/1975.
381 Art 26 of Proclamation 31/1975.
382 Art 27 of Proclamation 31/1975.
Land is the most important, valuable and scarce capital in agricultural production on which the majority of the population depends. In pastoralism the most important capital is livestock, not land.\textsuperscript{383}

As discussed in Chapter Four of this thesis, this trend to forcibly sedentarise the pastoralist community remains a continuity in today's Ethiopia too.\textsuperscript{384}

Land reform legislation, therefore, included provisions that aspired to tackle the problems of equitable access and security of tenure, while increasing the productive capacity of rural land and guaranteeing access to markets for the produce of that land. These aspirations were put into effect by 'creating a new political and social organisation in the countryside to defeat the landlords and allow the peasants to control their land and their affairs.'\textsuperscript{385} The reform was implemented with the optimistic view that it would spur production and bring high dividends to the poor, as evidenced by the establishment of over 18,000 Peasants' Associations in the early days of the Proclamation.\textsuperscript{386} As Ottaway put it, though, the change came 'not through reform, but through revolution,'\textsuperscript{387} by engaging a number of students in the programme popularly known as Zemecha.\textsuperscript{388} In Chapter Four, the relevance of rural land administration institutions in ensuring tenure security is examined and at present the useful roles of institutions of the likes of the Peasant Association is missing.\textsuperscript{389}

3.3.2. The 1975 land reform and its impact on urban land tenure

The urbanisation process in Ethiopia is a relatively recent phenomenon in comparison to many African countries.\textsuperscript{390} This is partly because the Ethiopian kings tended to change their capital from time to time, with the effect that no one city experienced a consistent process of development. Additionally, peasant life, and through it agriculture and agricultural

\textsuperscript{384} See note 899 and accompanying text.
\textsuperscript{386} Ottaway put the figure at 24,000 while Cohen and Koehn, on the basis of the then Ministry of Lands and settlement September 1975 report stated the figure of peasant associations to be 18,000. Ottaway Ibid., p 89 and Cohen and Koehn (n 370), p 22.
\textsuperscript{387} Ottaway, Ibid.
\textsuperscript{388} This was a campaign programme through which grade 11 and 12 students were asked to engage in various rural development activities named in Amharic as Zemecha to refer to 'progress through cooperation, knowledge and work.' Cohen and Koehn (n 370), p 50.
\textsuperscript{389} See notes 818, 819 and accompanying text.
production, was for a long time considered the most preferable and prestigious route through infancy, youth and adulthood, followed by warriorship. The absence of a colonial experience in Ethiopia might also be regarded as a contributing factor to the belated urbanisation process and for the fact that, where the process took place, it happened in a very distinctive fashion.

The 1975 land reform legislation changed the urban land tenure system almost as radically as it did the rural system. The law on ‘Government Ownership of Urban Lands and Extra Houses Proclamation 41/1975,’ as the name indicated, was meant to bring urban lands and extra houses under government ownership. If one reads the second and twelfth paragraphs of the lengthy Preamble to this Proclamation, one can get a sense of the ethos of the urban land reform legislation. The second paragraph is a general observation on the prevailing urban land conditions that the reform sought to transform:

Extensive areas of urban land and numerous houses are in the hands of an insignificant number of feudal lords, aristocrats, high government officials and capitalists, who by abusing their political and economic power, have created artificial shortages in the supply of urban land, thereby inflating its value and abstracting the improvement of urban areas and the quality of life of urban dwellers in their effort to perpetuate the system of exploitation.\(^\text{391}\)

More or less similar accusations were packed into the next eleven paragraphs of the Preamble, which then concluded by articulating the key objective of the Proclamation as being to:

Bridge the wide gap in the standard of living of urban dwellers by appropriate allocation of disproportionately held wealth and income as well as the inequitable provision of services among urban dwellers and to eliminate the exploitation of the many by the few.\(^\text{392}\)

The core element of this radical reform law was spelt out under Article 3, which proclaimed the nationalisation of all urban lands without compensation. The legislation accordingly provided for the possessory right over urban land of up to 500 m\(^2\), which could be transferable, upon the holder’s death, to the spouse or children.\(^\text{393}\) It normalised the tenants’

---

\(^{391}\) Para 2 of the Preamble of Proclamation 47/1975

\(^{392}\) Ibid., para. 12.

\(^{393}\) Ibid., Art 5(1).
possession by abolishing any pre-existing tenancy relations with landowners and by releasing the tenant from payment to the landowner of rent, debt or any other obligation.394

Apart from urban land, the second part of the Proclamation also dealt with urban houses, by which it limited a person or a family’s dwelling house to only one in any urban area of his choice.395 Unlike rural land, the right of persons, families or organisations over the house they owned encompassed use, and transfer by succession, sale or barter except that, where it involved transfer by sale, the right of pre-emption was reserved to the government.396 These were the fundamental changes introduced by this reform, which remained in place until the introduction of the present leasehold system that replaced the permit system in 1993.

3.4. Post-1991 Ethiopian land tenure

The land issue has been, and continues to be, a driving factor for most of the leaders that rebel against the incumbent regimes in Ethiopia. Indeed, the current ruling party played this same card during its struggle to overthrow the military government of Col. Mengistu. The Tigray People’s Liberation Front (TPLF) undertook fundamental land redistribution measures in Tigray after it had gained control of the Region (which was much earlier than its assumption of national political power), and these measures clearly showed the special position that was ascribed to the land issue in the party’s political ideology.397 One of the founding members of the party has criticised those early measures of land reform and redistribution as being politically motivated, as the TPLF:

[...] imposed political criteria to exclude those who were believed not to support the struggle. Land clearly became an instrument for mobilisation and surveillance of the people, and access to land was, in effect, under the TPLF’s control.398

This use of land policy for political influence and community mobilisation is a familiar characteristic in all the various regimes that have come and gone in the modern history of Ethiopia, with the tenure structure being a particular subject of discussions, schisms and discontent. The tension has been described, in the words of Haile and Mansberger, as ‘the

394 Ibid., Art 6(1).
395 Ibid., Art 11.
396 Ibid., Art 12.
397 When this redistribution measure was attempted in the Amhara Region, where there existed a widely felt unfairness in the distribution of agricultural land, it created chaos with nationwide implications. Therefore, doing it much earlier before taking national power in reality had helped that part of the country.
One side of the argument maintains that demands for *equitable access and distribution* of this indispensable natural resource can only be guaranteed if the government remains as its custodian. On the other side of the debate are those who, among other things, see state ownership as being a constant source of tenure insecurity, a hurdle to the efficient utilisation of land and thus an obstacle to economic development. This debate revives whenever something goes wrong with the political economy of the country, for which many opponents place the blame squarely on the alleged unsound land policy of the government. These debates will be treated separately elsewhere, but for the moment a brief account of the current land tenure system is in order.

The current constitutional order has tended to favour the equity side of the debate, and thus the constitution has maintained the status quo through Article 40, which discusses the right to property as one of the "democratic rights", in contradistinction to "human rights". The constitution classifies fundamental rights and freedoms into "human rights" and "democratic rights", and within the first category we find rights to life, liberty, security of the person from inhumane, degrading treatment or punishment, rights within the criminal justice process like the right to a speedy, public and fair trial and the right to equality and privacy. Within democratic rights we find freedom of movement, the right to elect and be elected, the right to citizenship, the right to self-determination up to secession, labour rights, freedom of association, freedom of expression, some socio-economic rights and the right to property. For ease of reference, the whole Article is duplicated below:

**The Right to Property**

1. Every Ethiopian citizen has the right to the *ownership of private property*. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.

2. "Private property", for the purpose of this Article, shall mean any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.

---


400 Chapter III of the FDRE Constitution.
3. 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.

4. Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law.

5. Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law.

6. Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law.

7. Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include 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. Particulars shall be determined by law.

8. Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.

These constitutional provisions are meant to establish, as it were, the fundamental guiding principles for detailed legislation in respect of each of the topics. Most of the sub-Articles directly mention the necessity for detailed legislation, and quite a number of these specific laws will be discussed in Chapters Four and Five of this thesis. According to Article 40(1), therefore, an Ethiopian citizen is guaranteed the right to the ownership of private property. By referring to 'Every Ethiopian citizen' in Article 40(1), it appears that the constitution is restricting property to being a citizenship right rather than an indiscriminately available human right for nationals and non-nationals alike. While private ownership is guaranteed in relation to chattels, the constitution takes a different position under Article 40(3) with regard to land and all other natural resources, which are made to fall under the exclusive ownership of the state and the peoples of Ethiopia. As a result, all individuals who lead their lives in an
urban setting, or who engage in agricultural or pastoralist lives, will have access to land, albeit only with use rights.\(^{401}\) As far as previous holdings are concerned, this provision made no change, and thus in every Region, except for the Amhara Region’s redistribution measure\(^{402}\), previous holdings were maintained intact and individuals are now issued a possession certificate on the same land they used to occupy.\(^{403}\)

The 1995 constitution also marked the end of the unitary system of government and instead introduced the Federal state structure.\(^{404}\) This form of state structure brings with it issues of power-sharing concerning land administration, which I shall now discuss briefly.

### 3.4.1. Land administration under the Federal arrangement

Land administration in the context of rural land holdings is a process whereby rural land holding security is provided, land use planning is implemented, disputes between rural landholders are resolved, the rights and obligations of rural landholders are enforced and information on farm plots and grazing landholders are gathered, analysed and made available to users.\(^{405}\) These are tasks that are to be carried out under the Federal system of government that was adopted under the 1995 constitution. Urban land, on the other hand, is managed through the leaseholding system for which detailed legislation has been issued by both the Federal and Regional governments.\(^{406}\)

The principal concern of a Federal constitution is power sharing between the two levels of governments in a manner that clearly indicates what citizens owe to the centre as well as to their local government.\(^{407}\) Articles 51 and 52 of the constitution attend to this task by listing what the Federal government’s powers are, with the residual powers being left to the Regions. The constitution has also listed some core functions that the Regions shall assume,
which Fisseha calls 'framework powers.' All of these powers and functions are to operate within framework legislation to be issued by the Federal parliament, which is 'subject to strict conditions because it has to leave substantial room for the states to issue their own legislation within the limits by the federation.' One of these functions specifically relates to land administration, stipulating that 'States shall have the power [...] to administer land and other natural resources in accordance with Federal laws.' The Federal parliament is to 'enact laws for the utilisation and conservation of land and other natural resources, historical sites and objects,' while states are empowered to administer land and natural resources. In other words, the Federal parliament is to issue framework legislation based on which the states' councils shall come up with enabling legislation for direct implementation within their respective territories. The expectation is therefore that the Federal law shall remain, as far as possible, general and lay down only the principles relevant for land administration. Recognising that Regional peculiarities exist, it makes sense to leave the land administration prerogatives to the Regional governments under a national land policy guide.

Issues of gender equity in the access to and enjoyment of the right to use and transfer, dispute resolution mechanisms and other pertinent matters, are treated under Articles 5, 8 and 12 in a rather general manner by the Federal Rural Land Administration Proclamation framework, which also imposes a duty on Regional councils to 'enact rural land administration and land use law, which consists of detailed provisions necessary to implement this Proclamation.' Accordingly, the power of the Regional governments with regard to land administration is designed to be operative in accordance with this law of the Federal government, and so far seven out of the nine Regional governments have legislated for their own land administration laws in line with the framework principles enshrined under the Federal Proclamation. This,
in essence, is a mechanism that opens up the possibility to be different, where necessary, on the basis of specific local conditions. As the forthcoming Chapter shows, however, there are more uniformities than variations in most of the Regional rural land administration Proclamations.

Although this sets out the general background on power sharing as it relates to land administration, both practice and legislation that fundamentally depart from these constitutional provisions have evolved over time. Of particular importance are the land lease arrangements for large-scale agricultural investment purposes. A large amount of land is being transferred to transnational companies which have been attracted by the exceptionally generous land deals that the Federal government of Ethiopia has made available. Some of the main incentives that have attracted investors on a large-scale are ‘very affordable land rents, low labour costs (cheap and abundant), outstanding incentives including relaxed regulations, the relatively low rate of corruption in the country, abundant amounts of “undeveloped” land and an abundance of water resources.”

As further discussed in Chapter Four, the need to ensure food and energy security of the country of origins of the agribusiness companies are also identified as additional reasons, apart from those local conditions serving as grounds of attraction.

Describing the significant departure that has been made from the original power sharing scheme under the Federal arrangement of the country, the late Prime Minister, Meles Zenawi, defended this in the following terms:

We saw large-scale interest, we as a Federal government felt that we had to take another step to make sure there are no mishaps. We have to make sure that [investors] interact with one entity, that there is a process that is transparent[...] and which is with eyes wide open.

This was meant to provide justification for centralising the land lease agreements to be concluded on the lands otherwise under the control of the Regional governments. In 2009, a new Directorate for Agricultural Investment and Support was established under the Federal Ministry of Agriculture to negotiate long-term leases on 3.9 million hectares of land come up with their own rural land use and administration laws. The World Bank Report, Options for Strengthening Land Administration in Ethiopia, (n 26).

416 See notes 887 and accompanying text.
417 Oakland Institute, (n 415), p 28.
delineated by the government for commercial farming.\(^{418}\) This centralised decision-making significantly departs from the power sharing principles outlined above, by retrenching the land administration tasks back to the central government. According to this arrangement, a Federal land bank was put in place for the purpose of identifying and making available for willing investors land considered suitable for investment. For instance, as indicated under in Figure 7 of Chapter Four, 32% of the total area of the Gambella Region\(^{419}\) has been entered into the Federal land bank to be marketed, with disturbingly large amounts now being granted to investors.\(^{420}\) Apart from the social implications on individuals who are facing eviction and displacement, the effect of usurping the Regional governments’ powers constitutes a threat to the Federal architecture.

3.4.2. Brief overview of the property rights structure

The definition given to private property in the constitution somehow resembles the classical Lockean theory of private property, in that it couples valued products with individual efforts expressed through labour, creativity, enterprise or capital. Under the 1995 constitution, both rural and urban land are excluded from the realm of private ownership and are made to be the common property of the Nations, Nationalities and Peoples of Ethiopia and, as such, they are not subject to sale or other means of exchange.\(^{421}\) The provision goes on to provide, in sub-Article 4, that ‘Ethiopian peasants have the right to obtain land without payment and protection against eviction from their possession.’ A further development of the constitution can be found in the part in which the bundle of rights relating to effort-created developments on the land (whether by investing labour or capital) is recognised.\(^{422}\) By restricting Ethiopian peasants’ rights only to usage, and by further creating a full entitlement to those developments on the land with the widest rights of use, and transfer, layers of rights are made to exist as far as land is concerned. To the extent that the law entitles individuals to exercise fully private ownership on the fruits of the land, effort is acknowledged and rewarded – as is


\(^{419}\) Approximately 829,199ha of land is currently made available to be marketed in the Federal land bank out of the 2.6 million ha of the total land area of the Region. Oakland Institute Report, (n 415), p 26. See also Figure 7 in Chapter Four.

\(^{420}\) It is reported that in just the last three years, an area as large as Britain has been given to investors. A single Indian based company named Karuturi Global has been given 300,000 ha of land just in one Region-Gambella. Vidal, John, (2011), ‘Ethiopia at the centre of global farmland rush,’ *The Guardian*, 21 March 2011.

\(^{421}\) The full text of Art 40 of the FDRE Constitution that discusses the right to property is given in the text following note 400 above.

\(^{422}\) Though golden as it apparently appears to be, it incidentally endorses the possibility of Derg’s redistribution of land holding upon the expiry of the use right.
the case in the Lockean theory of private property. The only modification introduced under the Ethiopian constitution is the individual being either a human or an artificial person. In other words, a legal entity is equally entitled to acquire private property on effort-created developments on the land. In contrast, when John Locke spoke about the mixing of labour as the means of acquiring private property, his initial premise was owning one's person. He stated:

Though the earth, and all interior creatures be common to all men, yet every man has a property in his own person. This nobody has any right but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left in it, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property.

Locke also implied in this quote that all humans have a common entitlement to the earth as well as to all its interior creatures. In a similar vein, the use right to land is a property right to which individuals are entitled on the object which is the common property of all. Whether or not we regard the "use right" as in effect a private property, however, is a subject that needs to be examined in light of various factors such as its being sufficiently secure, tradable or otherwise freely transferable through inheritance and donation. In the presence of a continual threat of expropriation and the various restrictions on transfer rights under the Ethiopian rural land administration system as discussed in Chapter Four, it is very difficult to call the land use right in Ethiopia as having attained the status of private property.

As anticipated by the constitution, a Federal legislation was issued in 1997 under the heading Rural Land Administration Proclamation no. 89/1997, which was later amended by Proclamation no. 456/2005. According to the Proclamation, peasant farmers/pastoralists aged 18 or older, and without distinction on the basis of sex, who are engaged in agriculture for a living, shall be given rural land free of charge. Since the government is the owner of the
land, it can redesignate land that was previously communal land and distribute it to new claimants. In addition, a peasant of the required age may also acquire a land holding through donation or inheritance from his family. The land on which a person establishes the right of use may therefore come from either a donation, inheritance or the government.

The important policy principle that underpins the current land laws in Ethiopia is the restrictive right that individuals are given over land they hold. An individual may be holding land either as a peasant, an urban dweller having the right of use of the land for house construction through the lease system or an investor using land for industrial, agricultural, service or real estate development purposes. Apart from these, as guaranteed by the constitution, pastoralist and semi-pastoralist communities may also hold communal land for grazing and other purposes. In all of these instances of land holdings, except urban land leaseholding, one common feature appears to be significant, i.e. the non-transferability of the use right by sale. Except for Article 24 of the Urban Land Leaseholding Proclamation, which permits the transferring and pledging of the leaseholding right, transfer in any other manner than those stipulated under Article 8 of the Federal Rural Land Administration and Land Use Proclamation appears to violate the law.

Some important elaborations have been made on the constitutional restriction on any form of transfer under the current rural land administration legislation. The first is the possibility of

---

427 Art 5(3) of Proclamation 456/2005 which provides 'Government being the owner of rural land, communal land holdings can be changed to private holdings as may be necessary.'
428 Art 5(2) of Proclamation 456/2005.
429 These various modes of acquiring rural land use are discussed in Chapter Four, under section 4.2.2. that also includes acquisition of use right by rent.
430 This is as per the Federal and the various Regions’ rural land administration laws that, as stated above, provide for free access to rural land use by peasants.
431 According to Art 5(1) of the Urban Land Leaseholding Proclamation, ‘no person may acquire urban land other than the leaseholding system provided under this Proclamation.’ Urban Land Leaseholding Proclamation 721/2011.
432 Both the rural land administration and urban land leaseholding Proclamations provide for land holdings by investors, all of which are to be made under lease agreements. See, for instance, Art 5(4)(a) of Proclamation 456/2005 with regard to rural land. Art 11(7) of the Urban Land Leaseholding Proclamation 721/2011 imposes a duty on Regional governments and City Administrations to prepare in advance plots of urban land to be assigned through tender to private investors that plan to construct ‘higher education institutions, hospitals, health research institutions, four star and above hotels and mega real estate developments.’
433 This Art 8 lists leasing/renting and inheritance as the two avenues by which rural land user may transfer her/his right of use. This implies, when read in conjunction with the constitutional stipulation that bars any form of transfer, that sale as one mode of transfer is not permissible when it comes to rural land use right. As we shall see in Chapter Four, none of the Regional laws permits sale of use right as one mode of transfer.
434 As can be read from Art 40(3) of the FDRE Constitution fully quoted above ‘Land is a common property...and shall not be subject to sale or to other means of exchange.’ The term ‘other means of exchange’ is
transferring the land use right by peasant farmers, semi-pastoralists and pastoralists who are given "holding certificates" as provided by Article 8(1) of the Federal Proclamation, stating:

Peasant farmers, semi-pastoralists and pastoralists[...] can lease to other farmers, or investors land from their holding of a size sufficient for 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.

This transfer is only possible via a rental agreement that must be for a limited period of time, the length of which is to be determined by the rural land administration laws of the Regions, based on particular local conditions. For instance, the Oromia Region’s rural land legislation stipulates the maximum rental period to be between three to 15 years. According to this law, where the rent relates to traditional farming land as opposed to mechanised agriculture, the maximum period of the agreement shall be three years. There is a further restriction attached to this form of transfer, in that the size of the land to be rented must not affect the minimum holding plot size of the peasant or pastoralist, which in the case of Oromia is 0.5 hectares for annual crops and 0.25 hectares for perennial crops. This is particularly meant, together with the limit on the length of the lease agreement, to protect against the risk of displacement of the holders. Protection against displacement, which may happen under the guise of rental transfers, flows from the framework legislation of the Federal rural land Proclamation Article 8(1), where it restricts the amount of land to be transferred via "lease" by stating that it may not go to the extent of displacing the land use right holders.

---

436 This is a certificate that proves one’s rural land holding right. See note 532 and accompanying text.
437 Art 8(1) of Proclamation no 456/2005.
438 Oromia rural land administration Proclamation no 130/2007, Art 10. Oromia is one of the nine Regions and the Region with the highest population in the country.
439 Art 10 (2) that states, ‘duration of the agreement shall not be more than three years for those who apply traditional farming, and fifteen years for mechanised farming.’ The rationale for the distinction being the anticipated period it takes to get the investment return in these two farming methods, the legislature is silent as to whether or not renewal of the rental agreement is permissible.
440 This restriction is deduced from Art 10(1) that has a proviso on rental agreements which must not affect Art 7(1) where we find the minimum holding plot size of 0.5 and 0.25 hectares, as the case may be.
441 This framework legislation employs the term ‘lease’ without any guide as to how we may distinguish it from ‘rent,’ a term that the Regional laws use to refer to arrangements different from what they call ‘lease.’ The Amhara Region’s Proclamation, defines ‘rent’ as to mean ‘a system by which farmer causes the use of his land...for the service of another person securing benefits in kind or cash for a limited time in contract’; and
The SNNP Region's legislation adopts a more nuanced approach with regard to the length of a rental agreement on rural land, by considering cumulatively the parties involved in the agreement as well as the purposes for which the land is going to be used. Amhara rural land administration law tends to be more liberal in this regard, by stipulating only the maximum duration, which is 25 years, irrespective of the parties involved and the purpose for which the land is rented. Where, as we said, the imposition of a maximum period is aimed at preventing the disguised sale of land under the cover of a rent contract and resulting in displacement, putting only the maximum duration of 25 years with the possibility of renewal as is done under the Amhara legislation defeats this purpose written under the Federal Rural Land Administration Law. And practice also suggests that farmers do rent out the whole of their holdings to investors. Ambaye, writing about this practice, points out the alleged argument in favour of this relaxed approach:

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 [rural land administration legislation] (which says in a manner that shall not displace them) is one that depends on recognising the rationality of the farmers; that farmers know better for themselves.

This restriction on the size of land and duration of the rental agreement weighs heavily on individuals' right, not only to be able to transfer their land use right, but also to otherwise acquire land use right through the market system. The effect is particularly significant, as discussed also in Chapter Four, on those persons who are completely unable to plough the

Art 2(25) & (26), respectively. This implies, therefore, that the application of these terms depends on who and to whom the land is being transferred, in the sense that where the government is the one that transfers the land to investors (implying that it is only to investors that the government transfers rural land via lease), then we call the arrangement a lease. If, however, it is a farmer's transfer of land via rent 'for another person' (which presumably could be an investor or a fellow farmer), it shall be called rent. Some of the variations that we observe in the other Regional laws are discussed in section 4.2.2.5. in Chapter Four.

Art 8(1) of Proclamation 456/2005. It provides a minimum period of five years and a maximum of 25 years under Art 8(1) of Proclamation 110/2007. See note 737 and accompanying texts.

Art 10(2) and (6) cumulatively provide as follows; 'Any land rent agreement made for more than 3 years shall be made in writing... The maximum duration of rent time may be 25 years. Therefore, any agreement made for more than 25 years shall be considered as only made for 25 years.' Moreover, Art 10(7) gives allowance for renewability of such rental agreement.

land by themselves for various reasons including those aged, disabled, orphans, and women land holders.446

Another permitted mode of transfer of the right of use is through inheritance to members of one's family.447 Therefore, rural land holding and use rights, although they cannot be donated or sold, may be bequeathed to a member of one’s family upon death. This apparently excludes a person who is not a family member from being a beneficiary of this form of transfer, while at the same time giving anyone, whether a relative or not, who is a member of the family the opportunity to inherit the right of use. Because of the complexity of this matter and its clear deviation from the existing law on succession, the Proclamation has defined a “family member” to mean ‘any person who permanently lives with the holder of holding right sharing the livelihood of the latter.”448 To tackle the ensuing fragmentation of holdings as a result of inheritance or other forms of transfer, Regional laws have set a minimum holding size of half a hectare.449 Where the land to be divided among family members or as the result of divorce between spouses is less than this minimum size, the law stipulates that the beneficiaries must continue holding it jointly.450 In cases where the individuals are unable or unwilling to continue using the land jointly, various schemes have been provided by the regulations that include renting the land and dividing the rent money, or giving it for share-croppers, employ hired labour or other locally available alternatives.451

The Proclamation therefore defines a “holding right” in a manner that encompasses all these issues, saying:

“Holding right” means the right of any peasant farmer or semi-pastoralist and pastoralist shall have 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

446 For further discussions see note 735 and accompanying text.
447 Art 8(5) of Proclamation no 456/2005.
448 Art 2(5) of Proclamation no 456/2005.
449 See for example Art 11 of Proclamation 110/2007 of the SNNP Region; Art 7 of Proclamation 130/2007 of the Oromia Region. But Art 18 of Proclamation 136/2000 (E.C.) of Tigray Region that sets the minimum holding size at as low as 0.25 hectares; the Amhara Region has a lower minimum size limit compared to the other Regions setting a 0.25 and 0.11 hectares for land developed by rain and for land developed by irrigation, respectively. The Amhara National Regional State Rural Land Administration and Use System Implementation Council of Regional Government Regulations No 51/2007 (hereinafter referred as Amhara Rural Land Regulations 51/2007), Art 5(1).
450 Art 11(1) (I) of the regulation issued for implementation of SNNPRS Proclamation 110/2007, Rural Land Administration and Use Regulations66/2007 (hereinafter referred as SNNPRS Rural Land Regulations 66/2007); see also Art 17(3) of Proclamation 136/2000 (E.C.) of Tigray Region that proposes similar solutions of joint holding, among other things.
includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same.\textsuperscript{452}

This definition provides a comprehensive explanation to questions such as who may hold rural land, for what purpose, as well as the scope of the holding right. Accordingly, it is a specific right and privilege of farmers, semi-pastoralists and pastoralists to have a holding right for specific purposes that the law identifies as agricultural and natural resource development. The law, therefore, regards housing as an integral part of agricultural and natural resource development, which means that a claim for a rural land holding right by a farmer or a pastoralist, merely for the purpose of constructing a house, could be impermissible, though the right holder may construct his/her house on parts of the land that are meant for farming or pastoralism. Apart from using the land for agricultural and natural resource development, an individual with a holding right has an array of entitlements such as leasing or bequeathing the holding right, as well as acquisition of a full ownership right on the property produced on the land by his labour or capital.

The current important administrative measure being carried out in the country is the process of issuing rural land holding certificates. The process had an initial legal basis under the 1997 Federal Rural Land Administration Proclamation that directed Regional legislatures to enact land administration laws for purposes, among other things, of the ‘assignment of holding rights.’\textsuperscript{453} Moreover, it defined “land administration” as referring to ‘the assignment of holding rights and the execution of distribution of holdings’\textsuperscript{454}, which partly demonstrates the importance attached to the assignment of holding rights. This is more pronounced under the current framework legislation, which treats matters of certification in greater detail.\textsuperscript{455} In practice, the process commenced as early as 1998/9 in the Tigray Region and in 2003 in Amhara and 2004 in the SNNP Region.\textsuperscript{456} At the time of writing, however, the process is still ongoing in many of the other Regions.

A possession, or holding, certificate is simply a document that proves title to a rural land use right.\textsuperscript{457} This is a measure that legitimises land holding rights and clarifies title with delimited boundaries fixed initially with traditional marks but which over time will be corroborated by

\textsuperscript{452} Art 2(4) of Proclamation 456/2005.  
\textsuperscript{453} Art 6(1) of Proclamation 89/1997.  
\textsuperscript{454} Art 2(6) of Proclamation 89/1997.  
\textsuperscript{455} See, for instance, Art 2(14) and Art 6 of Proclamation 456/2005.  
\textsuperscript{456} Holden et al., (n 52), p 261  
\textsuperscript{457} Art 2(14) of Proclamation 456/2005.
satellite images, thereby helping to ensure security of tenure with minimal land-related disputes. The issuance of this certificate serves to stabilise the otherwise uncertain holdings of those peasants who have been farming a particular plot of land based on their traditionally recognised title. This has been a huge process involving lower-level land administration committees, whose members are elected from amongst the communities presumed to have knowledge on holdings in the surrounding area. These committees gather information, consult the community, measure the plots, determine the size and boundaries of holdings of individual peasants and transfer this complete information to the land administration authorities, who then issue the formal possession certificate. This task has been largely completed in many parts of the country, with the second level of the process now underway. This second phase involves the electronic entry of the information through satellite imaging. This further strengthens the land information system and formalises title.

3.5. Urban land holding system

As rural land is the main focus of this work, the following brief overview of the urban land legal framework here is only meant to make the discussion on Ethiopia's land administration system complete. Leaseholding was introduced to the country in 1993, which permitted both the previous permit system and the lease system to operate in parallel until 2002, when it was amended by Proclamation no. 272/2002, which has again been amended by Proclamation 721/2011. While the constitution clearly specifies the rural land holding to be a free grant by the government, there is no mention about urban land holding. The urban land lease Proclamation issued prior to the constitution – and as amended later on – is meant to fill this gap. The point to be taken from the constitution is the government ownership of land, in both the urban and rural settings.

---

458 The initial Federal Rural Land Administration Proclamation has had a principle instructing the Regional lawmakers when legislating on assignment of holding rights that stated, 'with respect to former holder of lawful standing...allow for an opportunity to retain...portions of the land they have been improving upon their labour or capital.' Art 6(7) of Proclamation 89/1997.

459 It was again the 1997 Proclamation that provided the impetus for the creation of these grassroots Committees of land administration. One of the 12 contents of a rural land administration law of the Regions was supposed to 'lay down a system based on transparency, fairness as well as the participation of peasants...for purposes of assigning holding rights.' Art 6(12) of Proclamation 89/1997. The composition and legal status of these Land Administration Committees is discussed under section 4.3.1.3.

460 Art 6 of the current Federal Rural Land Administration and Land Use Proclamation anticipates the transformation of the first level registration process into a modern measurement and data entry with cadastral map. Art 6(1) & (2) of Proclamation 456/2005.
The Proclamation defines “lease” as ‘a system of land tenure by which the use right of urban land is acquired under a contract of a definite period.” 461 “Lease” is an English term that is now deceptively gaining official status in the Amharic language to describe the same land holding system. This definition addressed the shortcomings of the previous law that merely provided a circular definition by stating “lease” meant a “leasehold system” in which the use right of urban land was transferred or held contractually. 462 Now, however, the definition spells out the nature of the right that a leasehold gives as “use right on urban land”; it described “lease” as a land tenure system, and finally the basis for this legal right is clarified to be a contract with a defined period.

The Proclamation comprehensively covers the principles and procedures necessary for the administration and allocation of urban lands and the rights and obligations of lessees. It specifies that the allocation of land must only be for a fixed period463 and must be done either by auction or allotment. 464 Most importantly, and unlike rural land holding rights, this Proclamation acknowledges the right of a leaseholder to transfer or use his urban land lease right as collateral or as a contribution towards business capital. 465 In the case of transfer, however, the new law has introduced detailed rules on the share of the urban land held by lease agreement with the government. In this circumstance of transfer by sale, with the objective of discouraging speculative profit-making or rent-seeking behaviour in general, the lessee is not allowed to take the whole amount of the proceeds from the transfer. Accordingly, Article 23(3) provides that in the event of the transfer of the leasehold right, the lessee shall retain (a) the effected lease payment, including interest thereon, calculated at the bank deposit rate, (b) the value of the already executed construction, if any, and (c) 5% of the transfer value, and then pay the remaining balance to the appropriate body.

To understand this provision, let us assume that a plot of urban land obtained for a total lease price of 1 million is sold after five years for a value of 1.5 million, with no construction being carried out on it. Further assuming that the lessee, who has now transferred the land, paid

---

461 Urban Land Lease Proclamation 721/2011, Art 2(1).
462 Art 2(1) of Proclamation 272/2002.
463 Three factors are said to determine the period of the lease agreement: the development level of the urban town where the land is located, the nature of the development activity that the land is meant to be used for, and the type of service. Accordingly, the lease period may range between 15 and 99 years. Art 17 of Proclamation 721/2011.
464 Art 6(2) of Proclamation 721/2011.
465 Art 23 of Proclamation 721/2011.
only an initial down payment of 10% of the lease price, the proceeds of the sale shall then be
distributed as follows:

\[
10\% \text{ of } 1,000,000 + 6\% \text{ interest rate (a) } = 106,000
\]

\[
\rightarrow \quad \text{+0 construction cost (b)}
\]

\[
+5\% \text{ of } 1,500,000 \text{ (c) } = 75,000
\]

\[
= 181,000 \text{ to be deducted from } 1,500,000 \text{ of the proceeds of the sale and to be}
\]

\[
\text{retained by the lessee, while the remaining } 1,319,000 \text{ (one million three hundred and}
\]

\[
nineteen) \text{ shall be paid to the appropriate authority.}
\]

In effect, the seller who transfers the leasehold without any construction on the land will only
get 5% of the profit that comes as a result of the increase in the market value of the urban
land held by lease, thereby forfeiting the remaining 95% to the original “owner” of the urban
land, which is the state. In other words, this results in a 95% capital gains tax, which in itself
provides a significant disincentive to any kind of regular property market and will eventually
lead to informal markets flourishing. It is interesting to note here the possible restrictions that
may similarly be imposed if rural land use rights were to be made transferable by law.

Free access to rural land for agricultural purposes and the urban leasehold system, therefore,
together define Ethiopia’s current land holding structure. The administration of this, as we
shall see in detail in the following Chapter, is decentralised and, accordingly, the Regions
have the constitutional mandate to enact and enforce their own rules on the basis of the
Federal framework legislation.
Chapter IV: Rural land administration laws and policies: Regional States' experience

4.1. Introduction: socio-political context

Because of the marked variations amongst Regional laws, one of the nine Regions, SNNP, is taken as a case study for an in-depth treatment for various reasons. First, the SNNP Regional State stands out as the most diverse of the nine Federal units in terms of its ethnic composition. It is home to a people who speak a total of 56 different languages. Secondly, the Region is distinct in the sense of combining both pastoralist and agricultural communities. The other Regions' populations could easily be associated with a pastoralist or sedentary agriculturalist way of life unlike the case of the SNNP Regional State. The Region is better suited for examining the lack or presence of laws and policies that accommodate these diverse ways of lives particularly as they relate to the pastoralists. According to a recent statistical report, out of the SNNP's Region 15,760,743 total population, 14,007,377 (close to 90%) are rural, with just the remaining 1,753,366 being defined as urban. The pastoral community in the SNNP Regional State, together with those in Benishangul-Gumuz, Dire Dawa and Gambella, comprise 13% of the total pastoralist communities in Ethiopia. With 94.10 Million total population as projected for 2014 by the World Bank, Ethiopia is Africa's second most populous country trailing Nigeria, and the SNNP's Region stands as the third in terms of Regional rankings among the nine units of the federation. In terms of legal rules too, the Region has uniquely adopted a rural land administration law that is more or less to the Federal framework legislation. This provides a very good example for examining the prevailing mismatches between these copied legislative provisions and that of the local social context. In the other Regions, particularly the Amhara, Oromia and Tigray laws, there are some attempts to contextualise the framework legislation with local conditions without undermining the broad policy premises set by the Federal framework legislation. Accordingly, the SNNP Region is taken as a starting point in this Chapter's discussions while the other Regions will also feature prominently by way of comparison.

Pastoralists make up about 14% of the total population of the country, with 87% of these existing in the Regions of Somali, Afar and Oromia while the remaining 13% are within the Regions of SNNP, Benishangul-Gumuz and Gambella as well as the federal city of Dire Dawa. Pastoralist Forum Ethiopia and International Institute for Rural Reconstruction and Development Fund, Pastoralism and Land: Land Tenure, Administration and Use in Pastoral areas of Ethiopia, (Nairobi 2010) 1.

80
The Federal system of Ethiopia comprises nine autonomous Regional States and two Federal cities (Addis Ababa and Dire Dawa). The SNNP Region is uniquely named as compared to the other eight, which are “National States” (the Amhara National State, Oromia National State, Tigray National State, Somali National State, Gambella National State, Gumuz National State, Afar National State and Harari National State). During the transition period leading up to the adoption of the Federal constitution (1991-1995), the SNNP Region was constituted as five distinct administrative Regions so that the country’s self-administration units during this transitional period numbered 13 plus Addis Ababa as the 14th Region. It was only in 1994 that the Federal constitution put these four different administrative units together under the collective name Southern Nations, Nationalities and People’s Regional State.

467 While the FDRE Constitution refers to them simply as ‘State,’ each of the Regional constitutions are titled as ‘National Regional State.’ Art 47 of the FDRE Constitution. It is worth noting the Amharic meaning of the term ‘nation’ which is translated as ‘biher’ and which is an equivalent to the English term ‘ethnicity.’

468 Proclamation No 7/1992, Art 3 provided, within Regions 6-9, lists of localities that one way or another constitute the SNNP Regional State of today’s Ethiopia.

469 The original draft had named the Region as ‘The South People’s Regional State’ and listed the various ethnic and linguistic groups exhaustively as an annex. While this proposal was deliberated in the Constitutional Assembly, various groups, particularly the Silte and Kebena, claimed that their names were missing from the list and must be included. Fearing that the same claim would flourish from all corners as the Region has more than the enumerated 16 ethnic and linguistic groups, it was proposed to omit the annex containing listings and rename the Region as ‘Southern Nations, Nationalities and People’s Regional State’ which was believed to be inclusive of all the groups with no need for having the annex. See Minutes of the Constitutional Assembly, Volume 4, Nov 14-20, 1987, E.C., Addis Ababa, No 000090-0000104.
The Regional State shares international borders with South Sudan and Kenya, while, internally, it is bordered with Oromia to the southeast and Gambella to the northwest. The people are well-known in the country for their enterprising skills and are largely engaged in trade with intra-society economic support schemes. It is also the most densely populated Region, with an average of 142 persons per square kilometre.

As is true with all the other units of the federation, the overwhelming majority of the Region’s population lead rural and predominantly agricultural lives.\textsuperscript{470} The major staple food plant that is grown in the Region is \textit{Enset}, or “false banana”, from which various food

\begin{footnote}{470} See Figure 2 below depicting the urban rural population distribution by Region.\end{footnote}
products are extracted, the major one being *kocho*, a form of bread usually consumed with meat. This is a popular food throughout the country and is consumed like bread. The Region’s economy in general is dependent on a combination of agriculture and tourism.

Figure 2: Urban rural population distribution

<table>
<thead>
<tr>
<th>Regions</th>
<th>Population</th>
<th>Urban rural distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total/in million</td>
<td>Ratio of women/100 men</td>
</tr>
<tr>
<td>Oromia Region</td>
<td>26.99</td>
<td>103.02</td>
</tr>
<tr>
<td>Amhara Region</td>
<td>17.22</td>
<td>99</td>
</tr>
<tr>
<td>S.N.N.P. Region</td>
<td>14.92</td>
<td>101</td>
</tr>
<tr>
<td>Somali Region</td>
<td>4.44</td>
<td>80</td>
</tr>
<tr>
<td>Tigray Region</td>
<td>4.31</td>
<td>103</td>
</tr>
<tr>
<td>Afar Region</td>
<td>1.39</td>
<td>79</td>
</tr>
<tr>
<td>Benishangul-Gumuz Region</td>
<td>.78</td>
<td>97</td>
</tr>
<tr>
<td>Gambella Region</td>
<td>.30</td>
<td>92</td>
</tr>
<tr>
<td>Harari Region</td>
<td>.18</td>
<td>99</td>
</tr>
</tbody>
</table>

4.2. Rural Land Administration and Use Proclamation

The Federal Rural Land Administration Proclamation 456/2005 sets out the principles which are expected to guide Regional laws. In respect to rural land administration, the SNNPRS’s Proclamation 110/2007 is the governing legislation on matters of rural land for the Region and is published in the Amharic and English languages. The Rural Land Administration and Use Proclamation, as the title implies, has two overarching objectives. While the first relates to ‘rural land administration,’ the other is concerned with normatively defining and regulating the “use rights” of individuals and communities. After confirming the constitutional provision that declares ‘ownership of land is exclusively vested in the state and the people,’ the Preamble sets out the various objectives that the legislation seeks to realise within the pillars of land administration and land use. As part of the land administration objective, the

---

471 These figures show only the census result for the year of counting, 2007; since 2003, the population growth rate has remained more or less the same at 2.6% per annum. The current figures for both the total country-level population and that of the SNNP Regional state are therefore projected from these 2007 figures and, for the latter, stands at 15,760,743 people. These figures are thus presented only to show the consistent trend in the rural urban distribution of the population across the nine units of the federation.

472 See texts following note 400 in section 3.4.2. above.

Proclamation aims at developing and implementing ‘a sustainable rural land use planning based on the different agro-ecological zones of the Region.’ This has its source in the Federal Rural Land Proclamation 456/2005, which also provides a more or less identical objective in its Preamble. In its main body, the Proclamation establishes various norms on rural land use planning, with the purposes of ensuring the proper conservation of the land and its soil.

As one of the crucial objectives relating to land use, the Proclamation also aspires to clarify the identification of land holding types by ‘establishing a database system for different types of land holdings such as private, communal and state holdings.’ The third overarching objective, as part of the administration aspect, relates to the establishment of a conducive system of rural land administration, with a view ‘to resolving problems that arise in connection with encouraging individual farmers, pastoralists and agricultural investors.’ A significant hurdle prior to this law was the lack of clarity with regard to the possible legal arrangements for transfer of rural land holdings via rent or lease. Fourth, after affirming the indispensable role of women ‘for agricultural production and productivity,’ the Proclamation sets as one of its land use objectives ‘ensuring women’s land holding right.’ This objective does not feature under the Federal Rural Land Proclamation 456/2005. However, Proclamation 89/1997, the legislation that was replaced by the current Proclamation 456/2005, did set women’s equal rights ‘in respect of the use, administration and control of land as well as in respect of transferring and bequeathing holding rights’ as one the guiding principles for rural land administration. Apart from the Preamble, Proclamation 110/2007 of the SNNP Region has various provisions that seek to realise the objective of ensuring women’s equal rights with regard to rural land holdings.

474 Para 4 of the Preamble, Proclamation 110/2007.
475 Para 2 of Proclamation 456/2005 sets the same objective as above.
476 See for example Art 13 that imposes a number of restrictions on the use of sloppy, gully and wetlands. Art 13, Proclamation 110/2007.
477 Para 5 of the Preamble, Proclamation 110/2007; see also Para 3 of Proclamation 456/2005.
478 Para 6 of the Preamble, Proclamation 110/2007; and Para 4 of the Preamble, Proclamation 456/2005.
479 The conditions for entering into rental contracts on one’s rural land holding were not specified in the previous legislation on rural land administration. Now, however, detailed rules on formalities and duration of the rental contract as well as the size allowed to be transferred through rent and other relevant matters are rigorously regulated. See discussions in section 4.2.2.5. below.
480 Para 7 of the Preamble, Proclamation 110/2007.
481 Art 4(4) of Proclamation 89/1997. And for detailed discussion of the issues related to women’s rural land rights, see section 4.6 below
482 Arts 5, 6, and 8, Proclamation 110/2007
Fifth, in conformity with the Federal Rural Land Administration Proclamation, the SNNP Regional law promises to ‘put in place legal conditions which are conducive to enhance and strengthen the land use rights of farmers.’ Finally, the Region’s law declares its intention to:

Establish a conducive system of rural land administration that promotes the conservation and management of natural resources, and encourages private investors in pastoralist areas where there is tribe based communal land holding system.

Though one may find some provisions with regard to the conservation and management of natural resources, there are no provisions in the body of the Proclamation that directly address the objective of encouraging ‘private investors in pastoralist areas where there is a tribe-based communal land holding system.’ It is also unclear why private investment needs to be encouraged only in pastoralist areas.

Figure 3: Rural Land Administration Objectives, Proclamation 110/2007

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Overarching (Admin/Land Use) Objective</th>
<th>Legal basis</th>
<th>Illustrations from the provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setting norms for the development and implementation of rural land use planning based on the different agro-ecological zones of the Region</td>
<td>Land administration related</td>
<td>Preamble Para 4</td>
<td>Article 5;13</td>
</tr>
<tr>
<td>Clarifying land use rights (private, communal or state)</td>
<td>Land use right related</td>
<td>Preamble Para 5</td>
<td>Article 5;9</td>
</tr>
<tr>
<td>Establishing a conducive land administration system</td>
<td>Land administration related</td>
<td>Preamble Para 6</td>
<td>Article 6;12</td>
</tr>
<tr>
<td>Ensuring women’s land holding rights</td>
<td>Land use right related</td>
<td>Preamble Para 7</td>
<td>Article 5;6;8</td>
</tr>
</tbody>
</table>

483 Par 8 of the Preamble and Arts 7, 8, and 10, Proclamation 110/2007; and Para 5 of Proclamation 456/2005.
484 Para 9 of the Preamble, Proclamation 110/2007; for a verbatim copy of this objective, see Para 6 of the Preamble, Proclamation 456/2005.
486 The only probable link is to Art 5(14) of Proclamation 110/2007 that asserts the government’s prerogative to change communal rural land holding to private holdings. There is some probable link because as the Preamble states, the pastoralists’ land holding is largely communal for purposes of grazing, and water access, and one reason why the government might deem the conversion of this communal holding into private is for purposes of engaging private agricultural investors.
487 One may, however, consider the government’s long-sought national policy of enabling ‘pastoralists lead a settled livelihood.’ This is found in the country’s Growth and Transformation Plan 2010/11-2014/15 and discussed in section 4.5. below.
The Proclamation has a total of 20 Articles, with most of these being verbatim copies of the Federal Rural Land Use and Administration Proclamation.\(^4^8\) We now move on to examine in detail the contents of the law, with a focus on those topics that have a bearing on rural land rights. In particular, matters that show remarkable deficits in terms of ensuring the rural land rights of the poor, such as accessibility, transferability, security and issues of expropriation, will be closely examined. Women face a much deeper challenge when it comes to rural land rights, and one may, for example, mention polygamy as having negative implications, particularly on women’s rural land rights.\(^4^9\) The joint report by the African Commission on Human and People’s Rights and the ILO mentioned in Chapter Two underscores the impacts of polygamy in reference to indigenous women in particular and states:

Indigenous women’s rights are threatened by the practice of polygamy [and] in Ethiopia, polygamy in rural areas, where most indigenous women live, is still widely sanctioned by Regional States.\(^4^9^0\)

In the discussions that particularly concern women’s rural land holding and use rights, the thesis employs relevant data from a research report in which the student was directly involved. The research was carried out by the Ethiopian Institution of the Ombudsman within the Democratic Institutions Programme of the United Nations Development Programme (UNDP).\(^4^9^1\)

---

\(^4^8\) Proclamation 456/2005. See also sections 3.4.1. and 3.4.2 of Chapter 3.

\(^4^9\) Bigamy is a condition of concluding marriage while a previous marriage exists. For detailed treatment of this subject, see section 4.6.2 below.

\(^4^9^0\) Thornberry and Viljoen, (304), p 135.

\(^4^9^1\) The Report, which was produced in Amharic language, is on file at the Library of Ethiopian Institution of the Ombudsman under the title ‘An Assessment of Women’s Rural Land Use Rights in light of Rural Land Administration based on data gathered from six Selected Woredas of SNNP and Oromia Regional States’ (October 2010). The student, who was the lead researcher in this assessment Report, had published an Art on the basis of the report. Fikre, (n 23).
4.2.1. Rural land use rights

What does it mean to have a land use right according to the Region's rural land Proclamation? In this section we shall examine the relevant parts of the Proclamation, in order to respond to this question. There is a distinct lack of clarity in the concept, especially when one looks at the use of terms such as 'right to ownership of land is exclusively vested in the state and in the people'; "holding right"; 'use right'; 'private holding'; 'communal holding'; 'communal holding right'; 'state holding'; 'common holding'; 'land user'; 'possession right' and 'rural land use.' All of these terms are variously introduced, reintroduced, interpreted and reinterpreted in the different rural land Proclamations, both at the Federal and Regional levels. At times, it is not even easy for a rural farmer to grasp clearly what exactly his rights are over his land holdings.

Of paramount importance is the clarity introduced in this section to the distinctions that need to be made between land holding right and land use right. Land holding right under present day Ethiopia's rural land law and policy could be compared to the civil law concept of possessory right up on which land use right is founded. As examined in this Chapter, only the Amhara and Benishangul Gumuz rural land Proclamations have provided for the distinction between rural land holding and use right while all the rest have failed to do so. The relevance of this distinction in cases of transfer by rent and inheritance is explained in detail in the forthcoming sections. The Chapter argues that having a distinct conceptualisation of these two rights is crucial for making rural land rights in Ethiopia more robust and expand the rural poor's assets with better transferability.

The restrictions on land holding rights being freely tradable, and the threats of dispossession by the government, result in a high level of insecurity of tenure and provide a disincentive to long-term investment in the land. These problems of restrictive transferability and tenure insecurity tend to create a mind-set in which land is looked upon as simply ground to stand on, feed from and be sheltered in on a day-by-day basis. The point to be made here, therefore, is what does it mean for a rural person to have a land use right? The SNNPRS's rural land Proclamation provides definitions for two closely related concepts, namely 'rural land use,' and 'holding right,' as follows:
“Rural land use” means a process whereby rural land is conserved and sustainably used in a manner that gives better output.\(^{492}\)

“Holding right” means the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for the purpose of agriculture and natural resource development, lease and bequeath to members of his family or acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same.\(^{493}\)

Therefore, we do not find a direct definition for rural land use right, and instead the elements that define the use right are found within the definition of a “holding right”.\(^{494}\) How these two concepts are treated under the various rural land laws, in contradistinction to the Federal and the SNNPRS, is discussed under section 4.2.1. (b) below.

**Customary holdings and pastoralists**

The law also classifies rural land as a “private holding”, a “communal holding” and a “state holding.” These three types of holdings more or less comply with the traditional classification employed in various legal systems.\(^{495}\) However, unlike the Kenyan land law, for example, the Ethiopian legal system refrains from using the term “customary holdings”. These types of holdings exhibit a ‘complex set of property rights to land and to natural resources that may overlap.’\(^{496}\) Therefore, ‘customary land holdings give rise to land rights which are outcomes of negotiations, struggles, disputes and implicit agreements embedded in social relations of family, kinship and community.’\(^{497}\) The non-recognition of customary holding raises a concern, in the case of Ethiopia, when one looks at the land holding status of pastoralists and semi-pastoralists. These groups of society, whose land holding right is expressly recognised together with peasants\(^{498}\), are defined as follows:

---

\(^{492}\) Art 2(5) of SNNPRS Proclamation 110/2007.

\(^{493}\) Art 2(6) of SNNPRS Proclamation 110/2007.

\(^{494}\) These two definitions are one of those provisions taken verbatim from the Federal rural land Proclamation. Art 2(3) 7 (4) of Proclamation 456/2005.

\(^{495}\) See for example Arts 62-64 of the Constitution of Kenya 2010 and also see Art 3 of the Kenya Land Act 2012.


\(^{498}\) Art 2(4) of Proclamation 456/2005 and Art 2(6) of SNNPRS Proclamation 110/2007.
“Pastoralist” means a member of a rural community that raises cattle by holding rangeland and moving from one place to the other, and the livelihood of himself and his family is based mainly on the produce from cattle; “Semi-Pastoralist” means a member of a rural community whose livelihood is based mainly on cattle raising and to some extent on crop farming.

It is, however, problematic to categorise their holding type as “private”, and neither does it fit into the definition of communal holding, since in respect to the latter the law states:

“communal holding” means a land out of government or individual possession and is being under the common use of the local community as a common holding for grazing, forest and other social services.

There is, nonetheless, a tendency to use in Ethiopia the term “communal holding” to describe the pastoralist’s land holding. A case in point is the identical paragraph from the Preambles of Proclamation 110/2007 of SNNPRS and Proclamation 456/2005, mentioned in the previous section of this Chapter, where it states ‘pastoralist areas where there is tribe-based communal land holding system.’ The Afar Regional State, the predominantly pastoralist Region, has issued a Rural Land Use and Administration Policy, where it describes, among other things, the objective condition of land use in the Region, stating:

Rural lands in the Region are mainly administered under clan leaders. The government also administers rural lands in a few areas where there are state farms and national parks that are found in Zone Two. There are certain areas where rural lands are administered by individuals in areas where sedentary farming prevails in Argoba Special Zone. Such lands are mainly used for agriculture and grazing purposes. The lands that are under clans and clan leaders are mostly used as communal grazing lands and communal farms.

---

502 Para 9 of the Preamble, SNNPRS Proclamation 110/2007 and Para 6 of the Preamble, Proclamation 456/2005. See also Figure 3 above.
503 According to the 2007 National Population and Housing Census, 92% of the population of the Afar Region is rural pastoralist and agro-pastoralist.
The clan system referred to in this policy document undoubtedly refers to the traditional institutional arrangements in the administration and use of such pastoral lands, for which the term "customary holding" would have been the preferred terminology, rather than the narrowly defined "communal holding" as quoted above. However, Ethiopia has long exhibited a reluctance to give recognition to customary laws within the operative system of law. As far back as 1960, it was declared in the Civil Code Article 3347 that 'Unless otherwise expressly provided, all rules, whether written or customary, previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.' With the desire for a complete overhaul of the traditional legal structure, Ethiopians did not wish the codification process to be 'a work of consolidation,' wrote the drafter of the Civil Code, nor 'the methodical and clear statement of actual customary rules.' The University of Paris professor who drafted the Code explained the difficulties of maintaining custom within the Ethiopian context, and the preferred position taken in this Code, as follows:

They wish it to be a program envisaging a total transformation of society and they demand that for the most part, it set out new rules appropriate for the society they wish to create[...]. And] to follow strictly Ethiopian customs would have been to run up against an impossibility of fact; an impossibility because in certain matters there is a total absence of customs[...] The same impossibility existed in other cases as to a variety of customs. The Ethiopian nation is composed of communities which often do not follow the same customs. This fact is true not only when one considers the diverse ethnic groups but it is also true even when one considers the same ethnic group. It is aggravated by the fact that the customs remarkably lack stability.

The Civil Code, therefore, was created in such a way that all the customary rules and practices that needed inclusion were given a place within the Code while the rest were excluded as having no formal utility within the mainstream legal structure. One express recognition of custom insofar as the subject under discussion is concerned was Article 1489, which stipulated as follows:

---

505 Art 3347(1) of the 1960 Civil Code.
506 David, (n 365), p 193.
507 Ibid, pp 194-195
Land owned by an agricultural community such as a village or tribe shall be exploited collectively whenever such mode of exploitation conforms to the tradition and custom of the community concerned.

The Code also mandated the Ministry of Interior to facilitate the task of drawing up a charter for the agricultural communities, with a view to codifying the customs and traditions that regulate the collective exploitation of the land.\(^{508}\) There is, however, no endorsement of this crucial provision of the Civil Code in present-day rural land law and the policy regime of the country. This arbitrary sweeping away of customary rules and practices by the urban elite, supported by foreign draftsmanship, in a way constitutes disempowerment in the sense discussed in Chapter One of this thesis. In Ethiopia’s rural land holding system, therefore, there are no holdings that are held customarily, though communities may have traditionally practiced rules that they use to resolve land-related or other disputes.\(^{509}\) In so far as disputes are concerned, the current constitution has recognised religious and customary institutions as possible forums to which parties to a dispute of family or personal nature may agree to resort to.\(^{510}\) Therefore, the recognition of custom here does not in and of itself constitute the existence of holdings that could be termed as ‘customary tenure’ and they may only be used for dispute resolution with the mutual consent of the parties involved. Moreover, there is no separate legal frame that specifically governs pastoralist land holding and the closest the law can get is communal holding, which hardly accommodates the peculiar land use patterns of the pastoralists.\(^{511}\) This association of pastoralist holding to communal holding puts the future of pastoralists uncertain as the Federal Proclamation on rural land law stipulates, ‘government being the owner of rural land communal rural land holdings can be changed to

\(^{508}\) Art 1490 of Civil Code. It is important to note that Ministry of Interior has long been abolished from the administrative structures of the government.

\(^{509}\) With this regard, almost all the Regions’ Proclamations make direct or indirect reference to the application of customary rules of resolving land-related disputes. See Art 12(1) of the SNNPRS Proclamation 110/2007; Art 28 of the Tigray Proclamation 136/2007; Art 16 of the Oromia Proclamation 130/2007; and Art 29 of the Amhara Proclamation 133/2006 which mentions directly the application of customary rules in resolving disputes by the arbitrators. The Regulations issued to implement the Amhara Proclamation further promote the status of customary rules in matters of land dispute settlement. Here the Regulations provide that customary rules known by the Kebele residents as being applicable for land dispute resolution and which, by the Kebele residents’ decision they have been kept in writing, shall have the same force of law as the normal laws so long as they do not conflict with the Regional and Federal laws. In cases of conflict, the ‘proper laws’ shall have precedence over the written customary rules. See Art 37(1) & (2) of the Amhara Rural Land Regulations 51/2007.

\(^{510}\) Art 34(5) of the FDRE Constitution.

private holdings as may be necessary.\textsuperscript{512} And the current trend of expropriating pastoralist lands for purposes of transferring them to private investors for large scale agricultural purposes, which is discussed in this Chapter, also shows this uncertainty.\textsuperscript{513} The UN Declaration discussed in Chapter Two with respect to indigenous people imposes a duty on States not only to legally recognise and protect their land rights, it also instructs such recognition to be ‘conducted with due respect to the customs, traditions and land tenure systems’ of the people concerned.\textsuperscript{514} Therefore, the generalised reference to pastoralist land holding as communal holding is unhelpful in acknowledging and protecting the peculiar land use patterns emerging from the customs and traditions of Ethiopia’s pastoral communities.

Having briefly examined the status of customary holdings and that of pastoralist holdings, in the following sections, each of the rights words is examined based on the relevant sections of the rural land Proclamations where they exist.

4.2.1.1. Rural land use

The term “rural land use”, which is defined as ‘a process whereby rural land is conserved and sustainable [sic] used in a manner that gives better output’\textsuperscript{515}, is directly duplicated from the Federal Rural Land Proclamation Article 2(3) and appears in the Oromia and Afar Rural Land Proclamations in a more or less similar fashion.\textsuperscript{516} The term simply explains objectively the “duty” aspect of being a holder of rural land, by stating that it involves looking after the land for its sustainable use and conservation in a manner that ensures better yields. It stands as a process on its own accord, therefore, irrespective of who the holder is, and it is expressed as an inter-generational\textsuperscript{517} conservation process that ensures incremental productivity. It means, as the law puts it, ‘a process whereby rural land is conserved and sustainably used in a

\textsuperscript{512} Art 5(3) of Proclamation 456/2005.


\textsuperscript{514} Art 26(3) of UNDRIP, (n 272).

\textsuperscript{515} Art 2(4) of SNNPRS Proclamation 110/2007 ..

\textsuperscript{516} Art 2(10) of the Oromia Proclamation 130/2007 and Art 2(4) of the Afar Rural Land Administration and Use Proclamation 49/2009 (hereinafter referred as the Afar Proclamation 49/2009).

\textsuperscript{517} As one policy principle of rural land administration, almost all the Regional laws make reference to this inter-generational duty in line with the Federal rural land administration Proclamation that states, as one of its objectives, ‘sustainably conserve and develop natural resources and pass over to the coming generation.’ See Para 2 of the Preamble, Proclamation 456/2005; Para 4 of the Preamble, SNNPRS Proclamation 110/2007; Para 1 of the Preamble, the Oromia Proclamation 130/2007; Para 4 of the Preamble, the Afar Proclamation 49/2009.

92
manner that gives better output. Even if it does not in itself constitute a right, it nonetheless explains what a rural land use right, or simply a holding right, could entail to its holder. A person who is given a land holding right is expected continually to conserve and employ techniques that ensure sustainability and increase productivity, and any failure to do so results in the loss of the land holding right all together. It is, nevertheless, dubious as to whether or not the use must only be for agricultural and related activities. This in a way leaves it open to varied interpretations and could eventually provide a loophole for arbitrary use of executive power by the cohort of local officials. Moreover, by defining “land use” only as a duty, and shifting the “right” aspect as to constitute one element within a “holding right”, it deviates from the normal way of articulating “land use right” as a self-standing concept within a property rights system. As we shall see in the next section, however, the contents of the law more or less treat “holding right” and “use right” as synonyms.

4.2.1.2. Rural land “holding rights” vs. rural land “use rights”

In defining the term “holding right” as “the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for the purpose of agriculture and natural resource development, lease and bequeath to members of his family or acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same”, the specific type of use is expressly mentioned as being “for purposes of agriculture and natural resources development”. Moreover, the lists of entitlements that a holding right confers on a person are exhaustively provided in this definition, and in consequence the lists impose limitations on what one can do with his land. Accordingly, a landholder shall have the right to:

- Use the land for agriculture and natural resources development purposes;
- Lease [the holding right] to others;

518 Art 2(4) of SNNPRS Proclamation 110/2007 and under the Oromia and Benishangul Gumuz rural land Proclamations, this definition appears in Arts 2(10) and 2(3), respectively.
519 See for instance Art 10(1) of SNNPRS Proclamation. For detailed discussion on the loss of holding right see section 4.2.3.
520 See for example Art 7 on ‘duration of rural land use right’; Art 8 on ‘transfer of rural land use right’; and Art 10 on ‘obligations of rural land users, SNNPRS Proclamation 110/2007.
521 Art 2(6) of SNNPRS Proclamation 110/2007.
523 It is, however, important to note that in the content of the Proclamation, the term ‘rent’ is used instead of ‘lease,’ and the term ‘land use right’ is used instead of ‘holding right.’ See Art 8 (titled as ‘Transfer of Rural Land Use Right) of SNNPRS Proclamation 110/2007. The Federal Rural Land Proclamation is similar with
• Bequeath [the holding right] to members of the family or other lawful heirs;

• Acquire property produced on the land by one’s labour or capital; and

• Sell, exchange or bequeath those properties produced by labour or capital on the land.

The distinction between holding right and use right under the rural land law regime of Ethiopia in general lacks clarity. Property right, an institutional arrangement, must clarify the rules with regard to ‘exclusivity, inheritability, transferability, and enforcement mechanisms.’ A use right, under Ethiopia’s constitutional order, is what individuals, either privately or collectively, “own” as far as land as an object of property is concerned, while the land itself is state-owned. There is therefore a clear separation between ownership of the land, which is held by the state, and ownership of the produce of the land (trees, houses, and plantations) and of the right to use the land, both of which are held by the land holder. The classical bundles of triple rights that an owner has over a particular object of property are usus, fructus and abusus, and because of these triplets the Ethiopian Civil Code calls ownership ‘the widest right that may be had on a corporeal chattel.’ The French professor’s work on this topic is redolent of the Code Napoleon’s influence under which he was operating. Though this influence is ubiquitous throughout the Code, the resemblance between Article 1204 cum 1205 of the Ethiopian Civil Code and Article 544 of the French Civil Code is unmistakable. The cumulative reading of the two Articles of the Ethiopian Civil Code provides the following:

Ownership is the widest right that may be had on a corporeal chattel[...] Without prejudice to such restrictions as are prescribed by law, the owner may use his property

---

524 Again, the specific provision on inheritance employs ‘land use right,’ and not “holding right” which can be bequeathed. Art 8(5) of SNNPRS Proclamation 110/2007. See also the identical Art 8(5) of the Federal Rural Land Proclamation 456/2005. 525 Feder and Feeny, (n 186), p. 136 526 FDRE Constitution Art 40(3), (4), & (5). 527 This form of property rights arrangement where title to land is vested in the state so that individuals have rights only of use and occupancy is also common in other African countries such as Mauritania, Nigeria, Tanzania, Zaire, and Zambia. Gershon Feder and Raymond Noronha, ‘Land Rights Systems and Agricultural Development in Sub-Saharan Africa,’ (1987) The World Research Observer, Vol 2, no 2, 143, p 150. 528 Art 1204(1) of the Civil Code.
and exploit it as he thinks fit[...] He may dispose property for consideration or gratuitously, *inter vivos* or *mortis causa*.\(^{529}\)

This wide right was also applicable to rural and urban lands in Ethiopia until the drastic shift in 1975 that significantly narrowed the wide right of ownership, giving only a use right in land together with the ownership of the produces of and buildings on the land. That being the case, a meaningful definition of the nature, contents and breadth of this use right is what a rural land law should, among other things, provide for. According to the definition we have seen above, it is a rural land holding right that gives rise to a rural land use right. When this is operationalised in the detailed provisions of the Rural Land Proclamation, however, the use right primarily carries the sense of ‘the right to be acquired, and transferred through rent or bequeathal.’\(^{530}\) Almost all rural land administration laws use the term “holding certificate” to mean the document that is to be issued by the competent authority as evidence of the possession of a rural land use right.\(^{531}\) This means that a person’s land use right is legitimised by his holding right, as evidenced by the holding certificate. Having a clearer view of the distinction between these two terminologies becomes extremely useful, as we shall see below, when a farmer with a land holding right temporarily transfers his right of use under various contractual arrangements, such as rent. We may for now take from the preceding discussion that a land holding right means the right to have physical control of the specified rural land\(^{532}\) (either privately, communally or as corporate body, such as the state and other institutions), evidenced by a holding certificate, and entitles the holder to the various prerogatives as detailed in the “holding right” definition. Furthermore, there is no harm or legal difficulty in naming these “prerogatives” “land use rights”.

Among the catalogues of rights listed above as constituting a holding right, the first three stand out as the core, while the rest are contingent rights that flow naturally from the first three. Therefore, a land holding right yields to the holder each of the rights of *usus*, *fructus* and *abusus*, albeit with a completely modified and minimal scope. It is interesting that even

\(^{529}\) The corresponding French Civil Code Art 544 provides: Ownership is the right to enjoy and dispose of things (*biens*) in the most absolute manner, provided no use is made of them contrary to legislation or regulations. See also Shael Herman, ‘The Uses and Abuses of Roman Law Texts’ (1981) The American Journal of Comparative Law Vol 29, 671, p 673

\(^{530}\) See again Arts 7, 8 and 10 of SNNPRS Proclamation 110/2007.

\(^{531}\) Art 6(3) of Proclamation 456/2005 and SNNPRS Proclamation 110/2007; Art 24 of the *Amhara* Proclamation 133/2006; and Art 6(2) and 10(3) of the *Afar* Proclamation 49/2009.

\(^{532}\) Perhaps one point of distinction when it comes to pastoralists is the absence of this physical control of the land that they hold and use.
the transfer, or *abusus*, right has found a niche, though it only allows bequeathal, and even then only to specific groups of individuals that the law refers to as "family members". Thus, one may, through possession of a holding right, use the land, but only for specified purposes, which also includes the right to rent it out within the prescribed conditions of the law, as discussed in section 4.2.2, collect the fruits on which s/he acquires full and unrestricted ownership right and also "transfer" the use right, but only by inheritance or donation, and only to one's family members. One can observe, therefore, how much the holding right is burdened by all of these restrictions on use and transfer, not to mention the most serious sources of rights' curtailment that emanates from the government's power on eminent domain.\(^{533}\)

A brief comparison with other Regions' efforts to translate the framework law to their own contexts reveals that they more or less converge in articulating the holding right and use right. For instance, below is how the *Amhara* Region's rural land Proclamation law defines the holding right:

"Holding Right" means a right of any farmer or semi pastoral or any other body vested with rights on it in accordance with this Proclamation to be the holder of a land, to create all asset [sic] on the land, to transfer an asset he created, not to be displaced from his holding, to use his land for agricultural and natural resource developments and other activities, to rent a land, to bequeath same to transfer it as a gift and includes the likes.\(^{534}\)

This definition drops "pastoralists" from the list of the subjects of "holding rights", while it brings in 'any other body vested with rights on it in accordance with this Proclamation to be the holder of a land.' The exclusion of pastoralists is justified on the basis that, as shown on the sketch map of pastoralists under figure 8, there are no pastoralist communities in the Region, though there are some that combine the two ways of lives and who were referred to in the definition of "holding right" as semi-pastoralists.

Those legal entities which are clearly different from communities, recognised as other subjects for holding right purposes under the Amhara legislation, are not immediately clear unless we look further at the contents of the Proclamation. Are they legal entities, like

---

\(^{533}\) For detailed discussion of this topic, see section 4.3.2.1. below.

\(^{534}\) Art 2(8) of the *Amhara* Proclamation 133/2006.
companies engaged in agribusiness, or are they not-for-profit organisations and social establishments that provide public services? It appears that the law intends to refer to all these types of institutions as beneficiaries of rural land holding rights, even though the nature of the holding right and the corresponding duties of such establishments are very distinct from the mainstream rural land users. In this regard it is useful to see Article 6 of the Amhara Proclamation, which lists four different subjects who may acquire land: persons who are 18 years of age and above, persons below 18 years, private investors and governmental offices and organisations, non-governmental organisations, mass organisations and religious institutions carrying out their works in the Region. All of these four persons and legal entities may acquire rural land, so it appears that the definitional reference to ‘any other bodies’ as subjects who may enjoy rural land holding rights is meant to capture the last two in the list mentioned above. Those ‘other bodies’ are also considered, though separately, in the SNNPRS and the Federal Rural Land Proclamations as having derivative rights on the basis of rent or lease, as the case may be, from peasants, semi-pastoralists, pastoralists or the government for their specified development objectives.

One further variation that the Amhara Rural Land Proclamation exhibits is the fine distinction it makes between “land holding right” and “land use right”. Particularly in its Part Three, the law legislates on various matters of crucial importance under the broad title “Transfer and Obligations of Land holding and Use Rights” and begins by laying down the rules on the “transfer of holding rights” under Article 15, which generally provides that ‘any person provided with rural land holding may, as stipulated herein under, transfer his holding right in bequeath or donation.’ This section of the Proclamation generally introduces the concept of “representation of assets” in the sense that the use right is made to stand in and of itself and to be negotiated using the certificate of title. De Soto calls this ‘making assets fungible.’ Accordingly, a person may transfer his use right by rent, but transferring the holding right and use right together requires either a bequeathal or a donation. With this concept in mind,

535 Art 6(3) & (4) of the Amhara Proclamation 133/2006.
536 Art 6(1) of the Amhara Proclamation 133/2006.
537 Art 6(2) of the Amhara Proclamation 133/2006.
538 Art 6(3) of the Amhara Proclamation 133/2006.
539 Art 6(4) of the Amhara Proclamation 133/2006.
540 Art 5(15) (a) & (b) of Proclamation 110/2007, and Art 5(4) (a) & (b) of Proclamation 456/2005. Similar stipulations exist under Arts 10, 11, 12 & 13 of the Oromia Proclamation 130/2007.
542 According to de Soto, ‘by uncoupling the economic features of an asset from its rigid, physical state, a representation makes the asset ‘fungible’- able to be fashioned to suit practically any transaction.’ Hernando de Soto, p 55.
Articles 16, 17 and 18 legislate about ‘transfer of land holding right in bequeath,’ ‘transfer of holding and use right in donation’ and ‘transfer of land use right in donation,’ respectively. Below are the relevant parts of the texts of the Amhara Proclamation regulating these two modes of transfer.

**The distinction of holding and use right in cases of bequeathal**

The first rule that Article 16 of the Amhara Proclamation provides is the freedom to transfer either one’s holding or use rights by will to the deceased’s chosen beneficiary, who nevertheless needs to be a farmer or someone who would like to engage in agricultural work as a farmer. Here, therefore, the law creatively opens up the possibility for splitting the holding right from the use right in matters of transfer by bequeathal. A more direct application of this concept is provided under Article 16(4), where it says ‘any landholder may, in will, transfer his holding and for limited period of time his use right to more than one person.’ This is further elaborated by the implementing regulations issued by the Regional Council, which stipulate as follows:

 [...] a deceased may transfer by will his holding right [and] his use right for a limited period of time to several persons. Provided, however, that the beneficiary [under the] will shall gradually acquire the status of a landholder once the defined period of time for the exercise of the use right has expired.

The stipulation of ‘gradual acquisition’ appears unclear, because a person’s right to become a holder must start on the same date when s/he is declared as the beneficiary of a will that the deceased has left and by which s/he has been named as the person entitled to take the holding right. It is only the use right which has to be exercised temporarily by the other person whom the deceased has named as having the right to use. Once the period specified in the will comes to an end, the person who has already acquired the holding right resumes exercising the use right. This interpretation is also consistent with the Amharic version, where the term

---

543 The provision states, ‘Any Person, who is made the holder of the rural land in accordance with this Proclamation, may transfer his holding or using right in will to any farmer engaged or likes to engage in agricultural works.’ And for purposes of this provision, Art 16(2) extends the scope of farmer to also include ‘Persons residing in town and engaged in small income activities to support their lives.’ For discussions on specific matters as far as transfer by bequeath are concerned, see sections 4.2.2.3. and Art 16(1) & (2) of the Amhara Proclamation 133/2006.

544 Though the English version of this provision uses ‘or,’ the right connector should be ‘and,’ which is also in line with the Amharic version of the provision.

“gradual” does not exist. No other Regional law on rural land, except the Benishangul Gumuz Proclamation, has adopted this approach of ‘uncoupling the economic features’ of one’s holding from its physical state. This useful distinction continues throughout the provision, and it becomes relevant also in cases where a farmer has been survived by a spouse as well as his parents, who are engaged or would like to engage in agriculture. In the absence of a testament concerning his holding and/or use right of the rural land at his disposal, the law divides these two between the deceased’s parents, who shall take the holding right as lawful heirs, and the surviving spouse, who shall continue exercising the use right. The three sub-Articles of Article 16 that regulate this situation are as follows:

Sub-Article (5) Where a landholder dies without making a will, as to the holding and use right of his land, the right shall be transferred to his child or family engaged or likes to be engaged in agricultural works[…]; (6) Where a man dies without making a will and he does not have a child residing in the Region and engaged or like to be engaged in agricultural works, or where he does not have family, his parents who are residents of the Region engaged or like to be engaged in agricultural works and previously known for holding the land less than the maximum holding area, shall have a right to inherit the land holding. (7) The right of heirs provided under sub-Article 6 of this Article shall not have prohibition to stay using the land where the alive [sic] spouse continues to reside in that Kebele until he concludes another marriage and where he does not do so it remains for his lifetime.

Therefore, in the absence of a will, legitimate heirs to both his holding and use right are listed in this provision in the order of his children, family members and parents. Where the deceased is survived by a spouse, however, the heirs shall only be allowed to step in as beneficiaries of the holding right, while the surviving spouse, provided they meet the conditions, continues to exercise the land use right.

_____

546 Art 17(6) contains exactly the same statement on the possibility of separating holding right from use right by one’s will as is done under Art 16(4) of the Amhara Proclamation. See the Benishangul Gumuz Proclamation 85/2010.

547 Art 16(5), (6), & (7) of the Amhara Proclamation 133/2006.
The distinction of holding and use right in donation and rent

Transfer by donation is another element of the property rights regime that a rural landholder may make use of. Here also, the Amhara Proclamation adopts a dual view of holding and use rights. Apart from stipulating, in general, a landholder’s right to transfer by donation his holding right, use right or both, it further opens the possibility for a permanent transfer of one’s holding right and a temporary transfer of the land use right. With regard to corporate bodies, the Proclamation is more restrictive, only permitting them to donate their land use right.

The Benishangul Gumuz Rural Land Proclamation, the latest Regional land legislation, promulgated in 2010, is closer to the Amhara approach than it is to the Federal rural land Proclamation, in that it only renames “holding right” as “possession right” and otherwise maintains all the rest of the points in a relatively similar way. The provision on donation of the Benishangul Gumuz Region, however, makes a slight modification to the Amhara one, to read ‘Any holder may transfer permanently his holding right to family members and [his use right] to various persons in gift.’ Here, notwithstanding the lack of clarity on the part of the drafters in employing proper terminologies, the law is stating that one may permanently transfer by gift one’s holding right but only to family members, while it is possible to transfer the right of use of the land holding by gift to any person, so long as it is temporary. Therefore, the situation that this legal entitlement will create is simply that someone may be conferred, by gift, with a rural land use right, irrespective of whether or not he is a family member. Furthermore, during the tenure of that gift, the person to whom the permanent holding right has been transferred will have no use right over the land. Effectively, his right re-commences when the use right of the other person ends, and in this way the rights of the two individuals do not overlap. The Amhara Proclamation omits the “family member” requirement from the provision, presumably because under Article 17(1) beneficiaries of a

548 See section 4.2.2. for discussions of donation and rent as modes of getting access to rural land holding.
549 Art 17(1) 7 (2) of the Amhara Proclamation 133/2006.
550 Art 17(4) states, ‘Organisations may, excluding holding right, transfer their land using right for limited period of time in donation.’ The provision uses the generic term ‘organisations’ without specifying which types of organisations that may temporarily transfer, by donation, their use right.
551 For instance, the title of the Art 18 of the Benishangul Gumuz Proclamation 85/2010 reads as ‘transferring possession and use right in gift,’ while in its content ‘possession right’ is completely absent and instead “holding right” is applied.
552 Art 18(2) of the Benishangul Gumuz Proclamation 85/2010. The Amhara Proclamation 133/2006 under Art 17(2) however states, ‘any rural landholder may transfer permanently his holding right and temporarily his using right to different persons in gift.’
553 Particularly the confusion in employing possession right, use right and holding right is pervasive.
holding right donation are already specified, and therefore a combined reading of the two sub-Articles gives us the same meaning without a need for repetition. Nonetheless, a clearer drafting of the provision would have been to mention the fact that a holding right may only be donated to persons specified, and permanently, while the use right may be donated temporarily to anyone, as is done under the Benishangul Gumuz Proclamation.

When it comes to transfer on the basis of a rental contract, however, the Amhara Proclamation correctly states that it shall only be the use right which may be transferred by rent. In other words, noting the nature of rental transfers, it is only the use right which may lawfully be relinquished temporarily to the lessee, while the lessor maintains the holding right without time limit.

Though they are not similarly articulated in the SNNPRS Proclamation, these provisions of the Amhara rural land administration law are extremely useful. As per the above discussion, the law re-introduces the Civil Code concept of “usufruct”, whereby a donor, for instance, fully relinquishes his holding right and use right to two different individuals. While one will be a usufructuary, the other will just be “a holder”, maintaining the life-long right of holding which s/he may bequeath or donate. By distinguishing the rights of these two individuals, i.e. the usufructuary and the “holder”, the law serves to broaden the individuals’ choices in the exercise of their property rights as they relate to the land they occupy. The Proclamation has therefore undoubtedly benefited as a “latecomer” from the experiences of the other Regions which have already experimented with their rural land legislation. The SNNPRS law, by blurring the distinction that should exist between the holding and use right, has more strictly restricted the transferability of the two.

When we refer to a rural land use right in this thesis, it means a holder’s entitlement to use the land productively for agriculture and natural resource development purposes, to temporarily rent out the use right, to bequeath her/his holding to those named beneficiaries and to have the full ownership rights of use and transfer on the produce of the land that s/he makes by effort and/or capital. These varieties of rights, it needs to be noted, come with a specified piece of land, the holding of which has been assigned or transferred to the

---

554 Art 18 of the *Amhara* Proclamation 133/2006, the title of which itself says ‘transferring land use right in rent.’
555 See the discussion on ‘duration of land holding right’ at section 4.3.1.1.
556 However, as we shall see in our discussions on access to and transfer of rural land use right, donation as one mode of transferability is not recognised under the SNNPRS Proclamation.
individual or group of individuals, or a corporate body, through the various modes of gaining access to rural land. According to the Amhara Proclamation there is a further effort to add robustness to the whole rural land exploitation, by creating the legal regime that enables the holding right and use right to be separated off and to be held by different people at the same time. After examining the various holding types, we now move on to analyse how access to rural land holding and use rights is obtained.

One final point regarding the semantics in the use of the term “holding” and the more familiar property law term “possession” needs to be discussed. Possession is defined under the Civil Code of Ethiopia Articles 1140 and 1141 as follows:

Possession consists in the actual control which a person exercises over a thing [...] The possessor may exercise his control over a thing directly or through a third party who holds such thing.  

This definition has a direct resemblance with its French counterpart, from which most of the provisions of the Ethiopian Civil Code were drawn. And it is stated elsewhere in the Civil Code that this act of physical control over the object provides a presumption of ownership for movables, while for immovable properties one needs to present a title deed. How possession is understood in this sense and how the rural land administration laws articulate land holding have much in common. In a manner that appears to acknowledge this fact, two Regions' rural land Proclamations employ the term “possession right” to describe the same concept that the other Regions call “holding right”. More care, however, needs to be taken in distinguishing holding and use rights, since these terms are often used interchangeably, particularly in the SNNPRS Proclamation, which basically arises from the failure, as detailed above, to recognise them as separate concepts.

---

557 Civil Code of Ethiopia, Arts 1140 and 1141.
558 Art 2228 of the Code Napoleon provides ‘Possession is the retention or enjoyment of a thing or a right which we hold or which we exercise by ourselves or by another who holds it or who exercises it in our behalf. The Swiss Civil Code simply defines possession as ‘the effective control over something.’ See Art 919 of the Swiss Civil Code, cited in Josef Jurt, ‘Actions Relating to Possession and Property in the Swiss Civil Law’ (1955), Tulane Law Review, Vol 29, 735.
559 Civil Code of Ethiopia Arts 1193 for movable properties and Art 1195 for immovable properties.
561 For example Art 6 in some places correctly uses the term ‘holding certificate’ but then introduces the term ‘use right certificate’ in a manner that at times implies that there are two certificates and at times as if these two are interchangeable. See Art 6(5) where it provides, ‘a household head woman shall be given a land holding and use right certificate in her name.’ Here one might expect that there are two separate certificates to be issued. When one sees, however, Art 6(6) where it says ‘a woman shall get a land use right certificate prepared in her
4.2.1.3. Rural land holding types

Rural land holding, the basis for the exercise of one’s rural land use rights, is broadly categorised into three types: private, communal and state holdings. The Amhara rural land administration system adds to this list “investment holding”, which we will examine separately. The categorisation of holdings is crucial for the various purposes mentioned in one of the paragraphs of the Preamble to the SNNPRS Proclamation, where it says ‘it is necessary to establish a database system for different types of land holdings such as private, communal and state land holdings so that it may enable to identify land use rights.’ This statement of purpose sets the objective of categorising holdings, which is a part of the adjudication process for the purposes of registration. Identifying holdings in this form will help, among other things, to establish a robust land information system that ultimately enables individuals, communities and land administration institutions to identify their land use rights in relation to their various holdings.

Private holding

The SNNPRS law defines private holding as ‘rural land occupied by peasants, semi-pastoralists, pastoralists or others that have the legal right to possess land.’ According to this definition, therefore, land in the hands of private occupants during adjudication (first-time registration) is to be regarded as private, without any other condition. An element is added to this definition by the Amhara Proclamation, which states that ‘private holding means a land possessed by any farmer or other body vested with right to use it and existing under private holding having a certificate.' As well as the other requirements under this provision, there needs to be a certificate of holding for a holding to be defined as private. In other words, the definition combines the description of the holding type with the required...
proof by certificate, which is in line with the civil law tradition that any right related to immovable property is to be ascertained through title deed — a requirement which presupposes that all rights in immovable property are already registered.\textsuperscript{566}

Except for the Benushangul Gumuz Proclamation, no other Region's Rural Land Proclamation has this certification requirement in the definition of private holding. It is submitted that certification merely provides proof of the rural land holding and use right and does not actually constitute an element of the holding type as such.\textsuperscript{567} In legal terms, defining the holding type should be performed in a manner that simply explains the nature of the holding, and this would not support the inclusion of the requirement of certification. The certificate, which is to be issued for both private and communal holdings, enables the holder to establish her/his title, and the SNNPRS even makes it a precondition for the use of rural land, by stating 'any individual or organisation shall not use rural land without a land holding certificate.'\textsuperscript{568} In terms of coverage of the certification process, however, the Regions show significant variations, and overall it is too early to expect its nationwide completion anytime soon.\textsuperscript{569}

\textbf{Communal holding}

Another type of holding that is recognised by the various laws is \textit{communal holding}, which in the SNNPRS Proclamation relates to 'land out of government or individual possession and is being under the common use of the local community as a common holding for grazing, forest and other social services.'\textsuperscript{570} The Federal Proclamation, on the other hand, defines “communal holding” as ‘rural land which is given by the government to local residents for

\textsuperscript{566} Jurt, (n 558), p 737.
\textsuperscript{567} The Federal rural land Proclamation, as does the SNNP Region, expressly defines Holding Certificate as 'certificate of title issued by a competent authority as proof of rural land use right.' Even though not as explicit as these two, the \textit{Amhara} Proclamation also acknowledges this legal meaning of holding certificate under its Art 24. Art 2(14) of the Federal Proclamation 456/2005 and Art 2(16) of SNNPRS Proclamation 110/2007.
\textsuperscript{568} Art 13(14), Proclamation 110/2007 of the SNNPRS. Moreover, it obliges the competent authority to issue rural land holding certificates and imposes a duty of cooperation on rural land users in matters of land measurement for purposes of issuing the holding certificate. Arts 6(3) and 10(3), SNNPRS Proclamation 110/2007.
\textsuperscript{569} It was only in 2009, six years after the start of the process and four years after the issuance of the Proclamation, that the \textit{Amhara} Region has reported 98 per cent coverage of the certification process. See 'Land registration and certification; Experience from the \textit{Amhara} National Regional State in Ethiopia (2010), Booklet by SIDA-\textit{Amhara} Rural Development Program (SARDP) and the Bureau of Environment Protection, Land Administration and Use (EMLAU), p 14. The latest available data on coverage of the first time registration and certification can be seen in the discussions on certification.
\textsuperscript{570} Art 2(14) of SNNPRS Proclamation 110/2007.
common grazing, forestry and other social purposes.\textsuperscript{571} One notable difference between these two definitions is that the Federal Proclamation reaffirms who has the ultimate say on defining a land as communal, by stating ‘communal holding means rural land which is given by the government’ to local residents for various common use purposes.\textsuperscript{572} Though mostly such holdings may have developed as a result of pre-existing usage by members of the community within a particular \textit{Kebele}, legally speaking it is the government’s decision to recognise those holdings as communal or even to change existing communal holdings into private holdings, for various purposes that may include transferring them to private investors.\textsuperscript{573} Land held by the pastoral communities should be considered to fall under this category of communal holding.

The other marked difference between the Federal and SNNPR state Proclamations, which is also replicated in the Amhara Proclamation, relates to the limited scope given to communal holdings under the Federal Proclamation’s definition. The SNNPRS definition provides for a wider reach of communal holding, as it is made to mean all land other than that under state and private holding. Moreover, unlike the Federal Proclamation, which leaves the decision to the government, the communal status of land depends on it being used as such by the community. In other words, the fact that it is used for purposes of grazing, forestry and other social purposes gives it the status of a communal holding, which will then be registered and certified. Except for the use of the term “possession” instead of “holding” in the SNNPRS Proclamation, the definition is more or less similar to that of the Amhara Proclamation.\textsuperscript{574}

That said, the Amhara Rural Land Proclamation represents a departure in another respect. As well as “communal holding” it provides for a “common holding”, referring to what is normally called a “joint holding”.\textsuperscript{575} The distinction is useful in the sense of recognising the unique characteristics that communal holdings exhibit, which is defined as such because of the purposes for which they are being put into use and also because of the multitude and indeterminate number of rights holders involved.\textsuperscript{576} A joint holding, on the other hand, gives

\textsuperscript{571} Art 2(12) of Proclamation 456/2005
\textsuperscript{572} Ibid.
\textsuperscript{573} Art 5(3) and Art 5(14) of the Federal Proclamation 456/2005 and SNNPRS Proclamation 110/2007, respectively.
\textsuperscript{574} Art 2(5) of the Amhara Proclamation.
\textsuperscript{575} Art 2(5) that defines communal holding and Art 2(10) that defines common holding. The Amhara Proclamation 133/2006.
\textsuperscript{576} While Art 2(5) uses rural land ‘used by the local people in common’ to define communal holding, for common holding/joint holding, Art 2(10) states ‘holding of land by two or more persons in common,’ clearly
each of the joint holders the right to exclude others who do not have the use right, and
normally the members in jointly held land are smaller in number, unlike members in
communal holdings. They exhibit the characteristics of a private holding, with the exception
of the number of the right holders involved, which is more than one. Because of these and
other distinctions, it is conceptually and legally appropriate to acknowledge communal
holdings and joint holdings as distinct sets of holdings. Particularly, as two or more peasants
with private holdings may voluntarily join together to combine their fragmented holdings
with a view to increasing efficiency and productivity, the law must provide an operative
framework within which this can happen.  

State Holding

A third type of holding that the law defines is state holding, defined in the SNNPRS and the
Federal Proclamations as ‘rural land demarcated and those lands to be demarcated in the
future as Federal or Regional state holdings; and include forest lands, wildlife protected
areas, state farms, mining lands, lakes, rivers and other rural lands.’ It is interesting,
therefore, that apart from forest lands, wildlife protected areas and mining lands, state
holdings also extends to ‘lakes and rivers’ and other rural lands. This broadly captures the
reach of state holding and could be understood to relate to all lands which are not registered
as communal or private. That sense of the residual capacity of the state’s holding as
encompassing all the remaining land does not, as noted in our discussion on communal
holding, seem to be accepted in all Regional laws. The Amhara and SNNPRS’ Proclamations
have a broader concept of communal holding which cuts across the idea of state holding. This
is because both refer to communal holdings as constituting all land out of government or
private holding, and they also enumerate the types of land holding within the state holding in

showing that the number of holders in the former are indeterminate while in the latter, determinate. This is
further clarified in the Directive issued by the Amhara Bureau of Environmental Protection and Land
Administration and Use, titled as ‘Directive on the Implementation of Rural Land Registration and Information
Updating Processes’ issued in Amharic as ‘’ According to this Directive, where the use of communal holding is known to be exclusively by
identifiable number of individuals, the certificate of holding to be issued must be as a common/joint holding of
those specified individuals. See the Directive, Part I, no 1.1.6. (a).

One error on the choice of proper terminology is exhibited in the definition of ‘communal holding’ under the
Amhara Proclamation which states ‘communal holding’ means rural land which is out of the ownership of the
government or private holding and used by the local people in common...’ It must have been intended to mean,
as can be observed from the Amharic version, ‘out of the holdings of the state,’ as both ‘ownership’ and
‘government’ are inappropriate, and also inconsistent with the other sections of the Proclamation, for instance
with the one that defines, ‘state holding’ and not ‘government holding’ or ‘government ownership’ anywhere.
Art 2(5) of the Amhara Proclamation.

Art 2(15) of SNNPRS Proclamation 110/2007 and Art 2(13) of Proclamation 456/2005 which have identical
definitions for ‘state holding.’
a more specific way than is done under the Federal Proclamation. The purposes to which the land is to be put are also indicative of this specificity, by listing forest lands, wildlife protected areas and the like. Indeed, the Amhara Proclamation is even more specific by stating at the end of the definition ‘as well as lands around lakes and rivers,’ and not as the Federal and SNNPRS’s Proclamations do, by saying ‘lakes, rivers and other rural lands.’ This restrictive understanding of the holdings of the state is very crucial, particularly when one observes the past and present large-scale agricultural land deals that usually are illusively described as relating to “idle” or “unoccupied land” while in reality they happen to be used by the community or are temporarily left by seasonal users such as pastoralists.

**Investment holding**

Both the Federal and the SNNPRS Proclamations define only the above three types of holdings. One may, however, infer “investment holding” from the definition of “private holding” under the SNNPRS that refers to ‘other bodies who have the legal right to possess rural land,’ and under the Federal Proclamation that simply states ‘other bodies who are entitled by law to use rural land.’ These stipulations give the impression that all holdings of governmental and non-governmental institutions, of private investors and of social institutions such as churches, mosques and cemeteries are to be regarded as “private holdings”. However, some features of these forms of holdings relating to, for instance, the mode of access and the nature of the land use right in terms of its duration and transferability make them distinct from private holdings.

The Amhara Rural Land Regulations provide a separate definition for “investment land” which, nonetheless, does not feature under the same Region’s Proclamation. According to the Regulations, an investment holding is a ‘plot of rural land registered in the name of an

---

579 Art 2(7) of the *Amhara Proclamation 133/2006* which defines ‘State Holding as ‘rural land demarcated and held by Federal or Regional government for country and area development and growth, and it includes forest land, wild life sanctuaries, mining lands and parks as well as lands around lakes and rivers.’

580 Registration is used as one important criteria for the determination of ‘unused’ or ‘unoccupied’ land that may be transferred for private investors. The expansive legal definition of ‘State holding’ legitimises government’s measures of unduly including lands what have historically been used for grazing, shifting cultivation, and other, particularly in areas where the registration process has not penetrated well. Lavers, (*n 87*), p 804.


583 For instance, a private rural land holder with a land use right as a peasant farmer, pastoralist or semi-pastoralist, may transfer the holding right by bequeath or donation and may not use it as collateral. But a private investor may only transfer (or use as collateral) its land use right. Arts 8(1) & (4) of the SNNPRS Proclamation 110/2007; Art 8 of the Federal Proclamation 456/2005. For more discussions on matters relating to transfer see section 4.2.2.2.
individual, group, or organisation licensed as investor in a certain Kebele and whose use-right is upheld for a definite period of time.\footnote{Art 2(2) (C) of the Amhara Rural Land Regulations 51/2007.} By singling out the investment holding from those generally referred to in the definition of private holding as ‘other bodies,’\footnote{See again Art 2(9) of the Amhara Proclamation 133/2006.} this provision of the Regulations provides a distinct status for investment holding.\footnote{Art 4 of the Amhara Regulations, which lays down the basic rules on ‘the right to acquire land,’ separately treats holdings by investors and holdings by ‘mass organisations, governmental and non-governmental organisations and religious institutions found in the Regional state.’ These latter establishments may, ‘where their duties are not performed for gain, acquire rural land holding which they may use for their undertakings, on condition that such move may not contravene the rights of farmers to acquire land...provided however that they may not transfer same to third parties, either in bequeath or donation.’ Art 4(3) of the Amhara Rural Land Regulations 51/2007.}

Regarding how such an investment holding is acquired, the Regulations further stipulate that it could be from the government through a lease, or from private holders through a rental agreement. Therefore, discussions relating to rural land holding access and duration, as well as the transferability of the holding/use right, must be disaggregated in terms not only of private and communal holding, but also of the distinct holdings of private investors and other corporate bodies. In this regard, the Amhara legal framework provides more nuanced and elaborate rules from which lessons could be drawn by the other Regions.

\textbf{4.2.2. Access to rural land}

Having discussed the meaning, and to some extent contents, of rural land holding and land use rights, it is now necessary to examine the various legal ways of gaining access to land holdings. As examined in Chapter Two of this thesis, in human rights terms, the right to obtain access to land in general and rural land in particular emerges as a derivative right from the right to adequate food which accordingly entitles individuals and communities to a secure tenure, peaceful enjoyment without discrimination.\footnote{Art 4(4) of the Amhara Rural Land Regulations 51/2007.} Since agriculture is the predominant economic activity, the livelihood of rural people is largely dependent on having access to rural land holdings. Moreover, in Regions where there is scarcity of land, such as the SNNPRS, where land is scarcer than in China,\footnote{See notes 285, and 297 together with the accompanying texts.} it is all the more important to have clear rules and procedures for ensuring equitable access to rural land. In the country’s decentralised...
political setting, rural land access is dependent, in principle, on the applicant being a resident of the particular Region where s/he seeks rural land access. This can be ascertained from the various Regions’ rural land Proclamations, which make residence in the particular Region a requirement for gaining a rural land holding. This requirement does not exist in the Tigray Region’s Proclamation, however, nor understandably in the Federal Proclamation. The Tigray Proclamation, under Article 5(1) (d), contains a similar provision to the Federal Proclamation, stating ‘any citizen of the country who is 18 or above and wants to engage in agriculture for a living shall have the right to use rural land.’ The other Regions depart from this model. For example, the SNNPRS Proclamation states ‘any resident of the Region, 18 years or more, who wants to engage in agriculture, has the right of getting rural land holding and use.’ Whether this restriction is applicable in all cases of access, whether it be via government grant, rent, donation or inheritance, is not spelt out clearly in the laws.

The requirement of residence also raises the question as to whether or not an urban dweller within the Region who, however, wants to engage in agriculture may be granted a rural land holding. In the Amhara and SNNPRS Rural Land Regulations there is an explicit requirement that the applicant has to be a ‘rural resident’ to be considered for the right to acquire a rural land holding. The Amhara Regulations, however, provide for a few exceptions from this rural residency requirement, relating to ‘persons temporarily residing in urban centres for purposes of education, national service or any similar duty.’ Moreover, a former urban dweller who has just moved to a rural area with the intention of engaging in an agricultural occupation is also exempted from the rural residency requirement. When it comes to the SNNPRS, the Regulations provide the requirement of being ‘a peasant or pastoralist living in

590 It is qualified as ‘in principle’ because there are no restrictions of residency to a particular Region, if someone wants to get land access on the basis of rent agreement with person having rural land holding. See the discussion in section 4.2.2.5. on access to rural land through rent.
591 Art 5(2) of SNNPRS Proclamation 110/2007, the Amhara Proclamation 133/2006 (see also Art 6(1) of the Amhara Proclamation together with Art 5(2)) and the Benishangul Gumuz Proclamation 55/2010 and Art 5(1) of the Oromia Proclamation 130/2007.
592 As the Federal Proclamation is a framework legislation issued by the country’s highest legislative organ, the House of Peoples’ Representatives, taking National citizenship, rather than Regional residency, is a more plausible approach. See Art 5(1)(b) of Proclamation 456/2005 that simply states ‘any citizen of the country.’
594 Art 5(2) of SNNPRS Proclamation 110/2007.
596 Art 4(2), ibid. Art 2(2)(D) these Regulations define ‘national service’ as to mean ‘any military service rendered for a definite period of time by departing from one’s locality or a service rendered to cope with an emergency operation having to do with a certain calamity or participation in public administration as a regular employee, be it in the form of through an election or assignment for a specified duration.’
597 Ibid.
a specific Kebele and having a holding' for the purpose of obtaining a rural land holding certificate. Moreover, the frequent use of terms such as peasant farmers and rural youth in the Proclamation could also be taken as an implicit recognition of this requirement in the SNNPRS, and the Regulations do not make any exceptions to the requirement of being a rural Kebele resident to accommodate those circumstances covered under the Amhara Regulations.

The various means of gaining access to a rural land holding and/or use right under the different rural land administration laws can be discussed under four headings: government grant, inheritance, donation and rent. A critical examination of the various Regional laws on these modes of access to rural land enables us not only to appreciate the cross-Regional variations, but also to evaluate the level of rights protection to individual farmers and communities with regard to land access.

4.2.2.1. Grant by the "competent authority"

As the government is the "owner" of all land, it is the first to be resorted to for gaining access to rural land. As the number of new claimants to a rural land holding climbs higher, there has to be a way of ensuring that those needs, to whatever extent possible, are met. When we discuss a grant as one mode of gaining access to rural land, we are referring to both private and communal holdings. In this respect, the Federal Proclamation broadly states under Article 5(2) that 'any person who is a member of a peasant farmer, semi-pastoralist or pastoralist family having the right to use rural land may get rural land from his family by donation, inheritance or from the competent authority.' Similarly, the SNNPRS

598 Art 6(3)(A) of the SNNPRS Rural Land Regulations 51/2007.
599 See, for example, Arts 5, 7 and 8 that make use of 'peasant farmer.' When one reads these together with the definition given for 'peasant,' one can easily observe that being a 'member of the rural community' is required for someone to gain access to a rural land holding. For the definition of the term peasant, see Art 2(9), Proclamation 110/2007 of SNNPRS.
600 And as discussed above, the term 'private holding' encompasses not only individual farmers, pastoralists and semi-pastoralists, but also parts of the 'other bodies' which may be considered as having the right to gain access to rural land holding through grant from the government. Whereas, private investors are treated separately when we discuss rent as one mechanism of access to rural land. See Art 5(15)(b) of the SNNPRS Proclamation 110/2007 and Art 5(4)(b) of the Federal Proclamation which are further discussed in this section below.
601 Federal Proclamation 456/2005. 'Competent authority' is defined as 'a body established in accordance with the constitution of a Region to ensure that a system of rural land administration and utilisation is realised in the Region.' Art 2(17) of Proclamation 456/2005. The Amhara and Benishangul Gumuz Regions have accordingly established their own bodies under a title of 'Environmental Protection, Land Administration and Use Authority' within which, a bureau is created that is specifically tasked with land administration and use matters. Art 2(2) of the Amhara Proclamation 133/2006; Art 2(19) of the Benishangul Gumuz Proclamation. In the Oromia and SNNPRS, this authority comes under the Bureau of Agriculture and Rural Development, under the name 'Land Administration and Use Bureau.' Similarly, in Afar Region, the authority is 'The Afar Regional
Proclamation cited above states that ‘any resident of the Region[...] has the right of getting rural land holding and use,’ while also repeating the above Federal Proclamation provision under Article 5(11) that access may be obtained through inheritance, donation or from the competent authority. When we discuss “grants” as one mode of getting access to rural land, we are therefore referring particularly to land given by the competent authority.

While the legislation at the Federal level calls this mode of granting rural land holding ‘distribution of rural land,’ the SNNPRS’s law prefers to use ‘reallocation,’ though both the Federal and the SNNPRS Proclamations converge in the use of the Amharic term shigishig. This Amharic term is in fact closer to ‘reallocation/redistribution’ than ‘distribution.’ A more structured approach is followed in the Amhara Proclamation, which provides under the title “Conditions of acquiring Land holding and Limitations” as follows:

Article 7 (1): Any person residing in the Region[...] shall have a right to acquire land holding in the following manner; (a) by distribution from the Kebele administering the land in which he regularly resides or wants to reside; and (b) by bequeath or gift[...] anywhere in the Region.603

Article 8 of the Amhara Proclamation adds redistribution to this list as another mechanism by which rural land access is to be granted, apart from distribution and via bequeath or gift cited above under Article 7. Therefore, the Amhara legislation treats land redistribution as a separate mode of obtaining access to land holding and distinguishes it from distribution by employing the Amharic terminologies ‘yemeret dilidi’il (to refer to redistribution) and ‘yemeret shigishig’ (to refer to distribution).604 It is useful to distinguish and understand the meanings of distribution, reallocation and redistribution. While redistribution may involve taking land from one holder and handing it over to other claimant or claimants, usually through strict rules and land reform policies, distribution or reallocation are modes by which

State Pastoral Agriculture and Rural Development Bureau,’ which captures this Region’s dominant pastoralist way of life.

Ibid. It is similarly provided under the Amhara Proclamation 133/2006. Arts 5(2) and 6(1).

Art 7(1) of the Amhara Proclamation 133/2006. This provision has one more sub-Art that speaks about the issuance of Regulations that will define the size of holdings, and conditions of transfer by gift as well as rent. The Regional government has already issued these Regulations (Amhara Rural Land Regulations 51/2007).

The use of the term ‘land distribution’ by the Federal and land re-allocation by SNNPRS laws, with similar Amharic translation of ‘yemeret shigishig’ is very confusing. Therefore, while discussing this subject of reallocation/distribution/redistribution, we will specifically be focusing on what the actual content of the provisions say, rather than the heading. Arts 8 (land redistribution, ‘yemeret dilidi’il) and 7(1)(1) (land distribution, yemeret shigishig), respectively, of the Amhara Proclamation 133/2006; Art 9 of Federal Proclamation 456/2005 (land distribution, ‘yemeret shigishig’) and Arts 2(20) and 9 of SNNPRS Proclamation 110/2007 (land reallocation, ‘yemeret shigishig.’)
the government creates rural land holding rights to the benefit of claimants over vacant land or by converting public or state holdings into private holdings. Therefore, redistribution is peculiar in the sense that it implies dispossesssion of existing holders in favour of new ones. The Amhara Proclamation makes this distinction and treats redistribution separately from reallocation or distribution. And this classification of the modes of acquiring holding rights provides a clearer picture to better understand the legal rules. However, the Federal Proclamation employs the term “distribution” exclusively, and one finds the term “redistribution” nowhere in its contents. This is in direct contrast to the Amhara legislation, which uses the term “distribution” and then adds a separate provision on redistribution which does not explicitly feature in either the Federal or the SNNPRS law. Because of its peculiar character, we shall treat redistribution accordingly in a separate sub-heading within this section.

The next question is from where would the Region’s rural land administration institutions obtain land for the purposes of reallocation or distribution? According to the SNNPRS Proclamation, rural land that might be reallocated to those who have the right to rural land holding access may come from any one of the following sources: privately unoccupied land or abandoned land, either because it was left by the holder for more than a stipulated period of time, or because the holder dies without a legitimate heir, where a decision is made to reallocate a communal or state holding as a private holding and through a resettlement programme. The first source is provided under the SNNPR Proclamation, as follows:

Farmlands whose holders are deceased and have no heirs or have gone for settlement or left the locality on own wish and stayed over a given period of time shall be reallocated to landless farmers, semi-pastoralists and pastoralists.

Therefore, land that has been held previously could be considered to have been abandoned, where its holders are deceased and leave no heirs behind, have gone to settle elsewhere or

---

605 Art 9(1) and (4) of SNNPRS Proclamation 110/2007.
606 Arts 5(4) & (14), and Art 9(4) of the SNNPRS Proclamation 110/2007.
608 Art 9(1) of SNNPRS Proclamation 110/2007; Art 9(4) adds about ‘privately unoccupied land’ to the list of rural land that may be reallocated.

112
have left the locality of their own volition for more than a minimum period of time.\textsuperscript{609} In any of these eventualities, according to Article 9(1) of the Region's Proclamation, the land 'shall be re-allocated to landless or small land holding peasant farmers, semi-pastoralist and pastoralist.' The provision lumps together peasantry (engaged in farming), pastoralism (engaged predominantly with livestock on a rangeland with the characteristic of moving from one place to another) and semi-pastoralism (combining farming with livestock raising.)\textsuperscript{610}

Therefore, even if the provision begins by stating 'farmlands,' it anticipates the reallocation of these abandoned farmlands as invariably going to individuals falling within one of these three distinct categories. In other words, it does not differentiate between the various use types that distinctly define the three classes of individuals or communities for purposes of reallocation. One may therefore construe the term 'farmland' in this particular provision more broadly as implying land holding in general, whether it be a peasant’s, a semi-pastoralist’s or a pastoralist’s, which in cases where it has been abandoned, could be reallocated to a new peasant, semi-pastoralist or pastoralist, as the case may be, with only small or no previous holdings. Further support for this interpretation could be sought from the Amharic text regarding the provision that uses the term 'bale'yizotawoch,' literally meaning 'holders/possessors,' which could therefore include peasants, semi-pastoralists or pastoralists.

On the other hand, while the implementing Regulations of the SNNPRS’s Proclamation provide detailed rules on reallocation, reference to pastoralists and semi-pastoralists is completely absent. The relevant provisions, which classify reallocation into rain-fed and irrigable land, and which contain all the possible sources of land for this purpose, state as follows:

\begin{quote}
Article 9-Rural land reallocation (1) Concerning rain-fed land reallocation
A. Unoccupied cultivable land shall be allocated for landless and peasant farmers having smaller land size;
B. Based on the benefit of the local community, and the Region in general, unoccupied state land can be reallocated for farmers or leased for investors;
C. When peasant farmers went [sic] from densely populated areas to relatively sparsely populated areas by resettlement program, they shall get farmland through reallocation;
\end{quote}

\textsuperscript{609} This minimum period has been specified by the Regulations issued to implement Proclamation 110/2007. According to Art 13(5) of these Regulations, a rural land holder, who has left the land fallow for consecutive two years, will lose his holding right. See Art 13(5) of SNNPRS Rural Land Regulations 66/2007.

\textsuperscript{610} Art 2(9), (10) & (11) of SNNPRS Proclamation 110/2007 and see the discussions in section 4.2.1 above.

113
D. Possession with no inheritor can be reallocated for landless and peasant farmers having smaller holding.

Article 13(6)(c)-Communal lands shall not be transferred to private ownership (sic) for the purposes of growing annual crops. However, in areas where there is farmland scarcity, it may be possible to transfer it when it is decided to reallocate by two third of the community.\textsuperscript{611}

These detailed rules provide a comprehensive range of sources from which rural land for reallocation purposes can be obtained. While the Regulations in general make reference only rarely to pastoralists, and while in the provisions quoted above they do not appear as beneficiaries of reallocation, this need not be construed as totally excluding them, since the higher status of the Proclamation that the Regulations are meant to implement would not support such a narrow interpretation. The Amhara rural land administration system, widely recognised as the most capable,\textsuperscript{612} similarly anticipates all of these as possible sources of rural land to be given to land claimants through distribution. The Amhara rules, however, include the concept of redistribution as one mechanism by which rural land holding access could be granted, which is not mentioned under the SNNPRS legislation. Before looking at this issue of redistribution, though, it is important for comparison, and in order to gain a better understanding of access through reallocation/distribution, to look at the relevant provisions of the Amhara Regulations, which state:

Article 5(6)-The right of acquisition of land holding may[...] be applicable where one or the other of the conditions herein below are satisfied:

(a) [...] where it is publicly determined that land redistribution is to take place;

(b) Where it is ascertained that there exists an extra plot of land which is not already allocated in holding and registered as surplus land, due to variety of reasons;

(c) Where it is decided by the public at large that a communal rural land holding is to be distributed for and utilised by individual users.

Article 5(7) where it has been objectively impossible to materialise the right of acquisition of land holding due to an absence of the conditions specified under sub-Article 6 of this Article, and where it is ascertained that there exists sufficient land readily available for possible resettlement in the Regional state, an alternative of land

\textsuperscript{611} SNNPRS Rural Land Regulations 66/2007.
\textsuperscript{612} Lavers, (n 87), p 805.
provision may be considered by formulating and executing a voluntary re-settlement scheme. Since reallocation or distribution are important ways by which the state, as the owner of all land, might ensure that claimants have access to rural land holdings, a number of options must be looked at when making land available for this purpose. These general provisions of the Regulations list these options accordingly, with the first and best option by far being unoccupied land. This could relate to land which has either not been previously held or which has been held but for various reasons has now become unoccupied. The latter could happen because its holder has died without a legal heir, because the holder voluntarily relinquished his right or because the holder has failed to discharge duties imposed on a rural landholder such that he has been dispossessed of his holdings. Each of these situations creates a vacancy of holdings that the Amhara Regulations call ‘surplus land’ for possible reallocation or distribution.

Another option that the laws consider for this purpose relates to converting state and/or communal holdings. Both Regulations underscore the importance of public participation, with the SNNPRS even going to the extent of specifying the required percentage of public support in favouring such a decision.

The last option, as far as the SNNPRS and Amhara laws are concerned, is resettlement. Amhara Regional law not only provides this as a last option after all the others have been exhausted, but it also includes the important requirement of it being voluntary, an aspect which is missing from the SNNPRS Regulations. Since we will be discussing resettlement

---


614 Voluntary relinquishment is one way for a rural land holder to lose his holding right and this understandably creates a vacant land usable for distribution or reallocation. See Art 10(4) of SNNPRS Proclamation 110/2007 and Art 10(3) of SNNPRS Rural Land Regulations 66/2007. See also Art 12(1)(e) of the *Amhara* Proclamation 133/2006 as well as Art 14(1)(f) of the *Amhara* Rural Land Regulations 51/2007.

615 Situations where a rural land holder may lose his holding right because of failure to discharge a holder’s responsibility are considered under Art 10(1) of SNNPRS Proclamation 110/2007 and Art 13(4) & (5) of SNNPRS Rural Land Regulations 66/2007. Relatively detailed rules are provided under the *Amhara* rural land administration laws. See Art 12 and 14, respectively, of the *Amhara* Proclamation 133/2006 and the *Amhara* Rural Land Regulations 51/2007.

616 See the above quoted Art 13(6)(c) of SNNPRS Rural Land Regulations 66/2007 where it provides this option only to be considered exceptionally and where supported by a two thirds majority of the community, presumably living in that particular *Kebele* where the land is located.
separately, we shall briefly examine the other option that the Amhara Regulations provide, which is redistribution.

**Access through redistribution**

Accessing land through the grant scheme is an exceptionally sensitive matter, since it is usually associated with land redistribution — considered one of the critical problems with Ethiopia’s past and present rural land policies. Insecure tenure caused by frequent redistribution measures in the past, and the consequent fear that they could be undertaken in the future, are associated with low investment in land. Although Holden and Yohannes, in a study carried out in the southern areas of Ethiopia, found the positive correlation between land redistribution and tenure insecurity to be insignificant, they also found that land redistribution ‘has created such small farms that the owners have become too poor to purchase farm inputs or to plant perennials,’ which in turn undermines the ‘efficiency and sustainability of land use.’ While granting rural land holding access to the landless is one task of the government, it will have to consider meeting this demand with a policy choice that does not significantly affect the tenure security of present landholders. The current regime’s national policy on the subject is accordingly very cautious, as can be inferred from the following quotation from the country’s first Poverty Reduction Strategy:

In order to protect the user rights [sic] of farmers, their land holdings should be registered and provided with certificate of user rights. In this regard, a guarantee may

---

617 For further discussion of this point, see note 916 and section 4.3.2.4. under the sub-section, “Displacement for purposes of Development” below.

618 Redistribution has always occupied a central place in Ethiopia’s land tenure discussions, and one prominent critic has observed that ‘inappropriate land policy, mainly through its element of continuous land redistribution, has changed the country’s agricultural system towards production for survival, vulnerability, deterioration, and a fragile system.’ Dessalegn Rahmato, cited in Adal, (n 59). See also generally Montgomery Wray Witten, ‘The Protection of Land Rights in Ethiopia’ (2007) Afrika Focus, Vol. 20 (1-2), 153-184.


621 Ibid.

622 The Regional laws also have provisions ranging from those that impose a total ban (such as the Oromia and Tigray Regions) to those that provide for a number of conditions prior to the implementation of land redistribution measures (the SNNPRS and the Amhara Regions have, conditionally, permitted redistribution) as discussed below.
be given to the effect that land will not be re-divided for a period ranging from 20-30 years.623

Notwithstanding this policy direction, redistribution still continues as one of the legally recognised ways by which Regions may provide access to rural land holdings.625 In fact, there are marked variations between Regions as to the extent to which redistribution/reallocation is employed as a mode of obtaining access to rural land holdings, as can be seen in Figure 4 below, which is extracted from a country-wide panel survey of 2,300 households in 115 rural Kebeles conducted by the Ethiopian Economic Association jointly with the World Bank in July-August 2006.626

Figure 4: Access through redistribution/Reallocation

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Tigray</th>
<th>Amhara</th>
<th>Oromia</th>
<th>SNNPRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redistribution624 took place (Household</td>
<td>52.17%</td>
<td>83.33%</td>
<td>92.59%</td>
<td>25%</td>
<td>50%</td>
</tr>
<tr>
<td>respondents by per cent)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frequency</td>
<td>1.47</td>
<td>1.30</td>
<td>1.44</td>
<td>1.92</td>
<td>1.17</td>
</tr>
<tr>
<td>Years since last redistribution</td>
<td>9.44</td>
<td>12.90</td>
<td>9.04</td>
<td>8.46</td>
<td>8.36</td>
</tr>
<tr>
<td>Obtained land holding through redistribution</td>
<td>55.92%</td>
<td>88.44%</td>
<td>58.79%</td>
<td>61.53%</td>
<td>20.58%</td>
</tr>
<tr>
<td>(Household respondents by per cent)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expect increase due to redistribution</td>
<td>8.34</td>
<td>12.40</td>
<td>7.53</td>
<td>9.46</td>
<td>4.80</td>
</tr>
<tr>
<td>Expect decrease due to redistribution</td>
<td>6.13</td>
<td>11.98</td>
<td>10.22</td>
<td>3.19</td>
<td>4.80</td>
</tr>
</tbody>
</table>


624 Though it does not become immediately clear in which sense the term redistribution is being employed in the research, it is implicit in the report that it refers to the taking of land from an existing holder and granting it to another person. See, for example p 1254 where reference is made to Tigray Proclamation that ended administrative redistribution and also the repeated reference throughout the text of the report to the Amhara rural land redistribution. Deininger et al., (n 76), p 1254.

625 Art 9(4) of the Federal Proclamation 456/2005 that provides for this possibility on conditions that it is agreed by the community affected, and it does not go below the minimum holding size, does not result in fragmentation of holdings and generally natural resources degradation.

626 Deininger et al., (n 76).
The Amhara Regional state’s radical land redistribution in 1997 remains by far the most contested example of redistribution. This was carried out on the basis of a Regional law which preceded the first Federal legislation which, according to the constitutional order of the country, was meant to serve as a framework for subsequent laws in the Regions. Furthermore, as reported by Ege and others, it was implemented through a highly secretive process. The legislation accuses the then prevailing status quo of ‘unbalanced possession of rural land’ so as to have ‘subjected the broad peasant to languish in abject poverty,’ because ‘the rural land in many parts of the country has been grabbed by few bureaucrats and elects of agricultural cooperatives who have been proponents of the regime.’ The discriminatory character of this reallocation Proclamation can be ascertained from its scope of application, which was meant to apply only to ‘the areas freed from the Derg regime after 1991, since the distribution of land has not yet been accomplished there.’ Commenting on this piece of legislation and the discriminatory nature of its implementation, Adal wrote:

In the case of the 1996 land redistribution of the Amhara Region, social equity consideration of the land redistribution with the head count as a basic criterion had not been most important and was replaced by a political criterion. According to the land reallocation policy, peasants were stratified into five categories: “bureaucrats”, “remnant feudal”, rich peasants, middle peasants, and poor peasants. Redistribution was then carried out using such political criteria in such a way that regardless of their family size, all those so called “bureaucrats” and “remnant feudal” were allowed to hold a maximum of only

---

627 Svein Ege, *The Promised Land: The Amhara Land Redistribution of 1997* SMU-Rapport 5/97 (Dragvoll Norwegian University of Science and Technology, Centre for Environment and Development 1997); Witten commented on this measure as ‘punitive land redistribution that had left many people afraid of the local governments that had administered’ it. Witten, (n 618), p 161.

628 The Proclamation was titled as ‘The Amhara National Regional State Re-allotment of the Possession of Rural Land Proclamation 16/1996.’ Ege’s account on this process by far is most appealing where he states ‘the implementation of the land redistribution was basically a closed process, with directives coming from above, orders to be fulfilled whether they fitted the local reality or not.’ See Ege, ibid, p 22. See also Adal, (n 59), p 27. Partly, the urgency felt could probably be attributed to an attempt to pre-empt an impending Federal legislation that might impose restrictions on redistribution.

629 Para 2 of the Preamble, the Amhara National Regional State Reallotment of Rural Land Possession Proclamation 16/1996 (hereinafter referred as the Amhara Reallotment Proclamation 16/1996).

630 Art 3(3) of the Amhara Reallotment Proclamation 16/1996. The areas where the redistribution took place before 1991 were parts of Wollo and Gondar Provinces, and some areas in Northern Shoa including Menz. See Bruce et al., (n 50), p 24.
one hectare of land while the other categories were allowed to have up to three hectares.\textsuperscript{631}

The effects of this redistribution of holdings in those areas where it was considered necessary were largely negative, resulting in 'tenure insecurity, land degradation, holding diminution, and negative results on production and land utilisation.'\textsuperscript{632} The redistribution measure also resulted in an early test of the Constitutional Inquiry Commission, since the people of the Region alleged that they had suffered violations of their constitutional right to property.\textsuperscript{633} Many who sympathised with the evicted rural peoples of the Region went onto the streets in protest against this Regional law.\textsuperscript{634}

When the Federal Rural Land Use and Administration Proclamation 89/1997 was promulgated after the controversial law of the Amhara Region, it provided land distribution as one means of ensuring access to rural land holdings to new claimants. This Federal Proclamation, which was subsequently repealed by Proclamation 456/2005, was very brief, with only ten Articles, compared to the present one, which has 21 Articles. It defined distribution of holdings to mean 'a rural land allocation measure taken at intervals, upon decision of the community, with a view to assigning holding rights in a fair and proportionate manner as well as to demarcating land for communal use by peasants.'\textsuperscript{635} Article 6, under the

\begin{itemize}
\item \textsuperscript{631} Adal, (n 59), p 27.
\item \textsuperscript{632} Ibid.
\item \textsuperscript{633} The Case of Biadiglign Meles et al. v Amhara National Regional State (8 May 1997) was disposed by the Constitutional Inquiry Commission, the organ that investigates constitutional disputes and provides expert support to the House of Federation which holds the ultimate power of interpreting the Federal Constitution. The applicants' plea for having a declaration of unconstitutionality on this law because it violated the constitutional order by which the Federal government, and not State legislature, is empowered to issue comprehensive law, was rejected by the Inquiry Commission. As reported by Fiseha, this was because of two reasons: first because law making in the areas of rural land is within the power of the States, and secondly because the subsequent Federal Rural Land Administration Proclamation 89/1997 had retroactively endorsed State laws that were enacted prior to its promulgation. Assefa Fiseha, 'Federalism and the Adjudication of Constitutional Issues: The Ethiopian Experience' (2005) Netherlands International Law Review, Vol 52 (1), 1, p 29.
\item \textsuperscript{634} The UNDP Emergencies Unit in Ethiopia had reported on the public outcry that accompanied the promulgation and implementation of this law that resulted in mass demonstrations protesting against the measure. The report states, 'An estimated 2000 farmers from Gojjam and North Shewa Zones of Region 3 [which is Amhara Region] came to Addis Ababa to protest against the land redistribution. They claimed to have lost some of their land holdings because they had been associated either with the previous Derg military administration or the regime of Emperor Haile Selassie I. They complained that their land was being confiscated and given to those peasants who sympathise with the EPRDF government [the ruling party]...In the largest demonstration in recent years, an estimated 20,000 people gathered for a peaceful protest in Addis Ababa's Meskel Square to support peasant farmers from the Amhara Region who oppose the government land redistribution programme. The protesters called for the release of university students still in detention following their arrest in March at the Addis Ababa University demonstration opposing the land distribution.' See UNDP Emergencies Unit for Ethiopia, Horn of Africa Monthly Review, (1997).
\item \textsuperscript{635} Rural Land Administration Proclamation no 89/1997, Art 2(4).
\end{itemize}
title ‘contents of a land administration law,’ exclusively dealt with matters of distribution of holdings in 12 different sub-headings. Moreover, under Article 8, it endorsed rural land laws previously enacted by any of the Regions.\textsuperscript{636}

Land redistribution in the sense of taking land from an existing holder and granting it to another in and of itself constitutes an important element of agrarian reform whenever it is undertaken\textsuperscript{637}, with the latter being taken as synonymous with redistribution in one important UN Report, where it stated as follows:

In its narrower and most popular sense, “land reform” means the redistribution of land. This is the type of reform which arouses the deepest political passions, for in a predominantly agrarian society a redistribution of land means a redistribution of wealth, of income, of status, and political power, in short a revolutionary change in social structure.\textsuperscript{638}

Because of its sensitivity, some of the Regions, like Oromia, imposed a total ban on future redistribution except for irrigation land\textsuperscript{639}, while the Amhara Region placed stringent conditions on any future redistribution. Redistribution is possible under Amhara law, but only where 80\% of the inhabitants of the particular rural \textit{Kebele} have given their written consent.\textsuperscript{640} The principle, however, is Article 8(1) of Proclamation 133/2006, which states ‘in any part of the Region, distribution and allotment shall not be carried out since the coming into effect of this Proclamation.’

The SNNP Regional State, even though it is one of the many Regions where the redistribution of holdings is not that prevalent, as shown in Figure 4 above, appears to have

\textsuperscript{636} See Art 8 that had stated, ‘A land administration law heretofore enacted by any Regional Council shall be applicable insofar as it is not inconsistent with this Proclamation.’ This was the relevant provision that was pointed out by the Constitutional Inquiry Commission as having retroactively endorsed the \textit{Amhara} Region’s redistribution law. See the Federal Rural Land Administration Proclamation 89/1997. Also see Fiseha, (n 575).

\textsuperscript{637} As an element of agrarian reform, it is considered as one corrective measure to mitigate inequalities in asset holdings. Martin Ravallion, ‘Can High-Inequality Developing Countries Escape Absolute Poverty?’ (1997) World Bank Economic Letters Vol. 56, 51; Empirical studies have also revealed that there is a direct correlation between initial inequalities in terms of asset holdings and poverty or slower growth, and therefore redistribution of particularly fixed assets like land does better than redistribution of other forms of assets in stimulating faster economic growth. Klaus Deininger and Lyn Squire, ‘New Ways of Looking at Old Issues: Inequality and Growth’ (1998) Journal of Development Economics, Vol 57, 259.

\textsuperscript{638} UN Progress in Land Reform, Fourth Report cited in Rahmato, (n 352), p 40.

\textsuperscript{639} Art 14(1) of the Oromia Proclamation 130/2007. See also Art 22 of the \textit{Tigray} Proclamation 136/2007 that endorses Art 9 of the Federal Proclamation 456/2005 that provides strict conditions for redistribution of holdings.

\textsuperscript{640} Art 8 of the \textit{Amhara} Proclamation 133/2006 together with Art 6 of the \textit{Amhara} Rural Land Regulations 51/2007 which contain very elaborate rules on the subject.

120
exercised caution in employing a measured terminology that only talks about reallocation on abandoned or unallocated land. It also totally omits the term “redistribution” from the Proclamation, although it was included in its draft. At that stage, indeed, the issue of redistribution in the draft attracted significant criticism as a recipe for tenure insecurity. One such criticism came from the USAID Ethiopia Land Tenure Administration Program (ELTAP) team, which is a programme implemented under Rural and Agricultural Incomes with a Sustainable Environment (RAISE), who argued:

[the draft law of the SNNPRS] states that “redistribution means the process of allocation of land that is irrigable or that is designated by law”. The ordinary meaning of redistribution is redistributing land already held by holders. The definition given to redistribution in the draft is a definition that is too stretched and far from the ordinary meaning and by doing so it confuses the difference between allocation of land that is not held by person or that is abandoned and the major tenure security issue of redistributing land to new comers already possessed by peasants. It should be deleted.\(^641\)

The term “redistribution” was indeed dropped altogether from the final text of the SNNPRS Proclamation, to be replaced by the term “reallocation”, which is defined to mean ‘an activity of reallocating land to individual(s) applicable only on the irrigated land or on the land its necessity being determined by the law.’\(^642\) When one compares the Amhara Regulations with the contents of the relevant provisions of the SNNPRS Proclamation 110/2007, such as Article 9, and its corresponding Article 9 of the SNNPRS Regulations 66/2007, there is a marked difference in terms of what holdings may be subjected to redistribution or reallocation. While in the former, redistribution could affect any type of holding, including private and communal, the SNNPRS only considers unoccupied cultivable lands – those private holdings without an inheritor and state holdings as liable to reallocation.\(^643\) The Regulations of the Amhara Region, however, simply state:

---


\(^642\) Art 2(20) of Proclamation 110/2007.

\(^643\) Art 9(1) of the SNNPRS Regulations 66/2007.
Land redistribution may be carried out in the Regional state under exceptional circumstances, where those who possess land in excess of the size of the minimum prescribed by these Regulations and at least 80% of the Kebele inhabitants have consented on the subject and submitted their request for same to the authority's Woreda representative office.644 Nonetheless, it provides various procedural guarantees, including the exclusion from deliberation on the issues of whether or not to redistribute holdings of those Kebele inhabitants with no holdings or with holdings below the legally prescribed minimum size.645 Moreover, it also includes a compensation scheme for the person whose land is taken away, relating to any developments s/he had made on land which is subject to redistribution.646 The Amhara land administration legislation therefore imposes a number of stringent conditions, insofar as redistribution affects private holdings, conditions which are absent in the parallel SNNPRS regulations.

In the SNNPRS, as mentioned above, the other type of land that can be subject to distribution is 'privately unoccupied land as well as lands under the possession of community or government which [have] potential for agriculture,' with the Proclamation stipulating that such land 'shall be reallocated to landless youths and peasants who have less farmland.'647 Even if it is clear that the land that is to be made available for reallocation is agricultural land, since the provision states that it should have 'potential for agriculture,' it is less clear why youths and peasants with smallholdings are singled out as beneficiaries. Apart from their being predominantly landless, one reason for singling out the youth could be that these sections of society embrace a better prospect for productive use of the land. Moreover, they also represent a significant and powerful potential political constituency that those in power might wish to placate.648 Making specific reference to youth here, though, gives the

644 Art 6(1) of the Amhara Rural Land Regulations 51/2007. It is important to note here that because of the significance attached to matters of redistribution, the request has to be submitted to the 'Woreda' level which is one step higher than the Kebele rural land administration and use committees, and the lowest being the sub-Kebele rural land administration and use committees. See Arts 25-27 of the Amhara Proclamation 133/2006 and Arts 25-28 of the Amhara Rural Land Regulations 51/2007.
645 Art 6(3) of the Amhara Rural Land Regulations 51/2007.
646 The relevant provision on this subject states '...a land holder whose holdings has been reduced...has the right to obtain, from the person taking over the land, prior compensation commensurate to the value of the assets produced thereon.' See Art 6(5) of the Amhara Rural Land Regulations 51/2007.
648 This is particularly valid in the sense that the so called the 'disaffected youth' represent a major source of ready discontent to be tapped by political opportunists. See generally Hannes Weber, 'Demography and Democracy: The Impact of Youth Cohort Size on Democratic Stability in the World' (2012) Democritisation,
impression that they are excluded from the above case in which abandoned land is to be reallocated. And when one looks at the Regulations, the provision on reallocation totally avoids the term “youth”. Instead, a general reference is made to “landlessness” and to those with smaller holdings.649

Other situations where individuals may acquire land holdings through reallocation or redistribution relate to where irrigation structures are put in place. This is provided for under Article 9(2) of the SNNPRS Proclamation and its Regulations.650 According to the Proclamation, ‘Re-allocation shall be made when irrigation structure is constructed by the expense of the government and held by peasants, semi pastoralists or pastoralists in order to use “irrigable land properly and equitably”.’651 The other sub-paragraph in this Article further states that “Where peasant farmers, semi pastoralist or pastoralists are evicted from their holdings for the purpose of constructing irrigation structure, land re-allocation shall be undertaken to make them get equitable benefit from the irrigation development to be established. Details shall be determined by the regulation.’652 The construction of irrigation structures, particularly dams, is a massive project that can barely be financed by the farmers themselves, and this appears to be why this SNNPRS Proclamation provision specifically mentions ‘when irrigation structure is constructed by the expense of the government.’653 Two situations that may result in the need for reallocation measures are envisaged in this regard. Firstly, an irrigation project may require the eviction of landholders, in order to obtain sufficient land for the construction of infrastructure. In this event, holders-turned-landless peasants, semi-pastoralists or pastoralists would have to be given alternative land by way of reallocation. Secondly, after putting the structure in place, the landholders around the area would have to obtain access for the equitable use of the irrigation, which might oblige the authorities to carry out reallocation. While Article 9(3) provides for the first possibility of reallocation as a redress to irrigation construction-induced evictions, Article 9(2) envisages

---

iFirst, 1-23. It is also important to note 28% of the population of SNNPRS is defined as youth. See the Ethiopia’s Central Statistics Agency 2007 Population and Housing Census Report, p 150.


650 Art 9(2) of SNNPRS Proclamation 110/2007.

651 Art 9(3) of SNNPRS Proclamation 110/2007.

652 The Regulations mention also ‘non-governmental organisations’ as additional suppliers of irrigation structures. See Art 9(2) of SNNPRS Regulations 66/2007.

123
the second that relates to reallocation for purposes of equitably sharing the benefits that come with irrigation structures.

The Regulations issued subsequently to the SNNPRS Proclamation, however, did not provide the expected details, except on one crucial point relating to the scope of application of the rules on reallocation.\[654\] As there could be previously constructed irrigation structures, the status of which was not immediately clear from Article 9 of the Proclamation cited above, the Regulations have clearly excluded those types of situations from being subject to reallocation, by stating 'Irrigation infrastructures constructed either by government or non-governmental organisations before the issuance of this Regulations shall not be redistributed.'\[655\] The next sub-paragraph then states that reallocation shall be undertaken in relation to those irrigation infrastructures constructed after the issuance of the Regulations for the betterment of society.\[656\] This is presumably meant to maintain pre-existing arrangements for the utilisation of irrigation structures.\[657\] The lack of detail in the SNNPRS’s Regulations is particularly evident with regard to the implementation of the reallocation, how to handle matters of compensation for any assets that might exist on the land which has now been reallocated, whether or not the decision requires public participation and the organ responsible for initiating the process.\[658\]

In this section we have examined the various rules pertaining to access to rural land through administrative mechanisms of distribution and redistribution. As one crucial non-market scheme of allocation of rural land holding rights to be exercised by the state, distribution and redistribution of holdings will have to be carried out with caution, so as not to affect tenure security for existing holders while trying to fulfil the needs of the landless. In the next subsections, the rules on acquiring rural land holding and/or use rights through rent, bequeath and donation will be examined.

---

654 Art 9(2) of the SNNPRS Rural Land Regulations 66/2007.
657 A more or less similar stipulation exists under the Amhara Rural Land Regulations 51/2007 Art 6(13). However, distinction that the Amhara, Oromia and Tigray Regions’ Proclamations make between modern and traditional irrigation schemes is missing from the SNNPRS law. For instance, the Amhara Rural Land Regulations 51/2007 under Art 6(13), by singling out only modern irrigation that predate the Regulations, it appears to imply that they may be subjected to redistribution; moreover, all the other provisions expressly refer only to modern irrigation schemes, unlike, for instance, the Oromia Proclamation 130/2007, which under Art 14(4)(b) declares that ‘distribution and redistribution of irrigation land shall be applied to both traditional and modern irrigation lands.’
658 Art 9(2) (A)-(C) of the SNNPRS Rural Land Regulations 66/2007 fail to cover all the pertinent rules stipulated under Art 6(6) –(13) of the Amhara Rural Land Regulations 51/2007.
4.2.2.2. Access through transfer

The right to transfer land holding and/or land use rights

Apart from the right to use the land, one additional prerogative that the land holding right brings to the holder relates to the right to transfer his holding and/or use right by rent, gift or inheritance. This right to confer title with regard to a rural land holding on another person is the core development in making rural land use rights increasingly proximate to ownership rights. It is also meant to set the course for the market-based reallocation of land holdings via rent as well as inter-generational sharing of resources through gifts and inheritance, in addition to augmenting the administrative mechanisms of allocation discussed above. Even though the law has slowly opened up possibilities of rent, gift and inheritance, the mortgaging and selling of the rural land use right is still not possible.

Sale and mortgage of land use right?

Unlike, for example, the 1993 Vietnamese land law, which instituted five important rights of the land user, namely transfer, exchange, inheritance, rent and mortgage,®®^ the Ethiopian law has only partial transfer rights through rent, inheritance and donation, all of which are bounded by complex conditionalities.®®® The absence, therefore, of the ability to sell the land use right means that the right to mortgage does not exist. What the decentralised rural land laws in Ethiopia currently permit by way of mortgaging the land use right is limited only to an investor who has rented a rural land use right, and in this regard the Federal Proclamation states ‘an investor who has leased rural land may present his use right as collateral.’®® ^ An investor who holds rural land by lease is therefore allowed to use the right as collateral according to the rural land laws of the Regions, though only the Amhara Region has detailed rules governing this point, including the effects of such arrangements in case of default.®®

---

°°° Art 3(2) of the 1993 Land Law of Vietnam 1993 which declared ‘Household or individual receiving land allocated by the State shall be entitled to exchange, transfer, lease, inherit, mortgage the land use right.’ Available at <faolex.fao.org> accessed 13 June 2014.

°° For discussions of these conditions, see section 4.2.2.3. and the following.


°°° The SNNPRS only has the exact provision Art 8(4) of the Federal Proclamation on the possibility of using the land use right that investors have obtained by rent or lease as collateral and the Region’s Rural Land Regulations do not have even a single provision on the matter. When it comes to the Amhara Region, there is Art 19 in the Proclamation which, in five sub-Arts, exclusively deals with mortgage of land use right and this is further augmented by Art 13 of the Amhara Rural Land Regulations.
The Amhara Rural Land Regulations, under Article 13(1), provide the following on the consequences of default:

[...]

Therefore, an investor is able to access the credit market by providing the land use right as collateral, and the detailed rule stated in this Amhara Regulation serves to further operationalise the allowance given by the Federal framework legislation. When it comes to individual farmers or pastoralists with rural land holdings, however, they may not be able to mortgage their use right, and the policy objective behind such prohibition is said to be 'ensuring that rural farmers do not lose their land through default on loans.' However, a study suggests that guaranteeing the right to mortgage the land use right would have a positive impact on tenure security and increase investment incentives.

The initial draft of the Amhara rural land Proclamation took a radical position in permitting mortgage by rural land users, but this was later removed from the final law. The USAID-sponsored rural land project team’s comment on that draft praised the proposed move as ‘a very important provision that encourages mobility of labour from the rural areas and that has the effect of easing the pressure on rural land.’ The initiative had limitations, though, in that its provision that ‘any rural landholder, who has the right of use, may give in collateral

663 Art 13(1) of the Amhara Rural Land Regulations 51/2007.
664 It is to be noted that investors obtain the land use right from two sources; individual farmers and the government. And according to Ambaye, practically it is the land use right obtained from the government that is being used as collateral by investors. Two factors are mentioned as having a bearing on this bias; first, the land usually rented from individual farmers is so small that it may not be attractive for the banks to accept it as collateral, and [secondly individual farmers usually prohibit the mortgaging of their land while entering into rent agreements with investors. Ambaye, (n 445), pp 12-13.
665 Witten, (n 618), p 175.
666 Holden et al., (n 52). This point is further discussed under section 5.3 (ii) as one of the hurdles that render cooperatives unable to access credit institutions.
the land use right or the property developed on the land or both to a legally recognized financial institution⁶⁶⁸ was criticised by the rural land specialist of the USAID project as follows:

The Article is drafted carefully with all the controlling mechanisms in place. But this law may suffer from lack of applicability because financial institutions in Ethiopia do not have the interest or the organization or the financial capability to take only use right of a piece of land as collateral. They are interested to sell the collateral in the event that the debtor fails to pay her debts rather than using the collateral for a certain number of years for repayment. It is suggested that the right to transfer use right in collateral would be applicable if it is not restricted to financial institutions and if individual lenders are also allowed to hold use right as collateral.⁶⁶⁹

As can be observed from the comment, easing the restrictions on the transferability of the land use right would have been preferable by permitting mortgaging, if not to individuals as the comment proposes, but to community-owned credit institutions and cooperatives, with the necessary adjustments being made to the transferability of the land use right. On the other hand, empirical findings suggest that individual farmers are risk-averse when it comes to borrowing by using their land, when the only source of their livelihood is the land itself.⁶⁷⁰ In other words, they would not want to risk losing their land in order to acquire loans.⁶⁷¹ The presence of cooperatives could, however, probably mitigate this problem by creating alternative means of income to members and thereby reducing the risk of default. As the laws stand now, however, all the Regions’ Proclamations, in conformity with the framework legislation of the Federal government, permit neither mortgaging nor selling of the land holding and/or use right. Whether Ethiopia’s farmers would be willing to give their land use right as collateral if permitted by law is a subject that requires separate investigation. A constitutional ban as is done by Art 40(3) however renders any future attempt of exploring options with a view to introduce possible changes significantly difficult, if not impossible.

⁶⁶⁸ Ibid.
⁶⁶⁹ Ibid.

127
In the following sections, the rules on allocations through bequeathal, donation and rent are discussed. Broadly speaking, two forms of transfer could be considered: the transfer of the perpetual right of land holding, which may be done through inheritance and gift/donation, and the temporary transfer of the land use right through rent and through donation/gift from corporate bodies.672

4.2.2.3. Access through inheritance

(i) General background to the Ethiopian law of inheritance

One crucial aspect of property rights is the authority of the right holder to make decisions on the fate of his/her property after s/he dies, and ‘the law of succession (wills, intestacy, inheritance) governs the orderly transfer of economic interests from generation to generation.’673 The Ethiopian law of succession is rooted in the Roman law tradition that gives precedence to the wishes of the deceased in matters regarding deciding who gets what. Accordingly, a will, if any, left by the deceased shall be executed once it obtains the court’s approval in the form of acknowledging it as reflecting the true wishes of the deceased, by checking both its form and substance. Only where there is no will left behind, or where, even if there was one, it has been rejected by the court for non-compliance with legal requirements, does the intestacy system come into effect.674 According to this rule, there is a legal presumption that the person, if s/he has had the chance to draw up a valid will, would have allocated the property left behind first to the surviving descendants, i.e. children and grandchildren.675 Only in the absence of descendants are ascendants considered as heirs at law. These could be parents or their descendants. For example, the father and mother of the deceased, and in the absence of either or both, their descendants (i.e. relatives of the deceased in the collateral line), could be named as heirs at law.676 Where there are no relatives, either in the descending or ascending lines, the law provides that the property shall go to the state.677 This, in other words, excludes a spouse from being a beneficiary in matters of intestate succession, so a validly drawn up will is the only avenue through which a surviving

672 Deininger and his colleagues also made this similar classification while discussing the four Regions’ (Tigray, Amhara, Oromia and SNNPRS) certification processes. Deininger et al., (n 68).
674 Art 829 of the Civil Code of Ethiopia.
675 Art 829 of the Civil Code of Ethiopia.
676 Arts 843, 845 and 847 of the Civil Code of Ethiopia.
677 Art 852 which provides, ‘In the absence of relatives the inheritance of the deceased shall devolve upon the state.’
spouse can inherit the property of their deceased spouse. This exclusion is rationalised by, among other things, the idea that marriage must be regarded as an institution established with non-material considerations. In other words, the legal entitlement to inheritance for a surviving spouse in cases where a deceased spouse leaves no will behind could result in someone getting married in anticipation of reaping not only the social and emotional benefits of marriage, but also the material benefits that might come in the event of the death of the richer spouse.

The Ethiopian law of succession also adopts the equality principle, not just for women and men, but also among legitimate, illegitimate and adopted children. Therefore, surviving children of a deceased person will be considered heirs at law irrespective of their gender, whether they were born within or outside wedlock or whether they are related by blood or by adoption. Even though this is a law that was promulgated in the country’s early days of codification and modernisation, it still remains uniformly applicable across the country.

(ii) Obtaining rural land holding right by inheritance

Since land is owned by the state and the peoples of Ethiopia, the constitution has also outlawed the transfer thereof by sale or any other means of exchange. This prohibition is not interpreted, however, as implying the exclusion of the transfer of the land holding right by inheritance, since the express intention of the writers of the constitution, among other things, was simply to combat the perceived ills of the transfer of land in exchange for money, thereby potentially creating a concentration of holdings in the hands of a few individuals. Following the Federal framework legislation on this matter, the SNNPRS states ‘any holder shall have the right to transfer his rural land use right through inheritance to members of his family.’ Furthermore, Article 5(11) further provides that ‘Any person who is a member of a peasant, semi-pastoralist and pastoralist family have the right to use rural land that may be obtained from his family by[...] inheritance.’ A guarantee to the holder of a rural land use right to transfer the use right means the law has institutionalised a mechanism through which rural land use rights may be acquired, albeit restricting this to the benefit only of surviving members of the deceased’s family.

---

678 Art 836 of the Civil Code of Ethiopia.
One pertinent question here relates to whether it is the land holding right, or use right, or both, that may be transferred and acquired through inheritance. As a clear reading of the letter of the laws of the Federal government and the SNNPRS suggest, the rural land use right is singled out as the subject of inheritance. On the basis of the distinctions we have made in section 4.2.1. above, the holding right provides the basis for the exercise of the various elements of the land use right. This distinction finds meaning, as discussed at length in the previous section, in the Amhara Rural Land Proclamation, while on matters of inheritance, the relevant provision states as follows:

Article 16: Transfer of Land holding Right in Bequeath: (1) Any person who is made the holder of rural land in accordance with this Proclamation, may transfer his holding or [use] right in will to any farmer engaged or likes to engage in agricultural works. (5)[...] where a person dies without making a will as to his holding and use right, the right shall be transferred to his child or his family engaged or likes to engage in agricultural works consecutively.680

As can be gathered from the title of this provision, it is, in principle, the rural land holding right which may be bequeathed unless the deceased decides, by his will, to separately transfer the land holding and use right. Accordingly, Article 16(4) stipulates that a person with a rural land holding may, by his will, transfer the holding right and the use right to several persons, with the only condition in these instances being that the transfer of the land use right must be for a temporary duration.681 Upon the death of a person with a rural land holding right, therefore, it is his holding right which is to be transferred by inheritance, unless the deceased, by his will, decides to dismember the two, thereby temporarily transferring the land use right while permanently transferring the holding right to those entitled to inherit.682 This is not, however, clearly articulated under the Federal and the other Regions’ rural land laws, including the SNNPRS Proclamation, primarily due to the failure meaningfully to distinguish the land holding right and the land use right.

680 Art 16(1) & (5) of Amhara Proclamation 133/2006.
681 See also the corresponding provision Art 11(6) in the Amhara Rural Land Regulations 51/2007.
682 This refined terminology is used under Art 17(2) of the Amhara Proclamation 133/2006 and Art 18(2) of Benishangul Gumuz Proclamation 85/2010 in matters of gift where they similarly permit the separate transfer, by gift, of the land holding right permanently, and the land use right temporarily.
The other point of divergence relates to how rural land laws have articulated “member of a family” for the purposes of inheritance, since, as the ensuing discussion shows, this is not similarly understood in the various Regional laws.

**Member of a family**

One controversial aspect in the Ethiopian land legislation relates to the definitional intricacies involved in the term “family member”. Whereas there are elaborate rules in the Civil Code that provide for legitimate heirs in the event of a death that was not preceded by a valid will, 683 with family relations being established on the basis of natural relationships emanating from consanguinity or affinity, 684 these rules do not apply in the same way in rural land legislations. Both Federal and SNNPRS rural land legislations have defined the concept of a family member as meaning ‘any person who permanently lives with landholder sharing the livelihood of the latter.’ 685 Therefore, one has to establish the fact of having lived permanently with the rural landholder and the fact of having shared their livelihood. This has shifted the criteria from the Civil Code rules of succession, which completely depended on natural relationships of consanguinity and affinity, to subjective facts of permanent cohabitation and sharing a livelihood.

In making this departure from the established principles of succession law that apply to all other property interests, the legislature implied the distinct nature of land holding and use rights for rural people. Since land is owned by the state and the people, individuals only have that use right without any time limit 686, and only where there have been people whose livelihood depended on that land would they be allowed to continue that use through the legally acknowledged inheritance rules. This, in effect, means that if only the deceased had been using the land, without any family member whose livelihood also depended on that land, those heirs at law, being unable to prove their dependency on the land, would be less

683 See notes 674-677 and the accompanying texts.
684 See Art 550 of the Civil Code that prescribes on natural relationships as emerging from the bonds of consanguinity (blood relationships) and affinity (relationship emanating from marriage). See also Art 8 and 9 of the Revised Family Code Proclamation 213/2000. It is also further stipulated under Art 557 of the Civil Code and Art 181 of the Revised Family Code that an adopted child is deemed to be the child of the adopter.
686 The Federal framework Proclamation under Art 7(1) states “The rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit. Similar provisions exist in all the Regional laws. See Art 7(1) of the SNNPRS Proclamation 110/2007; Art 6(1) of the Oromia Proclamation 130/2007; Art 5(1) (b) of the Tigray Proclamation 136/2007; Art 5(1) of the Afar Proclamation 49/2009; and Art 6(1)(d) of the Benishangul Gumuz Proclamation 85/2010. It is important to note that except for the Amhara legislation, which uses the term ‘rural land holding right of peasants as having no time limit,’ all the other legislations including the Federal Proclamation prefer ‘rural land use right’ as having no time limit.
likely to inherit the land holding and use right. From this point, one may draw the conclusion that, in order to claim a use right over a deceased person's land, one must oneself be intent on continuing to use the land for the purposes of farming or purposes as they relate to semi-pastoralism or pastoralism, and this interlocking of the person with the land use right appears to inform the entirety of the provisions of the SNNPRS's rural land Proclamation. For example, one ground by which a person may lose his use right to rural land is where he does not keep on exercising that right for a prolonged duration. A more specific stipulation also exists in the SNNPRS law in this sense of tying the land to a person's continued use under Article 10(1), which declares that 'a holder of rural land shall be obliged to properly use and protect his land.' In addition to this duty to keep on using the land, because this connection between the individual holder and land use right is a legal bond, even its voluntary parting will have to comply with relevant procedural requirements. First, the user is duty-bound to notify the competent authority where s/he voluntarily abandons the land use right. Secondly, s/he shall then return the land holding certificate back to the competent authority, and this duty may not be taken lightly, as failure to comply could result in criminal liability. One may observe, therefore, the institutionalisation of the bond between the rural land user-person with the use right itself — a bond which must subsist for the right to have validity. Where this bond is broken by the death of the person, the use right in principle would have ended had it not been for the inheritance law that permits it to continue in the person of those family members who are able to prove that they retain that bond because their livelihood depends on that land. This, in effect, means that they will have to be willing to continue using the land; in other words, they will have to be willing to live with that bond between the person and the land holding and use right.

The stringent rules specified under Article 8 of the SNNPRS rural land Proclamation on renting use rights also strengthen this bond that the law assiduously aspires to sustain. This may not, therefore, be jeopardised by letting a "stranger" descendant, who has not depended on the land for his livelihood, inherit the land use right. If that were to happen, the integrity of

---

687 Art 9(1) of SNNPRS Proclamation 110/2007. And according to the SNNPRS Rural Land Regulations, this duration is fixed at a maximum period of 3 years from which one year is a period reserved for warning. Therefore, after leaving the rural land fallow for two consecutive years, the holder shall be given warnings twice in six months' interval before the land holding right is legally terminated. See Art 13(5) of SNNPRS Rural Land Regulations 66/2007.

688 Art 10(4) of SNNPRS Proclamation 110/2007.

689 Art 16 of SNNPRS Proclamation 110/2007 states that 'any person who violates this Proclamation or the regulations and directives issued for the implementation of this Proclamation shall be punishable under the applicable criminal law.'
that bond would presumably be endangered, since no case could be made in this stranger’s favour to establish either a past or a future bond between the person and the land use. Therefore, “heir”, for the purposes of rural land holding and use rights, must be regarded to have undergone a re-articulation in the current rural land legislation to mean “family members”, which may not necessarily be suggestive of a blood relationship in the sense of conventional succession law principles.

Regional laws markedly differ in providing meaning to this peculiar rule on the inheritance of rural land holding. For instance, there are variations in responding to the questions of whether or not a person may bequeath his holding right through will and depart from the “family member” rule, whether or not preference could be made between those individuals who fulfil the family member and the Civil Code criteria of natural relationship and those who only fulfil the family member test, and finally, on the status of a spouse in the new family member criteria. To see how these and other related questions are addressed, first it is useful to look at the relevant provisions in the various Regional laws. The definitions given to “family member” under the Federal Proclamation, as well as the SNNPRS, Oromia, Amhara, Benishangul Gumuz and Afar Proclamations, are as follows:

- Federal Proclamation Article 2(5): “family member” any person who permanently lives with the holder of the holding right sharing the livelihood of the latter.
- SNNPRS Proclamation Article 2(7): Same as the Federal Proclamation
- Oromia Proclamation Article 2(16): “family member” means children of the landholder or dependants who do not have other income for livelihood.
- Amhara Proclamation Article 2(6): “family member” means any person who permanently lives with the landholder sharing the livelihood of the latter and who does not have his own regular income.
- Benishangul Gumuz Proclamation Article 2(5): Same as the Federal Proclamation.
- Afar Proclamation Article 2(7): Same as the Federal Proclamation.

According to the Federal Proclamation, the two factual criteria for membership of a family are first living permanently with the deceased rural landholder, prior to his or her death, and

690 The Tigray Proclamation does not have a definition for “family member” though it has, under Art 17, detailed rules on inheritance and who may be entitled to be called to succeed to a deceased’s rural land holding right.
secondly the fact that this person has shared a livelihood with the deceased.\textsuperscript{691} The Oromia Proclamation, however, reinstates the Civil Code rule that gives preference to descendants of the deceased over anybody else in matters of inheritance. The law then adds dependants having no other income to the list of those who may be considered as family members. Strictly speaking, therefore, sharing permanent residence does not seem to occasion itself as a requirement for the establishment of one's status as a family member under the Oromia Proclamation. The Oromia law, however, has apparently departed from the Civil Code understanding of heirs at law and also appears to have adopted a wider interpretation by bringing in the term "dependants" as possible beneficiaries of the inheritance. One may argue, when it comes to children, that they are entitled to inherit from the deceased parent under the Oromia law, even if their livelihood did not depend on that particular land, and thus it is only dependants, other than the children, who are supposed to prove their dependency on the land as a source of income for their livelihood.

The Amhara Proclamation, on the other hand, puts together the permanent residence requirement, and being someone without regular income as cumulative requirements for anyone trying to prove the status of being a family member. The specific rules on inheritance, however, provide a list of individuals – in order of priority – that may partake in a deceased's holding right, and family members are only one of the beneficiaries in this list. The Amhara Regulations name the following as "close relatives", in an order of priority, as having the entitlement to be called to inherit in the absence of a lawfully drawn up will:

- The deceased's minor children, in the absence of same, his family member;
- His sons and daughters of full age or other family members having virtually no land and yet engaging or preferring to engage in agricultural work as the means of their livelihood;
- Those sons and daughters of full age although they already have their own land holdings, where such persons so engage in an agricultural work;
- Parents who engage or wish to engage in an agricultural work, where there are no minor children, grownups, family members or caretaker individuals living together with the deceased.\textsuperscript{692}

\textsuperscript{691} These are similarly stipulated under the SNNPRS, \textit{Benishangul Gumuz} and Afar rural land Proclamations.

\textsuperscript{692} Art 11(7)(A)-(D) of \textit{Amhara} Rural Land Regulations 51/2007.
This has closer match only from the *Tigray* Proclamation which provides, under Article 17, a list of preferences, in order of priority, for the purposes of inheriting a land holding right. As there is no official English translation of the Proclamation, the following is a close translation that the writer has made for drawing up some comparisons:

1. Upon the death of a holder of rural land use rights:
   a) His children who have no rural land holdings shall inherit the land;
   b) Where there are no children, his parents who do not have rural land holdings shall inherit the land.

2. Land use rights may be transferred by inheritance:
   a) To adopted children equally as with legitimate children;
   b) May not go beyond the second level of relationships. However, where the deceased has no children who may be called to inherit in accordance with this provision, the children of his children, if any, may become the heirs in law;
   c) No-one who has his own holdings or who has already changed his way of life to a non-agrarian livelihood may inherit [rural land holding] except what is necessary for a residential house construction.
   d) Those children residing in urban areas shall not have the right to inherit the rural land holding.

3. [About minimum size restriction when partitioning land among legitimate heirs]

4. [Exceptions on matters of size for irrigable land holdings.]

5. Where the deceased has no legitimate heirs in accordance with this Article, his land holding shall be returned back to the rural *Kebele* Land Administration Committee, which shall then reallocate the land to those who do not have holdings.

6. Notwithstanding sub-Article 5 of this Article, the person who is landless and had been living with the deceased or had been supporting the deceased shall be given priority during the reallocation of the land which has no legitimate heir.

7. The Civil Code provisions on succession shall not be applicable in matters of inheritance relating to rural land holding.

---

693 This sub-Art regulates matters pertaining to minimum holding size and what the inheritors may have to do in case the holding they inherited may not be partitioned without violating the minimum holding size restriction. The first option being to continue using the land as joint holders and where this is not possible, they may have to decide who may take the holding by drawing up a lot. See Art 17(3) of the *Tigray* Proclamation 136/2007.

694 This provision excludes the application of sub-Art 3 of Art 17 for cases of rural land holdings that are irrigated by modern or traditional irrigation infrastructures.
In many ways these two Regions' laws depart from the other Regions’ rural land legislations and introduce an otherwise unparalleled interpretation of the Federal Rural Land Proclamation’s new terminology regarding what constitutes a “family member”. According to the Tigray Proclamation, a family member is either one’s descendants up to grandchildren, or parents (i.e. mother and father). These relatives can only become beneficiaries of rural land held by the deceased, though, if they fulfill two further conditions: first, they must be able to prove that they have no rural land holdings, and secondly they have to be willing to lead an agrarian life. And in the absence of these relatives in the descending or ascending line, the land holding shall be reclaimed by the state and will constitute part of the land that the state will reallocate to landless individuals. It is therefore only in the process of reallocation that those landless “family members” who were living with and supporting the deceased will be considered as having priority over other land claimants under the Tigray Proclamation. The Amhara rule on this matter differs from the Tigray by including landless “family members” as the second in the list of beneficiaries to a deceased’s holding, but these only come in to the inheritance where there are no minor children. Therefore, by bringing in children as the first to be called to inherit the land holding, the Amhara, the Tigray and the Oromia Proclamations have some resemblance. The requirement for the inheritor to be someone leading or intending to lead an agrarian life, and in effect someone who is able to ensure continuity of the rural person-land holding bond, though, is shared by all of the Regions’ rural land legislations. The new “family member” concept in the rural land legislations has therefore transformed the old rules on who may inherit a deceased’s estate. Moreover, it embodies the special nature of land use rights, in that the land has to remain continuously in the hands of persons who use it for their livelihood, and it is this which distinguishes land from other property interests that can be freely passed on to legal heirs, whether they intend to keep on using them or transfer them to others. The following table, which is extracted from Deininger et al.’s findings cited above, shows the situation with regard to access through inheritance.

695 Art 17 of Tigray Proclamation 136/2007 (own translation).
696 It is only the Tigray Proclamation that has this type of provision declaring the inapplicability of the Civil Code provisions on succession insofar as they relate to rural land holding.
697 This, as defined under Art 2(6) of the Proclamation, ‘means any person who permanently lives with the land holder sharing the livelihood of the latter and who does not have his own regular income.’
698 Deininger et al. (n 25).
A further question to be asked relates to the status of a surviving spouse whose livelihood depended on the land holding of the deceased spouse. Though s/he is entitled to half of the land holding following the dissolution of the marriage because of death, it is not clear whether a spouse would be given priority as a “family member” for purposes of inheriting the holding right. We have discussed above the normal succession law rule that would automatically bar a surviving spouse from being designated as an heir at law in intestacy situations. Since the rural land laws have introduced this new concept of family membership instead of (or together with, in some Regions like Tigray, Amhara and Oromia) blood relationship for being considered a legitimate heir at law, whether a surviving spouse would fall within the definition of “family member” or not is unclear. Under the Federal as well as the SNNPRS laws, the general reference of the right to acquire rural land access, by merit of being a “family member”, does not seem to exclude a spouse from being entitled to claim the deceased person’s holding, so long as permanent residence as well as livelihood dependency on that land can be proved. The legal permission to transfer the land holding right through inheritance to individuals other than one’s children is not yet widely understood; however, and as indicated by the data in Figure 5 above, in Tigray this knowledge is as low as 7 per cent of the households surveyed. Even if one cares to argue that the legal stipulation does not automatically exclude a spouse from inheriting the land holding by merit of being a family member, it is actually very difficult to translate this into practice.

That said, those Regions that have expressly listed those individuals who could have the right to inherit the land holdings of a deceased person appear to support the interpretation of considering a spouse as a family member. However, the Tigray Region’s law, by specifying that only children and parents can be called to inherit a deceased’s holding, and mentioning
family members only as having a priority right during the administrative reallocation of the heirless holdings of the deceased, has expressly excluded a spouse from inheriting the rural land holding of his/her partner.\footnote{See note 695 and the accompanying text.} Therefore, the Tigray rural land Proclamation, in line with the Civil Code’s position, maintains the exclusion of spouses from inheritance rights on each other’s land holdings. Moreover, those dependants, being neither children nor parents, and which could presumably include spouses, are only considered for priority in reallocating the land in the absence of legitimate heirs, which also conforms to the Civil Code’s position of sticking to blood relationships for the purposes of inheritance.

The Amhara Region, on the other hand, under Articles 16(7) of the Proclamation and 11(8) of the Regulations, brings in a new form of arrangement with regard to a surviving spouse. The order of priority for inheritance, as has been discussed above, is (1) minor children, (2) family members, (3) grownup children with no land holding and (4) parents and carers of the deceased.\footnote{This list is given under Art 11(7) (A) to (D) of the Amhara Rural Land Regulations 51/2007. See note 692 and the accompanying text.} Following the stipulation under Article 11(7)(D) that mentioned parents as the last ones to be called to inherit, the next sub-Article provides as follows:

Notwithstanding the provisions of sub-Article 7(D) of this Article, where the landholder has left a spouse at the time of his death, the surviving spouse shall continue using the land [for as long as s/he lives] as of the date of the farmer’s death [on condition that] s/he continues to reside in the same Kebele, or until s/he concludes a new marriage; however, where s/he quits residing in that Kebele, or concludes marriage, or dies, such use right with respect to the land shall be transferred to parents who are the legal heirs of the deceased.\footnote{Art 11(8) of the Amhara Rural Land Regulations 51/2007.}

Therefore, the principle that spouses do not inherit their deceased partners’ land holding rights is also maintained by the Amhara legislation, though it has made a very important arrangement to enable a spouse to benefit temporarily from the land use right. According to this provision, parents, who will only be beneficiaries in the absence of children and family members, will have to give way temporarily to a surviving spouse with regard to the land use right while they would take over the land holding right as legitimate heirs of the deceased. As we have pointed out while discussing the distinction between rural land holding and rural land use right, the Amhara legislation’s approach in acknowledging the distinct nature of
these two elements has enabled this possibility of temporarily leaving the land use right with a surviving spouse, while the legal heirs permanently inherit the land holding right up to the death of the deceased.

Finally, it is important to note that the Amhara Proclamation, together with the Benishangul Gumuz Proclamation, has expressly permitted a dying rural landholder to draw up a valid will and decide who should specifically be taking the rural land holding right. According to this Region’s law, ‘any person who is made the holder of the rural land in accordance with this Proclamation, may transfer his holding or use right in will to any farmer engaged or like to engage in agricultural work.’ The deceased, however, may not disinherit by his will the minor children or family members, or cause harm to the surviving spouse. The surviving spouse’s entitlement to half of the land holding on the basis of the marriage, for instance, may not be disposed of by the will of the deceased. Moreover, where the deceased has transferred the land holding right by a will to persons other than his spouse, the surviving spouse will continue to exercise the land use right for two consecutive harvesting years and the deceased may not, by his will, set aside this right. The relevant provision of the Regulations on this important point states as follows:

Where a person, having died after transferring his holding right by will does not have minor children but rather a spouse while declaring the will and where he has transferred his land holding and use rights by will to persons other than his spouse, the “land holding” shall remain in the hands of his surviving spouse for two consecutive harvesting years as of the date of his death and as far as the use right is concerned, the will shall stay suspended short of execution provided however that after the aforementioned period of time such use right shall be conveyed to the designated beneficiary.

According to the Amhara law, therefore, a deceased’s will by which he transfers the land holding right to ‘any farmer’ would have a legal effect, so long as it does not totally exclude

702 Art 16(1) of the Amhara Proclamation 133/2006. See also Art 17(1) of the Benishangul Gumuz Proclamation 85/2010 which has similar provision.
703 Art 16(3) of the Amhara Proclamation 133/2006.
704 By ‘land holding’ it must be understood to refer to the land use right that follows the land holding. Otherwise, if we were to understand the ‘land holding right,’ it does not conform to the Amharic version of the provision and also because legally there is no a temporary transfer of land holding right for two harvesting years.
minor children and family members from the inheritance, and as long as it does not harm the surviving spouse's various rights, such as the ones mentioned above. Someone who is neither a family member nor a blood relative to the deceased may acquire the rural land holding, so long as s/he is a farmer or willing to engage in agricultural work where s/he is named as a beneficiary under the will of the deceased. This fundamental right of individuals to name by will a beneficiary to their rural land holding right does not exist in the SNNPRS and other Regions' laws, except for that of Benishangul Gumuz, which has substantial similarities with the Amhara Region's rural land law.

In this subsection, we have examined rural land holding inheritance laws by which an individual may gain access to rural land holding through one of the non-administrative allocation mechanisms, and then determined how these inheritance rules of the various Regions have departed from the Civil Code rules on succession. Some of the critical points made in this section relate to the legal stipulation that insists on maintaining land use and holding rights within family members and the position of Regional laws in matters of surviving spouses. In the next subsection, donation, as one other mechanism by which a person may gain access to rural land holding and/or use right is examined, followed by a discussion on rural land leasing or rental as the third avenue by which individuals may acquire a rural land use right.

4.2.2.4. Acquisition of rural land use right by donation

Donation may also provide another legal basis through which individuals may acquire rural land holding and/or use rights. The donation of a rural land holding right to only family members, as defined in the respective laws of the Regions discussed above, is permitted under the Federal Proclamation and the Regional laws. Apart from the donation of rural land holding rights between living persons, as we have seen, the Amhara Region law has expressly provided for the possibility of drawing up a valid will by which a person may confer the land holding right to a named beneficiary. Donations between living persons usually happen in relation to marriage, through which a woman acquires a rural land holding from her husband. According to the Ethiopian law of marriage, a couple is allowed to keep as

---

706 Art 5(2) of the Federal Proclamation 456/2005; Art 5(11) of the SNNPRS Proclamation 110/2007; Art 7(1)(b) and 17 of the Amhara Proclamation 133/2006; Art 9(5) of the Oromia Proclamation 130/2007; Art 5(2)&(3) of the Tigray Proclamation 136/2007; and Art 18 of the Benishangul Gumuz Proclamation 85/2010. However, the Afar Proclamation 49/2009 does not have any provision that expressly permits donation or gift of rural land holding and/or use right.
private any property that they individually own prior to the conclusion of their marriage. Therefore, it is a spouse’s choice as to whether or not to make a privately held plot of rural land common property upon the conclusion of the marriage. Building on this point, the Amhara Proclamation has a clear rule on the possibility whereby, subsequent to the issuance of a certificate of holding, a rural landholder concludes a marriage and decides to share the private holding with his spouse. The relevant provision states as follows:

Where marriage is concluded after the land holding certificate book has been prepared and granted in the name of one spouse, the spouses may apply to the respective Kebele Land Administration and Use Committee [...] with the view to granting to them the holding certificate book having been amended and prepared in the name of both of them.

In the study commissioned by the Ethiopian Institution of the Ombudsman, referred to at the beginning of this Chapter, which assessed women’s rural land holding and use rights in six selected Woredas of the SNNPRS and Oromia, a sample survey of 142 households that had a rural land holding in the name of women (either jointly with their husbands or individually) revealed that the highest proportion of them had acquired their holding rights as a result of marriage. As indicated in the figure below, over 40% of the sample households mentioned that they had gained access to the land in their holding because of marriage.

Art 57 of the Revised Family Code states as follows: ‘property which the spouses possess on the day of their marriage, or which they acquire after their marriage by succession or donation, shall remain their personal property.’ See the Revised Family Code Proclamation 213/2000.

Art 20(6) of the Amhara Regulations 51/2007. This is based on the Amhara Proclamation 133/2006 stipulation under its Art 24(3).

Ethiopian Institution of the Ombudsman, (n 491).

Ibid.

The specific question was framed as, ‘how did you acquire the land holding?’ for which options were given as ‘reallocation,’ ‘inheritance,’ ‘marriage,’ ‘other,’ which had been explained to respondents to mean such arrangements as ‘rent,’ ‘donation,’ ‘lease’, or ‘purchase.’
Donation, like inheritance, only applies to family members, with the relevant provision of the SNNPRS Proclamation stating ‘Any person who is a member of a peasant, semi-pastoralist and pastoralist family have the right to use rural land that may be obtained from his family by gift.’ In the Regions of Tigray and Amhara, the law lists those beneficiaries who are mentioned as legal heirs to a deceased person as the ones also entitled to receive a land holding right by way of donation. The Amhara law, however, imposes an additional condition, apart from the donee-person specification, for a donation to be legally recognised. This additional requirement is stated as follows:

Any landholder may transfer his holding or use right in donation to a person[…] Where the donee had stayed tilling the land of the holder or

---

712 Art 5(11) of SNNPRS Proclamation 110/2007. The Oromia Proclamation also has an explicit provision relating to donation where it states, ‘Any peasant or pastoralist or semi-pastoralist shall have the right to transfer his land use right to his family members or children whose livelihood depends on it, or have no other income, or to his children who have no other incomes or are landless as a gift.’ Art 9(5) of the Oromia Proclamation 130/2007.

713 Under the Tigray law, it is children and parents, and under the Amhara law, it is children, grandchildren and the broad classes of individuals who may be considered as family members, which presumably includes parents, so long as they can prove that they are landless and engaged or willing to engage in agricultural work. See Art 5(3) of Tigray Proclamation 136/2007, and Art 17 (1) (a) of the Amhara Proclamation 133/2006.
working other works and known freely (this meant without payment in return) cared for three consecutive years before the gift is undertaken.\textsuperscript{714}

It is not enough, therefore, that the receiver of the rural land holding be someone in the list of those entitled to benefit from the act of donation; rather, that person must have been using the land without interruption for the previous three years. The Amhara law, as we have observed, also permits the possibility of donating the land holding right permanently to someone and the land use right temporarily to another person.\textsuperscript{715} This provides the holder of rural land wider opportunity for exercising the right he has over the land, particularly the one relating to transferability, which is one of the areas from which the other Regions may draw lessons.

We have observed that corporate bodies may also enjoy a rural land holding right under the various laws\textsuperscript{716}, but when it comes to transferability, again only the Amhara and the Benishangul Gumuz Proclamations allow such bodies temporarily to donate the land use right. In this respect, the Proclamation states that ‘organisations may, excluding holding right, transfer their land use right for limited period of time in donation.’\textsuperscript{717} Therefore, according to this law, one mechanism by which a rural land use right may be accessed is as a beneficiary of a donation made by organisations. The presence of this form of arrangement would promote efficiency, because if rural land holdings were not being used by organisations for a period of time, everyone would be better off if transferred temporarily to those who can use the land rather than leaving it fallow.\textsuperscript{718} There are not, however, any recorded instances of this arrangement actually having been used in those Regions.

\textbf{Circumventing Restrictions?}

Overall, donation, together with inheritance, enables individuals to transfer their land holding right, and, in the majority of the Regions, it is only possible to make such a transfer to the benefit of those legally named beneficiaries known generally as “family members”. These restrictive rules on transferability reflect the fact that the integrity of the policy on state

\textsuperscript{714} Art 17(1) of Amhara Proclamation 133/2006.
\textsuperscript{715} Art 17(2) of Amhara Proclamation 133/2006.
\textsuperscript{717} Art 17(4) of the Amhara Proclamation 133/2006 and Art 18(4) of the Benishangul Gumuz Proclamation 85/2010.
\textsuperscript{718} While the holders escape the danger of forfeiting the holding right because of non-use, those who get temporary use right would also benefit from exploiting the land for that duration.
ownership of land can only be ensured when all possible legal ways to circumvent restrictions on the sale of the land holding right are attended to. There is no guarantee, though, that even in the presence of such restrictive rules, people will not try to beat the system. Feder and Noronha call this situation the ‘divorce of law from reality’ and, according to them:

When the legal system decrees that land cannot be sold or can be transferred only with bureaucratic (and frequently arbitrary) approval, law gets divorced from reality. Land continues to be sold or pledged, but in an informal market. The only result is that these sales or pledges are unenforceable in a court, so prices contain risk premiums that cause a deviation between the social value of land and its market value. Land sales may be disguised as the sale of trees or houses, as in Malawi; or as a pledge, with the pledgee paying an amount equivalent to the purchase price of the land so as to avoid getting the permission of the village headman, as in Nigeria.\(^{719}\)

In Ethiopia, too, farmers resort to unofficial transfer deals that also include mortgaging of the land use right, even though this is legally not allowed under any of the rural land administration laws. One World Bank Conference Paper reports as follows:

With these all restrictions and mixed messages of legislative frameworks, farmers may tend to use unofficial market systems to transfer lands through renting, sharecropping and bequeathing. Although all the legislative instruments fail to put provisions in mortgaging of farmers land use rights, recent practices indicated that Micro Finance Institutions (MFIs) have been using holding certificates as collateral to release credit to the farmers. The MFIs, being government affiliated organizations, seem to work in an informal way as there is no legal provision to refer and make such transactions legally binding.\(^{720}\)

Ultimately, such a mismatch between the law and reality renders effective enforcement difficult and costly to the concerned state institutions. Andrzej calls this a Hobbesian problem

\(^{719}\) Feder and Noronha, (n 527), p 154

whereby ‘enforcement becoming less and less effective, individuals have an incentive to follow their own interests, regardless of any paper constraints.’

4.2.2.5. Acquisition of rural land use right through rent

A person may also acquire ‘land use rights’ via the mechanism of rent, through which one may enter into contractual arrangements with another person with a rural land holding right. The use of the term “rent” is preferred here instead of “lease”, which is employed by the Federal Proclamation. This will enable us to distinguish rural land lease by the government, which we shall be discussing separately, from the rent arrangements that are done by individuals with rural land holding rights. This distinction also conforms with the SNNPRS and the Amhara Proclamations that define “rent” to mean ‘a system by which investors or other legal bodies rent in land from peasants for specific period of time’ and lease as ‘a system by which investors get land by rent from government for specific period of time.’

Rent is the only way of acquiring a time-bound rural land use right, although this was not one of the preferred mechanisms until the 1997 Federal Rural Land Administration Proclamation. Since the 1975 rural land Proclamation under the unitary government of the Derg, which introduced public ownership of rural land, the country has had strict prohibitions on any forms of transfer by individuals, including rent. The Derg’s Rural Land Proclamation was explicit and comprehensive in exhaustively outlawing all such forms of transfer:

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 who has attained majority, shall have the right to use the land.

When one looks at the 1995 Federal constitution, the prohibition on the transfer of land by ‘sale or other means of exchange’ could be interpreted also as outlawing most forms of

---

722 In defining ‘land holding right’ under Art 2(4) and under Art 8, where transfer is discussed, the Federal Proclamation 456/2005 employs exclusively the term ‘lease.’
723 See our discussion under section 4.3.2.4. below.
724 Art 2(21) of SNNPRS Proclamation 110/2007. The Amhara Proclamation 133/2006 also has more or less similar definition under Art 2(25).
transfer. The legislature rather hesitantly provided for the possibility of renting one's holdings, however, under Proclamation 89/1997 which was promulgated two years after the adoption of the Federal constitution. More details only emerged when Proclamation 456/2005 was issued, though, including limits on the amount of land to be transferred via rent. There are also stringent conditions and restrictions attached to a landholder’s right to transfer the land use right by rent. These can be classified into four categories. The first and most important one relates to the size of the land on which the use right is to be rented. The size requirement under the SNNPRS and the Federal Proclamations is less about how much one may transfer by rent and more about how much one needs to retain for oneself first, before renting out the rural land use right to another person. The pertinent section of the SNNPRS Proclamation states:

Peasant farmers, semi-pastoralist and pastoralist who are given land holding certificates can rent out [land] for farmers or investors from their holding of a size sufficient for the intended development in a manner that it shall not displace them.

The possibility of transferring land use right through rent is therefore conditioned on the fact that the holders maintain enough that they would themselves not become displaced or landless. This is confusing, to say the least, as there are no clear grounds for determining the facts for one being displaced. In its literal sense, if someone is renting the use right on the whole of his land temporarily, it is legally valid to still regard him as not having been displaced, because he is going to have it back upon the expiry of the rent agreement. The provision nevertheless attaches specific importance to how much is to be rented out, when it says ‘from their holding of a size sufficient for the intended development purpose,’ and

\footnote{As far as the 1997 Federal rural land administration Proclamation was concerned, it only indicated ‘lease’ as an element of holding right where it defined this term as to mean ‘the right any peasant shall have to use rural land for agricultural purposes as well as to lease and, while the right remains in effect, bequeath it to his family member; and includes the right to acquire property thereon, by his labour or capital, and to sell, exchange and bequeath same.’ Art 2(3) of Federal Proclamation 89/1997.}

\footnote{According to Art 8(1) of Federal Proclamation 456/2005, the amount to be rented by a private holder may not go to the extent of displacing the holder. While some Regional laws like that of Tigray and Oromia state that the amount to be transferred via rent may not exceed half of the holding, the Amhara Proclamation does not put any restriction. See Art 6(1) of Tigray Proclamation 136/2007, Art 10(1) of the Oromia Proclamation 136/2007 and Art 18(1) of the Amhara Proclamation 133/2006. The SNNPRS, however, follows different approach which is discussed in this section. See Art 8(1) of SNNPRS Proclamation 110/2007, and Art 8(1) of the SNNPRS Rural Land Regulations 66/2007.}

\footnote{What is to be rented must be understood to relate to the ‘land use right,’ and not simply the ‘land’ or the ‘land holding right.’}

\footnote{Art 8(1) of SNNPRS Proclamation 110/2007. See also Art 8(1) of the Federal Proclamation 456/2005.}
therefore it does not appear to permit a landholder to rent out all his holdings. Exactly how much must be kept for oneself to be regarded as not being displaced, and how much to transfer by rent, is not clearly stipulated unless one looks at the SNNPRS Regulations, which guarantee to every peasant farmer or pastoralist the right to rent out the land use right on a portion of his holding, which must not result in his being totally evicted.\textsuperscript{731} The intended meaning of this, according to the provision, is that ‘the remaining holding should be enough to produce annual food consumption for his family.’\textsuperscript{732} The Regulations also make it possible for a rural landholder to rent out the use right over all of his holding on one important condition, namely ‘if he has any other alternative such as working as labourer, or to make business or any other better job opportunity.’\textsuperscript{733} From this stipulation one may understand the concern of the legislature to relate specifically to the farmer’s livelihood. Accordingly, so long as the farmer has a proven means for a sustained income from on-farm or off-farm employment, the law permits the renting out of the land use right over all the holdings.

There are also observable variations among the Regional Rural Land Proclamations in this respect. For instance, the Tigray and Oromia rural land use and administration Proclamations expressly limit the size to be kept by the rural landholder after renting to be not less than half of the total holding.\textsuperscript{734} The Amhara and \textit{Benishangul Gumuz} Regions’ Proclamations, meanwhile, have provided no such limit on the rental size, with the clear implication being that a rural landholder may rent out the use right on the whole of his land holding. The relevant provisions of these two laws similarly stipulate that ‘any holder may transfer his use right in rent to any person.’\textsuperscript{735} Therefore, these two laws have lifted the restriction on the size of land to be rented and do not provide any condition, such as the one provided under the SNNPRS Regulations, that permits transfer of the use right on the whole of the land holding, only where the farmer has established an alternative means of income.

\textsuperscript{731} Art 8(1)(B) of SNNPRS Rural Land Regulations 66/2007.
\textsuperscript{732} Ibid.
\textsuperscript{733} Art 8(1)(C) of SNNPRS Rural Land Regulations 66/2007.
\textsuperscript{734} Art 6(1) of the Tigray Proclamation 136/2007 and Art 10(1) of the Oromia Proclamation 130/2007. The Oromia Proclamation however adds another provision under Art 6 that stipulates ‘aged, disabled, orphans, and women and those in same situations can use their holdings by hiring labour, renting or entering an agreement to share income with a developer.’ This provision appears to suggest that because of the specific situations of these classes of rural people, they could rent out their holdings without size limit. Art 6(14) of the Oromia Proclamation 130/2007.
\textsuperscript{735} Art 19 of the \textit{Benishangul Gumuz} Proclamation 85/2010 and Art 18(1) of the Amhara Proclamation 133/2006.
On top of the size restriction, the right to transfer a rural land use right by rent is also time-bound, and thus the second condition lies in the period for which the rent agreement can last. In this respect the SNNPRS law has elaborate rules that are also meant to ensure that rental agreements do not turn into fully-fledged land transfers akin to sale. These various intervals are described as follows:

a) From peasants to peasants, the duration shall be up to five years;

b) From peasants to investors, the duration shall be up to ten years;

c) From peasants to investors who cultivate perennial crops, the duration shall be up to 25 years;

d) Land described in this sub-Article 1,a,b,c shall be returned to the landholders when the duration terminates based on Civil Code.\(^{736}\)

Acquisition of land use rights through rent therefore comes with these limits, unlike, for example, where a farmer acquires a rural land holding right through administrative reallocation or inheritance, for which there is no time limit.\(^{737}\) The restrictive timeframe makes this form of land use right on the basis of rent contracts more of a commercial arrangement than a scheme to be resorted to by individuals who may not be able to farm the land themselves. For instance, women, minor children, people with a disability\(^{738}\) or those who prefer to engage in off-farm employment may consider renting out the land use right for an indefinite duration. In these and other related situations, the propriety of both the size and the time restriction on rental arrangements is questionable. Even in circumstances where a person wants to rent his land holding for another reason, to impose a restriction on the size and to provide such restrictive periods is a hurdle to the effective and efficient exploitation of the land by persons who have both the will and financial capacity. In an empirical study carried out on the efficiency implications of Ethiopia’s market and non-market transfer of land, Klaus Deininger et al. concluded as follows:

Contrary to fears that land markets might lead to accumulation of land in the hands of the rich and powerful, greater emphasis on rental markets as

---

\(^{736}\) Art 8(1) (a)-(d) of SNNPRS Proclamation 110/2007.

\(^{737}\) Art 7(1) of the Federal and the SNNPRS Proclamations, state, ‘the rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit.’ See also the similar stipulations under Art 5(3) of the Amhara Proclamation 133/2006; Art 6(1) of the Oromia Proclamation 130/2007; Art 5(1)(b) of the Tigray Proclamation 136/2007; Art 5(4) of the Benishangul Gumuz Proclamation 85/2010; and Art 9(4) of the Afar Proclamation 49/2009.

\(^{738}\) The law that first declared state ownership of rural land had made exceptions to these classes of persons when prohibiting the use of hired labour on the rural land holding. See Art 4(5) of the Public Ownership of Rural Lands Proclamation 31/1975. It was in recognition of the challenges facing these members of the society and thus, as rental arrangements are now permitted, they should have been given a special consideration with respect to both size of holding as well as on the duration for which the rent agreement could be made to last.
compared to administrative reallocation of land would provide benefits to poor but efficient producers who have few alternative opportunities of using their labor endowment.\textsuperscript{739}

Moreover, this research also found that an increase in the number of land use right transfers through rent made a positive contribution to the development of the non-farm economy, which is ‘a critical pre-condition for broad-based rural development.’\textsuperscript{740} With regard to the other Regions’ laws, the Amhara Proclamation has a relatively longer duration, which may go up to 25 years with the possibility of renewal,\textsuperscript{741} the Tigray law puts a maximum of 20 years for mechanised farming and three years for traditional farming;\textsuperscript{742} the Oromia law has three years for traditional farming and ten years for mechanised farming;\textsuperscript{743} the Benishangul Gumuz Proclamation has two years for traditional farming and ten years for mechanised farming\textsuperscript{744} and in the case of the Afar Region, three categories are established: where an agro-pastoralist rents out the use right to another agro-pastoralist, the maximum period is set at five years, where it relates to a rental arrangement between an agro-pastoralist and an investor for the purpose of producing annual crops, the duration is set up to ten years, and where it relates to perennial crops this may go up to 20 years.\textsuperscript{745}

The third condition provides a requirement for procedural formality. According to the Federal law, ‘the rural land lease agreement shall secure the consent of all the members who have the right to use the land,’\textsuperscript{746} while the SNNPRS Proclamation on this subject provides that ‘the rental land agreement has to be accomplished based on the agreement of the family of the land user.’\textsuperscript{747} Therefore, a rental agreement is only valid according to the SNNPRS Proclamation where it has been assented to by family members of the landholder, which once again makes the definition of family members that we discussed in relation to inheritance relevant.\textsuperscript{748} This requirement of consent by the family unduly constrains the right of the principal landholder, because a right to inherit a land holding because one is a family member is something that must not affect the manner of its use by the landholder. The requirement

\textsuperscript{739} Deininger et al., (n 213), p 17.
\textsuperscript{740} Ibid., p 5.
\textsuperscript{741} Art 18(2) & (6) of Amhara Proclamation 133/2006.
\textsuperscript{742} Art 6(3) of Tigray Proclamation 136/2007.
\textsuperscript{743} Art 10(2) of Oromia Proclamation 130/2007.
\textsuperscript{744} Art 20(1)(f) of Benishangul Gumuz Proclamation 85/2010.
\textsuperscript{745} Art 11(2) of Afar Proclamation 49/2009.
\textsuperscript{746} Art 8(2) of Federal Proclamation 456/2005.
\textsuperscript{747} Art 8(2) of SNNPRS Proclamation 110/2007.
\textsuperscript{748} See the discussion on inheritance at 4.2.2.3., specifically on the meaning of ‘member of a family.’
would make more sense if it were to apply only to the landholder’s spouse, who would have a similar interest and right in the proper utilisation of the land, be it by renting out the use right or ploughing it by themselves. That would also conform to the requirement in family law for the joint management and administration of matrimonial property.\(^749\)

Here, by applying a wider “family members” concept, the legislature has limited the right of the landholder, and there appears a complete mismatch with the framework legislation that rather requires only the consent of those persons ‘who have the right to use the land.’\(^750\) Furthermore, the other Regions’ position on this matter differs from that of SNNPRS, as described below:

- **Tigray Article 6(2):** where the land is *held in common by a husband and a wife*, both shall give their consent to the rent agreement. (translation my own)
- **Oromia Article 10(6):** Any agreement made on land renting shall bear the consent of *all individuals who have rights on that land*.
- **Amhara Article 18(4):** Where the land to be rented *is a common holding*, the agreement shall be invalid, unless all holders agree upon it.
- **Benishangul Gumuz Article 19(1):** Any peasant under his holding shall have the right to rent where there *is a family agreement made or in joint holdings*, and the holders may show their agreement upon it.

There is therefore an observable distinction in the way the Regions interpret Federal rural land legislation. In the *Tigray* law, the statement ‘members who have the right to use the land’ is taken to refer to a husband and wife, while in the *Oromia* and *Amhara* Proclamations it appears to mean a jointly held land use right and the requirement of consent of those joint holders. In the *Benishangul Gumuz* Proclamation, meanwhile, it is given an even more onerous meaning that requires the procurement of consent of the family members, and where it is a jointly held use right, all those co-holders will have to consent.

The *Oromia* and the *Amhara* Proclamations, together with the Federal legislation, provide a better approach in terms of making transferability easier by avoiding the consent requirement of family members for the validity of rental agreements. They rather emphasise the consent of those individuals who have the right to use the land as joint holders. As far as spousal consent goes, it is already regulated elsewhere in the family Code\(^751\), and where it relates to a

\(^{749}\) According to Art 68 of the Family Code ‘the agreement of both spouses shall be required to…sale, exchange, rent out, pledge or mortgage or alienate in any other way a common immovable property to confer a right to third parties on such property.’

\(^{750}\) Ibid.

\(^{751}\) See note 689.
land holding registered in their name as joint holders, the rule that says both joint holders must express their agreement will properly govern their situation as well. A rental agreement that meets all the requirements will presumably have an effect not only on the person with the land holding right, but also on the heirs after his death.\textsuperscript{752} Apart from implying the indefinite nature of the rural land holding right, the fact that the agreement binds the heirs does not by itself make the consent of those family members a requirement.

The final requirement under the SNNPRS law relates to the approval and registration of the rental agreement by the competent authority. According to Article 8(2), 'the rental agreement[...] shall be approved and registered by the competent authority as follows: (a) the contract agreement with duration of up to two years shall be registered at \textit{Kebele} administration office; (b) the contract agreement with duration of more than two years shall be registered by the concerned authority.'\textsuperscript{753} According to this provision, which is identical to the Federal Proclamation, all rental agreements must pass through the approval and registration procedure. A registration requirement, irrespective of the duration and nature of the rental agreement, unduly burdens the rural landholder by increasing the transaction cost. In consideration of this issue, the Amhara Region only requires registration for rental agreements lasting more than three years.\textsuperscript{754} Even if registration of the rental agreement is legally required, compliance may not always be easy\textsuperscript{755}, as has been empirically established, partly because of fear of dispossession\textsuperscript{756} and partly because of the informal nature of arrangements between Ethiopian rural farmers.\textsuperscript{757}

\textsuperscript{752} According to the country's law of succession, both the rights and obligations of the deceased, unless they are terminated by the death of the deceased, shall pass to the heirs or legatees. See Art 826(2) of the 1960 Civil Code of Ethiopia. And land holding right and any obligations that are created up on it constitute part of the inheritance and are thus transferable to heirs. The \textit{Amhara} Rural Land Regulations 51/2007 under Art 12(8) provides on rental contracting as having legal effect not only in respect to the holder himself but also the heirs.\textsuperscript{753} Art 8(2) of SNNPRS Proclamation 110/2007. The 'competent/concerned authority' for the purposes of the Region is the Bureau of Agriculture and Rural Development.' See Art 2(19) of SNNPRS Proclamation 110/2007.

\textsuperscript{754} Art 18(3) & (5) of the \textit{Amhara} Proclamation 133/2006 and Art 12(2) of the \textit{Amhara} Rural Land Regulations 51/2007.

\textsuperscript{755} For instance, in the empirical research of Deininger et al. household level evidence highlighted that a large number of fixed term rental contracts were not registered. Deininger et al., (n 25), p 1809.

\textsuperscript{756} Holden and Yohannes had, on the basis of data collected from the Southern parts of Ethiopia, found that tenure insecurity was higher in households who have rented out their land use right fearing that their holdings might be redistributed by the government. Holden and Yohannes, (n 620), p 586.

\textsuperscript{757} Gebeyehu, (n 720), p 10.
4.2.3. Loss of rural land holding and/or use right

A rural land holding right, once acquired through any one of the above modalities, in principle entitles the holder to an indefinite right of use that may in turn be donated, bequeathed or rented out for a defined duration. The holder, however, must be able and willing to comply with the legal obligations relating to the rural land in his custody. An inability or lack of will to do so may result in various administrative and punitive measures, including loss of the holding right. In addition to a landholder's failure to utilise the land properly, or his voluntary decision to renounce the holding, the loss of a holding right may also occur as a result of expropriation, which will be discussed separately in section 4.3 (ii) below in relation to the various threats to security of tenure.

The principle relating to loss of a holding right because of a failure to use the land properly is set out under the Federal Proclamation as follows:

A holder of rural land shall be obliged to use and protect his land. When the land gets damaged, the user of the land shall lose his use right. Particulars shall be given in the land administration laws of the Regions.\(^{759}\)

Accordingly, the various Regions' rural land administration laws have a provision that regulates the obligations of rural land users, including persons or organisations using the land on the basis of rental or lease agreements.\(^{760}\) The SNNPRS law, having repeated the provisions of the Federal legislation quoted above, leaves the details to subsequent Regulations to be issued by the concerned authority. It is in Regulations 66/2007 that damage to land is interpreted. Under Article 13(4) (A) and Article 13(5), the grounds for termination of a land holding and/or use right are set out in the following terms:

Article 13(4)(A): An individual shall lose land holding right when he fails to implement soil conservation techniques, and leave the soil to erode, when he

---

\(^{758}\) The rural land Proclamations, both at the Federal and Regional levels are criminal liability provisions. See Art 19 of the Federal Proclamation 456/2005; Art 16 of the SNNPRS Proclamation 110/2007; Art 31(2) of the Anhara Proclamation 133/2006; Art 27 of the Oromia Proclamation 130/2007; Art 36 of the Benishangul Gumuz Proclamation 85/2010; and Art 24 of the Afar Proclamation 49/2009. It is only Art 29 of the Tigray Proclamation 136/2007 that specifies the criminal acts and the punishment to be imposed, and declares the applicability of those punishments in cases where the Criminal Code of the country provides for lighter punishment than is stipulated under the rural land Proclamation. The Federal Criminal Code, which has national application, has, under Art 689, criminalised acts of mismanagement of land holding. See The Federal Democratic Republic of Ethiopia Criminal Code Proclamation 414/2004.

\(^{759}\) Art 10(1) of the Federal Proclamation 456/2005.

\(^{760}\) See for example Art 10(6) & (7) of SNNPRS Proclamation 110/2007.
does not plant trees suitable to the environment, and the concerned official states the problem with evidence.

Article 13(5): Any rural land user shall not negligently let fallow his land for more than two consecutive years. After the Kebele administration approves the land is not ploughed, it shall give oral warning with Kebele Land Administration and Use Committee together with local elders. Then, if it is not ploughed after six months, the Kebele administration shall give written warning for the next six months. Still, if it is not done based on the warning, he shall lose his holding right.\textsuperscript{761}

The decision to remove one's holding right may only be set aside where the rural landholder proves one of the following compelling circumstances: his sickness or imprisonment, death of the family member who used to be the land tiller, occurrence of drought, flooding or other natural calamities or any other problem acceptable to the Kebele administration.\textsuperscript{762} More or less similar circumstances are given under the various Regions' laws as grounds for the deprivation of a holding right.\textsuperscript{763} Unlike the SNNPRS, however, most of the Regional laws provide for the award of compensation to the landholder who has lost his holding because of mismanagement for those properties situated on the land.\textsuperscript{764} All the laws have also provided for the voluntary relinquishment of a holding right, in which instance the holder must return the land holding certificate to the concerned body.\textsuperscript{765}

4.3. Security of tenure

So far we have analysed the meaning of land holding and/or use right, how those rights can be acquired and circumstances that may eventually result in the deprivation of one's holding right. It is now pertinent to examine the various legal stipulations that contribute to or undermine security of tenure as far as rural land holding rights are concerned. Where tenure security can be guaranteed, it serves to engender higher yields and efficiency in land use, but

\textsuperscript{761} Art 13(4) and Art 13(5) of SNNPRS Rural Land Administration Regulations 66/2007.
\textsuperscript{762} Art 13(5) (A)-(D) of SNNPRS Rural Land Regulations 66/2007.
\textsuperscript{764} See for instance Art 12(4) of the Amhara Proclamation 133/2006; and Art 14(7) of the Tigray Proclamation 136/2007.
where it is absent, it negatively affects individuals’ motivation towards long-term investment. Deininger and Jin established that the certification of holdings enhances tenure security and eventually increases investment in land. Moreover, freedom from expropriation and ensuring transferability, as demonstrated by Besley, enhance investment in land. Feder et al. also conceptualise the reverse cause-effect relations of tenure security and investment in their study in Thailand, as follows:

The most obvious effect of insecurity of landownership is increased uncertainty whether the farmer will be able to benefit from investments that he makes in equipment, structures, irrigation infrastructure, or land conservation measures to retain or improve the productive capacity of his farm. Investment would be expected to be related negatively to uncertainty of tenure: with increased uncertainty, investment incentives are reduced and current consumption is preferred.

Tenure security is defined as ‘the bundle of legal rights held with rights being described along several dimensions (e.g. type and breadth, duration, and certainty of exercise). Tenure insecurity, therefore arises according to Place, ‘from a sense of “lacking” in single rights, combination of rights, duration of rights, certainty of retaining rights, from actual or risk of dispute over rights, risk of expropriation of all land rights, among others. These are summarised as demands for breadth, duration and assurance by Place, and by others as the determinants of tenure security. In this subsection we compare the legal stipulations that aim to mitigate these “lacks” with the potential sources of insecurity, to see where the balance falls.

4.3.1. Legal guarantees on security of tenure

4.3.1.1. Duration of rural land holding rights

767 Deininger and Jin, (n 619).
768 Besley, (n 766), p 907.
771 Ibid.
772 Frank Place, Michael Roth, and Peter Hazell, ‘Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology’ In Bruce, and Migot-Adholla, (n 15), p 282.
One crucial element of security is the guarantee of an uninterrupted period of use right for the landholder. Rural land laws have guaranteed holding rights for peasant farmers, pastoralists and semi-pastoralists for an indefinite duration. This guarantee is further strengthened by the legal restraints placed on any future redistributive measures. These restraints range from a total ban, as in the Tigray Proclamation, to the imposition of strict conditions, as in the Amhara Proclamation.

4.3.1.2. **Holding rights certification**

Another important aspect of security of tenure is the rural land administration process underpinned by the measurement, registration and certification of rural land holding. This process is meant to ascertain the sizes of rural lands under the various holdings, in order to identify the land use and level of fertility. Certification as a process of ascertaining who holds what, with these facts being recorded as paper-based evidence, is a new project for Ethiopia. In a context in which rural land was owned by the state and was only used for subsistence agriculture, there was previously little demand for formal registration projects. This is in contrast to urban holdings and housing, which have long had title deeds properly issued to serve as a proof of ownership. Even though the 1960 Civil Code had a full Title X (Articles 1553-1646) treating exclusively matters of registers of immovable property, these were never implemented. The Code itself, under Article 3363(1), suspended the application of that title by stating ‘Title X of this Code relating to registers of immovable property shall not come into force until a date to be fixed by Order published in the Negarit Gazeta.’ In the interim period, Articles 3364-3367 of the Code mainly acknowledged the customary rules for governing matters of transfer or extinction of ownership, easements and restrictions to ownership, duties of a seller and mortgages — all as they related to immovable property, which under Ethiopian law is constituted of land and buildings.

---

774 Art 5(1)(f) of the Tigray Proclamation 136/2007 deems the land redistribution done prior to the issuance of this Proclamation as final.
775 Art 8 of the Amhara Proclamation 133/2006 as well as Art 6 of its Regulations 51/2007.
776 Art 3363(1) of the Civil Code.
777 Art 1130 of the Civil Code states, ‘Land and buildings shall be deemed immovables.’
Current certification processes

The current task of measuring, registering and certifying rural land holding rights is undertaken by the Regional governments in two stages. The first-level certificate involves the provision of a simple and temporary land holding certificate, without geo-referencing or mapping land parcels. In the second level, meanwhile, a permanent certificate is issued, with the geo-referencing and mapping of individual parcels and with the objective of further enhancing tenure security for smallholder farmers and stimulating greater investment by farmers in sustainable land management practices.\textsuperscript{778} Issuing first-level holding certificates started in 1998 in the \textit{Tigray} Region, in 2003 in the Amhara Region and in 2004 in the Oromia and SNNPRS.\textsuperscript{779} In early 2005, the country’s second-phase poverty reduction strategy paper reported that out of a total of about 13,000,000 rural households, 6,216,819 had received a first-level land holding certificate.\textsuperscript{780} This covered the four Regions of Oromia (2,484,693 households certified), Amhara (2,400,000 households certified), \textit{Tigray} (632,000 households certified) and SNNPRS (700,126 households certified).\textsuperscript{781} Although the so-called “emerging Regions” of Afar, \textit{Benishangul Gumuz} and \textit{Gambella} have issued rural land administration and use Proclamations, they are yet to commence implementation.\textsuperscript{782}

The country’s development plan, which replaces the previous Plan for Accelerated and Sustained Development to End Poverty (PASDEP),\textsuperscript{783} was issued in 2010/11 with a five-year timeframe and outlined ambitious plans for transforming the country’s poverty conditions.\textsuperscript{784} This plan aims:

To maintain an average of 11% GDP growth and attain the MDGs by 2015; to expand and to ensure the qualities of education and health services and achieve the MDGs in the social sector; to establish suitable conditions for sustainable nation building through the creation of a stable democratic and developmental state; and to ensure the


\textsuperscript{781} Ibid.

\textsuperscript{782} The World Bank Report, \textit{Options on Strengthening Land Administration in Ethiopia}, (n 26).

\textsuperscript{783} PASDEP, (n 780).

\textsuperscript{784} The Federal Democratic Republic of Ethiopia, Growth and Transformation Plan (GTP) 2010/11-2014/15.
sustainability of growth by realising all the stated objectives within a stable macroeconomic environment.\textsuperscript{785}

The Growth and Transformation Plan also paid attention to the certification process by promising the completion of first-level certification by certifying the holdings of 3.09 million households and the issuance of the second-level holding certificate to 12.7 million households spread over the five-year plan period.\textsuperscript{786} Therefore, the perpetual holding right that the laws guaranteed is to be represented by the certificate, the registers of which are to be kept by local-level land administration offices. As detailed by Deininger et al., the process involves traditional methods of determining the size of plots, 'either using ropes or relying on knowledge of the number of ‘timads’\textsuperscript{787} of a plot.'\textsuperscript{788} Once determined, the plot is described by naming the neighbours bordering it from east, west, south and north. The process of certification is carried out, as affirmed by Deininger and Feder, ‘with high levels of community participation.’\textsuperscript{789} Accordingly, it is a participatory process through which the three important questions, as suggested by Peter Ho and Max Spoor, are answered: Whose land is it? How much is it? Where is it located?\textsuperscript{790}

The SNNPRS Proclamation has a provision just like the Federal legislation, which exclusively governs rural land measurement, registration and certification. In the opening sub-Article of the provision, the following promise is made: ‘the sizes of rural lands under the holdings of individuals, communities, governmental and non-governmental organisations shall be measured using equipment; their land use and level of fertility shall be registered in the data base center by the competent authorities established at all levels.’\textsuperscript{791} It therefore provides for the use of both traditional and modern methods of measuring the land, the details of which are then entered into a database. The entry details of the certificate are also listed and include descriptions of the size of the land, land use type and cover, level of fertility and

\textsuperscript{785} Ibid, (Volume I, Main Text), p 22.
\textsuperscript{786} Ibid, (Vol II, Policy Matrix), p 8.
\textsuperscript{787} The word ‘timad’ is used as a local unit of measurement of land according to which 4 timad equals 1 hectare. It simply means the amount of land that can be ploughed with a pair of oxen in a day.
\textsuperscript{788} Deininger et al., (n 68), p 4.
\textsuperscript{791} Art 6(1) of SNNPRS Proclamation 110/2007 as well as the Federal Proclamation 456/2005.
borders, as well as the obligations and rights of the holder. These details are then also to be registered into the database, which in turn is to be kept by the competent authority.

The certification is targeted not only at individual holdings, but also those of governmental and non-governmental organisations, private investors and social institutions. Moreover, a certificate of holding over communal land will also be issued in the name of the beneficiary community and then be kept at the Kebele Administration office. Both private and communal holdings will therefore have a certificate of holding to be issued in the name of the beneficiaries, both individually and collectively. However, even if the registration of communal holdings has been undertaken as part of the ongoing first-level certification process in the Regions of Amhara, Oromia, SNNPRS and Tigray, the boundaries of this land are not recorded, and the communal land overall is registered in the name of the Kebele and not in the name of specific local groups, as the laws anticipate.

Objectives and impacts

Land certification has sought to ‘provide secure rights of tenure and protect the rights of vulnerable groups such as women, reduce land disputes and litigation, facilitate land use planning and management of community and state lands, and increase smallholders’ investment in, and output from their plots.’ A World Bank-sponsored, country-wide empirical research conducted on the certification process of Ethiopia’s rural land praises it as ‘a very successful start’ and suggests:

The massive scale and positive impact of first-time land certification in this country [Ethiopia] highlights that technical obstacles or resource constraints cannot explain the near-universal failure by African countries to put the innovative aspects of recent legal reforms into practice.

Some observations have been made on the basis of the progress of the certification process so far. Holden et al., Deininger et al. and Mintewab Bezabih et al. have each found, on

---

792 Art 6(3) of SNNPRS Proclamation 110/2007.
793 Art 6(8) of SNNPRS Proclamation 110/2007.
794 Art 6(12) of SNNPRS Proclamation 110/2007.
796 Rahmato, (n 65), p 51.
797 Deininger et al., (n 25), 1806.
the basis of empirical evidence from various parts of Ethiopia, that the certification process serves to enhance tenure security. Indeed, Deininger et al. state that 'the certification process seems to have resulted in significant reduction of tenure insecurity and an increase in land-related investment and to a lesser extent, supply of land to the land market.'\(^\text{801}\) However, these findings grossly exaggerate the gains from the certification process because of the ever-present threat to security emanating from administrative redistribution. The fact that holders are given a land holding certificate is not a guarantee that their land may not be subject to redistribution. Moreover, in the absence of the possibility of using the certificate to gain access to credit facilities through mortgaging,\(^\text{802}\) it is highly unlikely that the certification would create a better opportunity for investment or increased output, and the findings in this regard are also mixed.\(^\text{803}\) Additionally, the impacts on the rental market also show varied findings where in some cases, because of the formal requirements of reporting and consent of family members that came with the certification, the amount of land renting has gone down and in other cases such as the Tigray Region, where the certificate is issued only in the name of the husband, the certification and registration process has increased rental market activity.\(^\text{804}\) With regard to protecting vulnerable groups such as women, it has been suggested that the primary beneficiaries of this massive process of certifying holding rights are women.\(^\text{805}\) However, this must be approached cautiously because, as discussed in the section on women’s land rights,\(^\text{806}\) registration and certification are of no distributional consequence, and as stated in one report, it can simply be ‘a confirmation of exclusion.’\(^\text{807}\) In Ethiopia, the process of registration is ‘systematic, and in principle all those who hold land have succeeded in getting it registered.’\(^\text{808}\) Women being historically excluded because of the traditional and legal barriers that had made the husband the head of the family, they hardly had the opportunity to hold land. Therefore, the certification largely affirmed this historic exclusion.

\(^{799}\) Deininger et al., (n 76).
\(^{800}\) Bezabih et al., (n 24).
\(^{801}\) Deininger et al., (n 76), p 330.
\(^{802}\) See the discussions in sections 4.2.2. (2) and 5.3 (ii).
\(^{803}\) Rahmato, (n 57), p 52.
\(^{804}\) Stein Holden and Tewodros Tefera, *Land Registration in Ethiopia: Early Impacts on Women* (UN-HABITAT 2008), pp 4-5.
\(^{805}\) Berhanu Adenew and Fayera Abdi, ‘Land Registration in Amhara Region’ (IIED 2005).
\(^{806}\) See section 4.6. below.
\(^{808}\) Ibid.
The other objective of the certification that stated facilitating land use planning and the management of community lands is where there have been significant failures because of the failure to take the full terms of the law seriously when it comes to implementation, since the requirement to register and certify communal holdings in the name of the beneficiary community has not so far been adhered to.\textsuperscript{809} Even though the process of registering private holdings started a long time ago, the certification of communal holdings has not been implemented. Therefore, leaving communal holdings without certification has exposed them to both governmental and individual incursions, by rendering them a no-man’s land at risk of being seized or, as discussed in the section on ‘large-scale agricultural land transfers’\textsuperscript{810}, leased out to investors.\textsuperscript{811} This neglect, and the consequent incursions on those holdings, very much threatens tenure security and undermines some of the more positive impacts of the certification process, as well the serious degradation caused by unregulated use. Specifically, securing the land use rights of the pastoralist community has gained little or no attention under the certification process, the major problem being that ‘current rural land legislation seems to treat pastoral land synonymously with settled agricultural lands without seeking different instruments and provision to secure pastoral land use rights.’\textsuperscript{812}

Therefore, there is a need to design a mechanism on how to recognise, register and certify pastoral land holding and use rights that accommodate the peculiarities of these communities and their land use type. Nonetheless, it is also important to investigate all available options, apart from the ongoing certification, to secure pastoralists’ holding and use rights adequately, without incurring significant economic and social costs. This is because, as pointed out by Trebilcock and Veel, ‘the transition from a functional to a spatial property system can entail significant costs and necessitate significant and potentially deleterious social reorganisation’\textsuperscript{813}, particularly where it involves special property regimes as the pastoral land use system.\textsuperscript{814}

\textsuperscript{809} The World Bank Report, \textit{Options for Strengthening Land Administration in Ethiopia}, (n 26).
\textsuperscript{810} See section 4.3.2.4.
\textsuperscript{811} Lavers (n 87).
\textsuperscript{813} Trebilcock and Veel, (n 218), p 448. See also Jean-Philippe Platteau, Does Africa Need Land Reform? in Camilla Toulmin & Julian Quan (eds.), \textit{Evolving Land Rights, Policy and Tenure in Africa} (2000) 51.
Finally, it is worth mentioning here some of the critical suggestions made by Deininger et al. which would significantly assist in changing the perceptions of certificate holders, who are highly affected by the various challenges mentioned above, on tenure security:

(i) Well-defined compensation in case of expropriation; (ii) protection of contracts and security against arbitrary redistribution; and (iii) transferability of land use rights for longer time periods.\(^{815}\) Policy action on these areas will be critical to make certificates sustainable.\(^{816}\)

Each of these points, together with the absence of uniformity on systems of certification and updating, require attention. The 2012 World Bank Report reiterates the need for establishing consistent procedures for updating registration and certification upon life events such as inheritance, gifts and divorce that should also include revising the land registry book,\(^{817}\) addressing the confusing procedures of recording inheritance as a key form of transfer in agrarian smallholder economies such as Ethiopia\(^{818}\) and the lack of procedures for revising certificates and for recording changes in the registries when a property is split as a result of divorce.\(^{819}\) Certification must not be regarded as an end in itself; rather, it is a means towards ensuring tenure security, easing transferability of land use rights through rent and donation and reducing land-related conflicts by clarifying title.

4.3.1.3. Land administration institutions

Institutions also have a vital role to play with regard to ensuring tenure security, in particular as a result of the presence or absence of dispute resolution institutions having a significant

---

\(^{815}\) This is because of the fact that most of the Regions allow transfer of land use rights through rent only for limited period of time without any clear rule on renewability (except the Amhara Region that provides 25 years of rent period with unlimited possibility of renewal of the contract). See discussions on transfer of land use rights by rent or lease section 4.2.2.5.

\(^{816}\) Deininger et al., (n 25), p 1806.

\(^{817}\) Deininger et al. also underscore the problem of updating the certification process stating that the ‘lack of updating could quickly undermine the reliability of the system, especially in areas with higher transaction frequencies, thus undermining its overall reliability and trustworthiness.’ Ibid. The World Bank Report also pointed out that ‘except for Amhara, the design of the registry book has been judged by experts to be deficient, with insufficient space to update details and to account for all parcels.’ The World Bank Report, Options for Strengthening Land Administration in Ethiopia, (n 26), p 50.

\(^{818}\) As pointed out in the Report, the Oromia law requires, during transfer by inheritance, a new certificate to be issued to the heir or heirs, but the procedure for its issuance is yet to be developed. See Art 15(12) of Oromia Proclamation 130/2007. The requirements in SNNPRS and Tigray Regional laws have not been clarified. However, the Amhara Region has established rules that require the original certificate to be void and a new certificate to be issued to the heir or heirs. See Art 20(7) of Amhara Rural Land Regulations 51/2007.

impact. In situations where a landholder’s holding rights are threatened by individuals or institutions, access to clearly mandated institutions reinforces the perception of security of tenure. A well-managed administrative apparatus with transparent systems of registration, guidelines on the services that individual holders may get from them and with guaranteed accessibility are also equally crucial, along with the presence of formal and informal dispute resolution institutions.

The communist era of the Derg provided for well-organised, lower-level administrative structures typical of the socialist political and social governance approach. These were organised as Peasants’ Associations at the local, Woreda and Awuraja levels, with far-reaching administrative, dispute settlement and police-like power and responsibilities. The establishment and functions of these associations was originally regulated under Proclamation 31/1975, which later was implemented by the extensive terms contained in Proclamation 71/1975, titled “Peasants’ Associations Organisation and Consolidation Proclamation”. Rahmato called these institutional structures ‘quite an achievement in itself, for what was a scattered and inaccessible mass of people has now been brought under a network of local organisations. Their institutional mandate was extensive, with control over the land distribution, administration and conservation of public land and property in their areas of operation, as well as judicial power to hear various disputes emerging in their locality, including disputes over land. Moreover, the Proclamation conferred on these associations a collective social responsibility to ‘cultivate the holdings of persons who, by reason of old age, illness, or in the case of a woman, by reason of her husband’s death, cannot cultivate their holdings. It was also this same institutional arrangement which was tasked

---


822 Proclamation 71/1975, the Proclamation that provided for the organisation and consolidation of the Peasant Associations, provided for the establishment of an institution called ‘the Peoples’ Militia’ under its provisions Arts 11-14. This was mandated to support the tasks of the Ministry of Interior’s police force in protecting the property and crops of peasants. It was however ‘initially intended to keep former landlords from attempting to claim crop shares, expropriated land or oxen, or farm implements. In addition, the militia was to help the police locate criminals, safeguard national resources and properties, respond to the defence needs of the government, and enforce the decisions of peasant association executive committees and courts.’ Cohen and Koehn (n 370), p 17.

823 Rahmato, (n 67), p 75.

824 Art 10 of Proclamation 31/1975.

825 Art 10(7) of Proclamation 31/1975.
with undertaking villagisation programmes. Proclamation 71/1975 laid down the sophisticated structures, powers and responsibilities of the associations at the local/Kebele, Woreda and Awraja levels and how they should interact while discharging their judicial remit through, for instance, the appeals system. Rahmato described in the following words the particular importance of the adjudicatory role played by the Peasants' Associations:

The judicial tribunal is an important institution in the rural community in that it provides a vehicle for internally resolving conflicts, which otherwise would involve outsiders, that is the Woreda courts and the police. Peasants have easier access to judicial services, and since tribunal members are peasants themselves and residents of the community, the chances for a timely and sympathetic hearing are better.\(^{826}\)

This made it possible for the regime to impose an organised form of political control and oversight. At the same time, it was the most important institutional structure that rural Ethiopia has ever had in its history, particularly in the field of rural land administration. These Peasants' Associations were, however, highly politicised and cultured to function under the principles of 'democratic centralism.'\(^{827}\) Under the current regime, the Judicial Tribunals, one of the subsidiaries of the Peasants' Associations, have been replaced by Social Courts, which are formal state courts at the Kebele level comprising official judges,\(^{828}\) while the Peasants' Associations have generally been re-constituted as Kebeles, which at present are the smallest community administrative units.\(^{829}\) With regard to political influence on these low-level institutions, and the principle of democratic centralism that they are made to operate under, continuity with the former regime is evident. Rahmato comments on this point as follows:

The structure of rural governance is in fact much more complicated than meets the eye. While there has been administrative decentralisation, providing the Woreda and to some extent the Kebele more responsibility and authority than

---

826 Rahmato (n 67), p 79.
827 According to Art 8 of Proclamation 223/1982 that amended Proclamation 71/1975, ‘the organisation and method of work of peasant associations shall follow the principle of democratic centralism.’ This is an operational method of the Socialist Russian Party, the Bolsheviks, which briefly mean ‘democracy in discussion-centralism in action.’
828 Rahmato, (n 352), p 46.
829 Maconachie et al., (n 820), p 271.
in the past, in terms of “party politics” there is a strong system of centralisation and upward accountability.\textsuperscript{830}

The decentralised system of present day Ethiopia under the federation has also led to the creation of Regional disparities with regard to land administration institutions, particularly with respect to those involved in dispute resolution. The Federal framework legislation imposed a duty on the Regions which ‘shall establish institutions at all levels that shall implement rural land administration and land use system, and shall strengthen the institutions already established.’\textsuperscript{831} The design and operationalisation of land administration institutions that have a significant influence on security of tenure is therefore left to the responsibility of every Region of the federation.\textsuperscript{832} The SNNPRS’s Bureau of Agriculture and Rural Development is the highest organ vested with the power to implement the rural land Proclamation of the Region, and it does so in particular by establishing ‘institutions at all levels that shall implement rural land administration and land use systems, and rural land administration and use committees at Kebele level.’\textsuperscript{833} Accordingly, in this Region, as is more or less the case in the other Regions, land administration has been established at the Woreda level, together with use and environmental protection bureaus and Kebele level land administration and use committees, known by their Amharic name as ‘yemeret safari,’ which roughly means ‘land measurers.’ These committees are composed of five (in the case of Oromia) or seven (in the case of Amhara) elderly members selected from the locality on the basis of, inter alia, their knowledge of the holdings of individuals, and their elderly reputation. There are, however, no legally stipulated criteria that may be applied in the selection of the members of these committees, except that they be five (or seven) in number. The Kebele committees measure, record on paper and, where necessary, distribute holdings of rural land and relay the information back to the Kebele administration, which then transfers it to the Woreda land administration bureau for purposes of issuing the holding certificate or other necessary administrative decisions.

The dates on which the committee carries out the measurement in a particular neighbourhood must be notified in advance, and everyone having a vested interest around the locality is

\textsuperscript{830} Rahmato, (n 67), p 70.
\textsuperscript{831} Art 17(2) of Proclamation 456/2005.
\textsuperscript{832} The Federal Ministry of Agriculture only has the responsibility to ‘follow up and provide support in the establishment of a system involving rural land administration and use.’ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Proclamation 691/2010, Art 19(1)(n).
\textsuperscript{833} Art 14(4) & (5) of SNNPRS Proclamation 110/2007.
called on to gather as observers. Anyone having any objections to the determination of holdings and boundaries, which are measured by a rope, will have the opportunity to express these on the spot. The legitimacy or otherwise of the objection is then to be determined by the committee, which will also listen to what the people gathered from the locality may have to say on the matter. This process is by far the most transparent, albeit prolonged, part of the holding certification and is expected to be more judicious, democratic and people-centred.

One crucial challenge, however, is the susceptibility of the committee members to political influence and manipulation. This concern is crucial because:

At local level, party [politics] and government are closely linked with little or no separation between the two. The leadership of the Kebeles, including active members in the Committees, are members of the [ruling] party; this is also more or less true in the Woreda. The members of the elected Councils in both cases are either party members or have been supported by the party. Thus, there is very little opportunity for alternative voices to be heard. Local officials depend on instructions from above, and there is a hierarchical cadre system, and as a result, the party has immense influence in decision making and programme management.834

Legal titling of holdings in the presence of this relationship of subordination of the peasant to political authority would hardly be able to guarantee tenure security. Therefore, in the Ethiopian context, ‘formalisation,’ as stated by Rahmato, ‘has not questioned the basis of the relationship but has assumed it to be normal and justified, hence its failure to guarantee security of tenure.’835

The other Regions also have more or less similar features with regard to institutions of rural land administration. Some of them have treated the matter at length in their Proclamation, an approach slightly different from what we observe in the SNNPRS legislation. For example, the Tigray and Amhara Proclamations have specified the various levels of institutions to be involved in both executive and quasi-judicial roles. Both have also acknowledged the role of traditional dispute resolution as the primary institution for dealing with land-related civil

834 Rahmato, (n 67).
835 Ibid, p 93.
This existed as the sole justice rendition forum before the introduction of modern laws and institutions in Ethiopia, albeit, as mentioned above, in a very pluralistic way reminiscent of the diverse social fabrics of the country. Notwithstanding this, these two Regions in the northern part of Ethiopia have explicitly recognised the role of these practices in resolving land-related disputes, and individuals now have the opportunity to lodge an appeal to the ordinary courts, if they are not satisfied with the findings of these institutions. Moreover, it has been shown that people tend to prefer these forms of traditional dispute resolution institutions to the formal Woreda courts for various reasons:

To the average peasant, the Woreda is too far away from his/her locality, and taking one’s case there is inconvenient, time-consuming and costly. Moreover, peasants have little confidence in either the Social Courts or Woreda Courts, and instead prefer to take their cases to customary dispute settlement institutions.

In this subsection, we have explored the duration of holding rights, the certification process and the institutional frameworks that are established at the grassroots level. The analysis is meant to examine the extent to which these positive measures have contributed towards ensuring tenure security. As has been observed, although the holding right, which is guaranteed to have no time limit, is being certified, the existence of a subordinate relationship between the peasant and political authority poses a tremendous challenge in realising tenure security. Although tenure security potentially provides a basis for peasant empowerment, there is hardly any evidence to suggest that the peasants had gained any sense of empowerment and autonomy.' As discussed in the section on certification, the process of registering and certifying holdings has not yet attained its set objective of securing holdings, particularly in the presence of the risk of redistributing those holdings that are with or without certification. And accordingly, as Rahmato concludes, 'indeed it was evident that some of the institutional changes at grassroots level that accompanied land certification have enhanced the authority of the state over the farm household.'

---

837 Rahmato, (n 65), p 46; see also The World Bank Report, Options for Strengthening Land Administration in Ethiopia, (n 26), p 36.
838 See the discussions in section 4.3.1.2., particularly under the heading, 'objectives and impacts' of the certification process.
839 Rahmato, (n 67), p 61.
4.3.2. Threats to security of tenure

4.3.2.1. Expropriation

There are a number of threats to security of tenure for rural landholders, and neither the certification of holdings nor the presence of the supporting institutional framework are in themselves sufficient to ensure that security. One of the most significant threats arises from expropriation, both in its actual manifestation and the insecurity that the potential for expropriation creates in people’s minds, particularly insofar as the presence of the legal stipulation stating that ‘land tenure security shall be guaranteed’ is too insufficient to put people’s minds at rest. Compulsory purchase, eminent domain, resumption and compulsory acquisition are used alternatively to mean expropriation in various jurisdictions.

The state’s prerogative to expropriate land for public purposes is a fundamental aspect of any modern property rights system, and therefore there are always circumstances in which the expropriation of holdings may occur, whether the land is held privately or collectively. The threat to security of tenure does not therefore arise necessarily from the mere presence of a legal avenue for the state to expropriate land; rather, it emerges from the frequency of actual expropriation measures, the absence of detailed rules that are meant to ensure there is no expropriation except in instances of “public interest”, and rules on what may be regarded as “public interest/purpose”, principles of proportionality, the absence of guarantees for swift and adequate compensation and other matters of procedure.

The following discussion will examine the relevant Federal legislation which provides the framework for the Regional statutes as they relate to matters of expropriation. It will then proceed to examine the Regional legislation in the SNNPRS and the other Regions for purposes of comparison.

---


4.3.2.2. Basic laws on expropriation at the Federal level

The Federal constitution contains a number of important principles underpinning expropriation measures in the country. The constitutional stipulation states that ‘without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.’\(^\text{843}\) The constitution therefore acknowledges the government’s prerogative to expropriate property upon meeting two crucial conditions. The first relates to the “public purpose” caveat that must be proved before limiting individuals’ constitutional right to property by expropriating. The second caveat involves matters of compensation, which has to be paid in advance and must be an amount commensurate to the value of the property. Since land is not privately owned in Ethiopia, it does not constitute part of the “value of property” to be assessed for purposes of providing commensurate compensation. Therefore, what need to be taken into account are, as discussed below, three elements to determine compensation which is ‘commensurate to the value of the property.’ These are the value of the property situated on the expropriated land, the value of permanent improvements made to such land and the loss incurred as a result of the farmer being permanently or provisionally displaced from his land.\(^\text{844}\) Because the land which is expropriated does not feature as an element that determines the amount of compensation, the amount may not always reflect the loss sustained by the rural landholder, because apart from the absence of accounting for the location of the land, which undoubtedly affects its market value one way or the other, a holder’s emotional and social ties to the land and its neighbourhood would remain unaccounted for while assessing the commensurate compensation. As a result, Ambaye rightfully concludes that the “taker’s gain” principle is what implicitly governs the compensation regime in Ethiopia.\(^\text{845}\) The constitution does not offer any guidance either as to how “public purpose” is to be determined, or what it means to provide “commensurate” compensation. Below is a brief review of the relevant legislative stipulations concerning these two crucial aspects of expropriation.

**Public Purpose**

\(^{843}\) Art 40(8) of the FDRE Constitution. See also Art 40(1) which reiterates the idea that ‘public interest’ is the cardinal limitation on private property.

\(^{844}\) Arts 7 and 8 of the Expropriation of Land holdings and Payment of Compensation Proclamation 455/2005 (hereinafter referred as Expropriation and Compensation Federal Proclamation 455/2005).

\(^{845}\) Daniel W Ambaye, ‘Land Rights and Expropriation in Ethiopia’ (DPhil thesis, Royal Institute of Technology, Stockholm 2013), p 230. The ‘taker’s gain’ principle emphasizes that compensation paid must account for the original or undeveloped purpose of the use of the land rather than its futuristic potential. Ibid.
In 2005, the Federal government issued a Proclamation that was meant to regulate the expropriation of land holdings for public purposes and the determination of compensation. According to Article 2(5) of this Proclamation, the “public purpose” that may act as justification for the expropriation of land holdings is defined as follows:

Public purpose means the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.846

The terminology that the provision employs itself requires further legislation undertaking the task of clarification and unpacking. For instance, ‘the appropriate body’; ‘direct or indirect benefit’; ‘consolidate sustainable socio-economic development’ are all very crucial concepts for a clearer view of ‘public purpose.’ When one examines the Articles that address specific topics, one may deduce an explanation for some of these key terminologies. For example, Article 3 explains the ‘power to expropriate land holdings’ and has an opening statement that says ‘a Woreda or an urban administration shall have the power to expropriate rural or urban land holdings for public purposes.’847

This reference to a ‘Woreda or urban administration’ recurs across the whole body of the legislation as the appropriate body empowered to expropriate land. It is the Woreda rural land administration, therefore, that makes a decision on the propriety of the public purpose assertion to be made by the ‘implementing agency.’ This is a ‘government agency or public enterprise undertaking or causing to be undertaken development works with its own force or through contractors.’848 The implementing agency has the responsibility to (i) prepare and submit required documentation on the land needed for its works to the relevant Woreda rural

846 This is different from the earlier law in the area that defined ‘works’ which could justify ‘appropriation’ of land. This repealed legislation uses the term ‘appropriation’ instead of ‘expropriation’ and ‘works’ rather than ‘public purpose’ and provided exhaustive listings of may constitute ‘works’ that justify expropriation which meant ‘the construction or installation as appropriate for public use of highway, power generating plant, building, airport, dam, railway, fuel depot, water and sewerage telephone and electrical Works and the carrying out of maintenance and improvement of these and related works, and comprises civil, mechanical and electrical Works.’ See Art 2(2) of the Appropriation of Land for Government Works and Payment of Compensation for Property Proclamation 401/2004.
847 Art 3(1) of the Expropriation and Compensation Federal Proclamation 455/2005.
land use and administration Committee or the municipality, one year prior to the commencement, and (ii) effect payment of compensation.\footnote{Art 5 of the Expropriation and Compensation Federal Proclamation 455/2005.}

It therefore comes down to this implementing agency to initiate the expropriation process and to articulate the public purpose argument, although the final determination is to be made by the Woreda or urban administration. It is consequently a power that has neither legislative nor judicial control, and in practice, as Rahmato points out, the officials use the general term "limat", which could be translated loosely to mean "development".\footnote{Rahmato, (n 67), p 77.} This is because, as the expropriation law stands, the public purpose is left largely undefined so that the task of interpretation is left to the executive organs. The legislature has not attempted to impose restrictions on the executive by way of laying down some specific guides to be complied with when applying the public purpose argument, as is done, for instance, under the Kenyan Land Act, which has detailed rules on the meaning of "public purpose",\footnote{Land Act, 2012, Kenya Gazette Supplement No 37 (Acts No 6), section 2.} principally by setting out those services for the purposes of which the government may carry out a "compulsory purchase".\footnote{According to the Land Act of Kenya, 'compulsory purchase; means the power of the State to deprive or acquire any title or other interest in land for a public purpose subject to prompt payment of compensation. Ibid.} This list includes services such as transportation, public buildings like schools, libraries, hospitals, factories, religious institutions and public housing, as well as electricity, gas, communication, irrigation and drainage, security and defence installations and any other analogous public purpose.\footnote{Ibid.} There is no parallel list under Ethiopian law, though, leaving the executive with too much discretion. Moreover, as this decision is not subject to appeal to the formal courts by someone aggrieved at the expropriation decision, judicial oversight of the process is also completely unavailable.\footnote{According to Art II of the Expropriation and Compensation Federal Proclamation 455/2005, it is only in relation to the amount of compensation that appeal to regular courts is permissible, and not on the decision to expropriate.} It is only on the amount of compensation that an appeal to the regular courts is allowed, and such an appeal in respect to compensation, according to Article 11(7) of the Federal legislation, may not delay the execution of the expropriation order. Once the decision is made by the authority to expropriate, the landholder is legally obliged to hand over the land to the Woreda administration within 90 days from receipt of the expropriation order.\footnote{Art 4 of the Expropriation and Compensation Federal Proclamation 455/2005.} The lack of clarity on the meaning of public purpose leaves state officials at the local level with immense power and, as Rahmato has commented,
this strengthens the subordination of the peasants to the local officials and accordingly sustains tenure insecurity.\textsuperscript{856}

The International Federation of Surveyors (FIG), in one of its recommendations, explains the meaning to be attached to the concept of "public purpose" for cases of expropriation/eminent domain as follows:

Public interest can be defined as an outcome (e.g. development) in which the public as a whole has a stake and from which the public as a whole will derive considerable benefit. It refers to actions of a government or an organ or agent of government which provides services or development which is recognised in legislation as being of benefit to the community as a whole. In national legislation, public interest may be defined by or can include such terms as public use, public purpose or benefit to society.\textsuperscript{857}

Therefore, a law will have to recognise clearly the particular service or project as being of "considerable benefit" for the public and "of benefit to the community" as a whole for it to justify actions of expropriation. A further recommendation of the FIG relates particularly to access to justice through the appeal procedure, which must extend to all the relevant elements of the expropriation process.\textsuperscript{858} The person affected may accordingly take up for appeal any of his dissatisfactions relating to 'the legal right to take the specified land for the stated purpose, the use of compulsion, the non-availability of any alternative means of acquisition, the basis of expropriation in carrying out the project in question as well as issues concerning compensation.'\textsuperscript{859}

\textbf{Compensation}

Matters of compensation are regulated more rigorously under the rules enunciated both by the Proclamation and the Council of Ministers' Regulations, issued specifically to govern relevant aspects of compensation.\textsuperscript{860} The Federal Proclamation defines compensation as 'payment to be made in cash or in kind or in both to a person for his property situated on his

\textsuperscript{856} Rahmato, (n 67), p 77.
\textsuperscript{857} Kauko Vitanen, Heidi Falkenbach and Katri Nuuja, \textit{Compulsory Purchase and Compensation: Recommendations for Good Practice} (FIG 2010), Recommendation No 9, p 23.
\textsuperscript{858} Ibid, Recommendation No 7.
\textsuperscript{859} Ibid, p 21.
\textsuperscript{860} This is titled as 'Payment of Compensation for Property Situated on Land holding Expropriated for Public Purposes Council of Ministers Regulations 135/2007 (hereinafter referred as Council of Ministers Regulations 135/2007).
This definition dubiously implies the subject of compensation as relating only to 'property situated on the expropriated land holding,' which does not reflect the positions of the remaining provisions of the Proclamation. This is because the law generally provides for three important bases for compensation whenever a rural or an urban land holding has been expropriated for public use purposes. A person is entitled to compensation for 'his property situated on the land, permanent improvements he has made to such land, and his permanent or provisional displacement from such land.' Each of these grounds of compensation is further explained by the Council of Ministers Regulations 135/2007. According to these regulations, property situated on one's land could include buildings, fences, crops, perennial crops, trees and protected grass, and for each of these properties a formula has been worked out to value the amount of compensation due for payment. With regard to compensation for permanent improvements that the holder has made on the land, the basis for calculating the amount is the value of capital and labour expended on the land. The regulations, in further unpacking this subject matter, appear to be restrictive in the sense that they only provide for compensation for permanent improvements on rural land, without mentioning anything similar in cases of expropriation of urban land. Article 9 of the regulations states:

The amount of compensation for permanent improvement on a rural land shall be determined by computing the machinery; material and labour costs incurred for clearing, levelling and terracing the land, including the costs of water reservoir and other agricultural infrastructure works.

Since the Proclamation, which is higher in the legal hierarchy from the Regulations, only speaks about compensation for permanent improvement, the regulations would here have full application, and it is thus only rural landholders who are entitled to compensation for the permanent improvements they have made to expropriated land. A further reading of the regulations that lay down the grand formula for compensation confuses this assessment, however. Under Article 13(1), compensation for expropriated building shall be calculated as:

\[ \text{Cost of construction (current value) + cost of permanent improvement on land + the amount of refundable money for the remaining term of lease contract.} \]

861 Art 2(1) of the Expropriation and Compensation Federal Proclamation 455/2005.
862 Arts 7 & 8 of Proclamation 455/2005.
864 Art 7(2) of the Expropriation and Compensation Federal Proclamation 455/2005.
Here, therefore, the notion of 'permanent improvement' is reinstated, without any clue as to how it will be measured for rural land.

Apart from property situated on the land and the permanent improvements that one has made, a rural landholder is also entitled to so-called "displacement compensation", which applies in cases of both permanent and provisional expropriation, and the amount of compensation will vary on that basis. This is a basis of compensation which differs from the other two because it is essentially forward-looking and addresses the future loss of the landholder as a result of his dispossession. The past five years' average annual earnings are taken into account, in order to calculate the compensation, which shall be ten times that average annual earning. However, where substitute land is made available to the holder 'which can be easily ploughed and generate comparable income, the displacement compensation to be paid shall only be equivalent to the average annual income secured during the five years preceding the expropriation of the land.' The ceiling of ten years applies, however, in cases where the expropriation is going to last for more than ten years. Displacement compensation where there is no substitute land is therefore calculated as follows:

\[ A \times 10 \leq 10A, \text{ where } 'A' \text{ represents the average annual income to be calculated on the basis of the five years' earnings immediately before the year of expropriation.} \]

This is a crucial element in the compensation regime, albeit nominal, that represents the holding right per se, since it relates neither to the property physically present on the land nor to the invisible but significant improvement that a holder might have made to the land. A person's holding right, therefore, where it has been reappropriated by the government for public purposes, either permanently or provisionally, is nominally valued by this ten-years income that the holder would have made if he were to have retained his holding right. It is important to note that this amount will significantly reduce to just one year's income where the landholder benefits from the allocation of replacement land. Thus, the ten years' annual

---

866 If, however, the expropriation lasts for less than ten years, then it is deemed as 'provisional expropriation' and accordingly, the compensation shall only cover the annual earnings lost during the period that the expropriation is set to last. According to Art 18 of the Regulations, rural land could be expropriated for a limited period of time and the law calls this 'provisional expropriation.' See Art 18 of the Council of Ministers Regulations 135/2007. For instance, a rural land could be requisitioned for temporary use as camping ground for road construction workers, or for purposes of extracting quarries, and related matters. It could also be that because of the public work project, a farmer might be temporarily prevented from using his land. Daniel W Ambaye, 'Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation' (2009), p 22, Paper at 7th FIG Regional Conference, TS 4C, http://www.fig.net/pub/vietnam/papers/ti04c/ti04c_ambaye_3753.pdf Accessed 17 June 2014.
income only exists as compensation for the holding right or as displacement compensation where substitute land has not been provided. The ten years’ income calculation, nevertheless, does not follow any logic and, according to Ambaye, ‘the justification for fixing this amount is unknown, and probably baseless.’

Indeed, the simple fact that it takes the past five years’ income as the basis to calculate future loss, without accounting for inflation\(^\text{868}\), makes the amount of compensation nominal. For this reason, the income capitalisation method by which ‘the value of the property is determined by estimating the present value of income expected to be received in the future’ would have provided a more sound approach.\(^\text{869}\) This method is also followed under China’s land administration law\(^\text{870}\), and Ambaye also states that the Amhara Region used to calculate displacement compensation on the basis of the income capitalisation method until the adoption of the Federal Proclamation 455/2005.\(^\text{871}\) This method is considered as appropriate also by the UK’s Law Commission which, in its 2002 Report on Compulsory Purchase, suggested the following:

> It may be appropriate to consider an explicit discounted cash flow approach, where all future income and expenditure is discounted back to the present day at an appropriate discount rate to leave a net present value which is the value of the land.\(^\text{872}\)

The decision on the amount of compensation for expropriation, unlike the expropriation itself, is appealable before the regular court within 30 days of a decision being promulgated by an appropriate administrative organ, if any, that has been established to hear these forms of complaints.\(^\text{873}\) This means that once the first decision is given by a committee of experts to be established by the rural or urban administration, a landholder who is dissatisfied with the

---

\(^{867}\) Ibid, p 20.

\(^{868}\) According to the World Bank, Ethiopia’s inflation for the past five years (2008-2012) has been 44.4, 8.5, 8.1, 33.2 and 23.4 per cent. This undoubtedly will significantly affect the amount of compensation.


\(^{871}\) Ambaye, (\(n\) 866), p 21. He exemplifies the alarming difference of the income capitalization methods that makes allowance for inflation at the rate of the bank interest (3 per cent) and the current system that simply multiplies the average income of past five years by ten. Accordingly, the same land could have generated close to 70% higher amount of compensation when calculated by the income capitalization method than compensated on the basis of the present legal formula.


\(^{873}\) Art 11 (4) of the Expropriation and Compensation Federal Proclamation 455/2005.
amount of compensation offered will have to seek an administrative remedy by lodging his appeal to an administrative body established for that purpose. It is only after obtaining the decision of this body, or where there is no such body, that the regular appellate court may be resorted to, which shall then render a non-appealable final decision.

Procedurally, once the Woreda or an urban administration decides to expropriate, 90 days’ advance and written notification must be served to the landholder. Following the notification, the next step is payment of compensation, which the landholder may decide to accept or refuse, depending upon whether or not he regards the valuation to be reflective of his land holding’s worth. In either case:

[...] the landholder [...] shall hand over the land to the Woreda or urban administration within 90 days from the date of payment of compensation, or if he refuses to receive payment, from the date of deposit of the compensation in blocked bank account in the name of the Woreda or urban administration.

These and other procedural matters have to be complied with by the expropriating body, although there are no any clear rules as to what the remedies could be, where those organs are in violation of any of those procedures. Particularly, the denial of appeal on the propriety of the expropriation decision itself poses a huge threat to the security of individuals’ rural land rights.

4.3.2.3. The expropriation regime of the Regions

To begin with, there is no separate legislation that specifically governs matters of expropriation and the associated compensation in the SNNPRS. There is, however, one provision in the rural land Proclamation that points out the possibility of expropriation and how matters of compensation will be regulated. Article 7(3) provides as follows:

Holder of rural land who is evicted for purpose of public benefit shall be given compensation in advance proportional to the development he has made on the land and the property acquired and shall be given other land.

874 Art 4 of Proclamation 455/2005.
875 Art 4(3) of Proclamation 455/2005.
(a) When the rural landholder is evicted by the Federal government, the rate of compensation would be determined based on the Federal land administration law.

(b) When the rural landholder is evicted by Regional government, the rate of compensation would be determined based on the rural land administration regulation of the Region. The provision anticipates the possibility of expropriation by the Federal government of rural land situated within the Region and the applicability of the Federal law of expropriation in those instances. There is no doubt that there could be various initiatives that might be undertaken by the Federal government within the Region that would serve the general public’s interest. These could include cross-Regional roads, dams, electric power plants, bridges, railroads, to mention but few. The last section of this provision anticipates the issuance of regulations by the Regional government on matters of compensation, where it is the Regional government that expropriates the land.

The Regulations issued to implement the SNNP Region’s rural land Proclamation accordingly devoted some sections on expropriation as one measure that restricts rural land use right. It failed, nevertheless, to legislate on matters of compensation as anticipated by Article 7(3)(b) of the SNNPRS Proclamation cited above. What this piece of legislation adds to the Proclamation relates to the steps to be followed where a grant of substitute land becomes impossible, which, according to Federal law, would simply have been the payment of displacement compensation. Thus, in situations where substitute land may not be given, the SNNPRS regulation stipulates that ‘an income generation means will be devised with discussion between the beneficiaries and owner of the project to sustainably lead holder’s livelihood.’ This provision in a way is an endorsement of the position of the Region’s land Proclamation that there cannot be monetary compensation in lieu of displacement. The alternative to substitute land, therefore, would be a sustainable income-generation scheme for

876 Art 7(3) of the SNNPRS Proclamation 110/2007.
877 Art 13(3) of the SNNPRS Rural Land Regulations 66/2007.
878 As we have seen in our discussion under section 4.3.2.1. and 4.3.2.2., ‘displacement compensation’ is what a holder gets together with the other two bases of compensation, i.e., for properties on the land as well as compensation for permanent development made on the land. And displacement compensation, as a compensation meant to compensate the lost benefits that would have come had the holder not been parting from his holding, will only be available in full (ten years income to be calculated on the basis of average annual earnings of the past five years) where the holder does not get substitute land. See again Art 8 of the Expropriation and Compensation Federal Proclamation 455/2005.
the holder, although the provision does not indicate what such a scheme might entail. One may anticipate, however, that it would relate to a secured employment opportunity by the developer in the newly established development project that uses the holder’s land. It could also relate to any other scheme that the parties concerned will have to work out through discussion – as the regulation stipulates. The regulations also set a limit of three months within which the landholder must leave the land that has been subjected to the expropriation measure, with those three months being counted from the date of payment of compensation. This clearly disempowers the landholder in the sense that it fails to take full account of his or her wishes. The law, in providing only a single option for some form of secured employment, undermines the wishes of the holder, who might want to farm or capital to start a business and become independent. Even if there is negotiation as to what this employment entails, it is negotiation circumscribed by the power imbalance between the landholder and the ‘owner of the project,’ as well as the fact that the landholder has no alternative but to agree to employment of some sort. Unfortunately, there are no practical cases, to the knowledge of the author, relating to this form of negotiation between the landholder and the organ/person that owns the project.

This implementing law also fails to provide for a process of assessing compensation for properties situated on land which has been subjected to expropriation and for permanent improvements made to the land. As these are already stated in the rural land Proclamation of the Region as being considered for purposes of compensation, one may not assert their exclusion by the regulation; rather, it leaves a gap regarding the valuation methods and the organ responsible for evaluating the amount of compensation, amongst other issues. This gap needs to be addressed through directives or regulations, and in the meantime the rural land administration officials will have to decide on a case-by-case basis. It must not be left open to the officials’ discretion, though, since that would undoubtedly affect the tenure security of rural landholders. Compensation being the crucial balancing measure whenever expropriation is carried out, it requires strict regulation so that entitlements are properly and judiciously determined once land is to be expropriated. Otherwise, it would leave landholders in a condition of great insecurity knowing that if the inevitable expropriation measure occurs, they would not have access to a clear, transparent and fair compensation scheme.

880 Art 13(3)(C) of the SNNPRS Rural Land Regulations 66/2007.
The practice of expropriation in the Region shows priority being given to lands which have not been previously occupied by individuals, and only when this is not achievable is the expropriation of private holdings resorted to. The challenge facing the poor relates particularly to their inability to strike a fair compensation bargain following an expropriation decision for purposes of granting the land to private investors. This is because, as Rahmato notes, in cases of expropriation for purposes of private investment, it is the government that pays compensation and the holder is not allowed to negotiate directly with the private investor.

4.3.2.4. Transfer of large-scale agricultural land for private investment

The recent surge in agricultural land deals has attracted growing research interest, not only because it is unprecedented, but also because it has come against the backdrop of a global food market crisis. Robertson and Pinstrup-Anderson state the possible factors driving this global trend as relating to ‘development aid shortfalls, the global food crisis, the burgeoning middle class in middle- and high-income nations, and increasing acceptance of biofuels as a viable alternative source of fuel by governments of these nations.' The targeting of these deals in highly food-insecure and economically-underprivileged parts of the world has also evoked accusations of neo-colonialism, with the deals at times being regarded as “land grab” – acquisitions of large amounts of land by transnational and national companies – to the detriment of the locals. Although these are matters that are peripheral to this work, it is worth noting that there is extensive scholarship on the subject.

Three factors have been identified as driving the current large scale farmland acquisitions; securing alternative energy sources, an ever-rising domestic food security needs that has been exacerbated by the global food price crisis particularly affecting those food-importing nations and the attractive financial returns that private investors are getting in the agribusiness

---

881 This information was given to the writer by the Region’s Bureau of Agriculture and Rural Development Office during his field visit conducted between in June 2011.
882 Rahmato, (n 67), p 78.
884 Ibid.
industry. In the context of growing populations, climate change and increasingly complex supply chains, the ideal of food security has been difficult to achieve for many countries, and it is this combination of factors that has led nations and agribusinesses looking for ways to secure fertile agricultural land to meet both immediate and future food and alternative energy demands. These trends have had a particular impact on the East African States, and the ensuing tensions have stimulated discussion in the media, within the World Bank, grass roots civil society organisations and reputable human rights institutions such as Human Rights Watch.

Of particular significance is food security, which has provided the impetus for striking large-scale land deals by some of the Gulf countries and China. The 2007/2008 global food price spike encouraged many countries to look for sustainable sources for supplies of food rather than relying on the erratic global food market. It is paradoxical, however, that this Foreign Direct Investment (FDI) has been targeted ostensibly at African and some Latin American and Asian countries – states that are themselves highly food-insecure. Daniel and Mittal have found that most of the target countries themselves are net food importers or even emergency food aid recipients and this has led some to view the land transfer deals as ‘governments outsourcing food at the expense of their most food insecure citizens.’ Ethiopia too is subject to this charge as it is identified as one of the countries with ‘severe localised food insecurity’ which is targeted by the rush for farmland acquisition. According to Council of Ministers Regulations on Investment Incentives of Ethiopia, an investor in agribusiness is granted a five-year income tax exemption by way of incentive when it exports over 50% of


886 The latest of these voices is the report by the Human rights Watch written in a highly critical tone. See the report titled, ‘Waiting here for death’: Displacement and ‘Villagisation’ in Ethiopia’s Gambella Region (Human Rights Watch, January 2012)

887 Ibid.

888 Daniel and Mittal, (n 886), p 16.

889 Ibid.

890 Ibid.
its products. Rahmato criticises this move as ignoring local food security needs while giving priority to exports and foreign earnings.

The ease with which land is being acquired in some African countries has also provided a special incentive for transnational investors to enter into the venture. As demand intensifies for the reasons articulated above, host governments are developing simplified processes for land acquisition, by removing institutional and community-based barriers to the transfer process. On the positive side, this has provided impetus to dispose of excessively restrictive practices, but more negatively, when conducted by central government, there is a risk that these deals fail to consult adequately with the poor who are affected. For example, there was no obvious consultation in Ethiopia when large tracts of farmland were transferred in the Gambella Region. Karuturi Global, a Bangalore-based company, has the largest foreign agricultural land holding in the country, with a total of 300,000 hectares in Gambella and 11,000 hectares in the Oromia Region.

When one examines trends in the land deals that have been struck by central government, as shown in the table below, it is evident that they have particularly impacted two of the nine units of the federation, namely Benishangul Gumuz and Gambella. These Regions, which also contain the largest proportion of minority ethnic groups in the country, are home to communities that lead a pastoralist way of life. As the Figure shows, 32% of the Gambella Region is, for instance, being marketed and those areas identified are where the communities have already been relocated under the “villagisation” process.

---

891 Art 2 of the Council of Ministers Regulations to Amend Investment Incentives and Investment Areas Reserved for Domestic Investors Regulations, 146/2008.
893 Human Rights Watch, (n 887), p 56.
894 Rahmato, (n 90), p 12.
895 Human Rights Watch, (n 887), p 56.
These forms of dispossession and displacement of local claimants, for purposes of transferring land into the hands of foreign investors with very limited levels of transparency and consultation, undoubtedly create grievances. The promised benefits are deferred into an uncertain future, and the expectations of the political elites regarding economic benefits do not align with those of the rural poor, who can only see the current destructive effects. A World Bank study has revealed the widespread expropriation measures carried out for private investment purposes and the associated problems as follows:

In Ethiopia, more than a third of expropriations, not necessarily all for large-scale land acquisition, benefited private investments rather than the public[...]. Even if some compensation is paid, the fact that land cannot be sold implies that those who lost land will be unable to obtain land somewhere else even if monetary compensation is paid. Thus, the state may seriously undermine its authority by being seen as taking the side of one party, especially if amounts or modes of compensation are disputed.897

One has to question, therefore, the benefits that the Ethiopian government intends to generate from large-scale land deals. The proceeds of lease fee agreements appear relatively insignificant, and so it is not as straightforward a case, as some allege, that the government is bagging a fortune for itself through these deals.898 The main benefits are expected to be the

---

896 Rahmato, (n 90).
897 Deininger et al., (n 91), p 105.
898 Lorenzo Cotula et al., Land Grab or Development Opportunity?: Agricultural Investment and Land Deals in Africa (FAO, IIED & IFAD 2009), p 78, where it has been correctly asserted that compared to the long term
employment, infrastructural development and technology transfer that the investors are expected to bring to the country and its people, but there is as yet no indication that these purported yields are close to realisation. The brunt of the measures are instead negatively affecting the rural communities that have had settled and/or pastoralist livelihoods on the land from which they have been displaced. The complete absence of consultation with affected communities violates rights of participation examined in Chapter One of this thesis and to that extent disempowers the people who are not only left behind but also impoverished.899

The fact that the government relies on the "public purpose" provision for taking land for purposes of commercial agriculture, as commented in a recent World Bank publication, has also undermined ‘the ability of local people to negotiate directly with investors and benefit from an investment.'900

Consequently, the agribusiness agenda constitutes one crucial land policy and economic re-orientation in Ethiopia with a resolve on the part of the government since 2008/9 to involve private investment in the agriculture sector.901 Attracting the high level of capital that this sector requires is highlighted as the justification for this policy shift in a country which hitherto had only experienced the feudal and socialist modes of production. The government’s desire to encourage economic development through the inflow of capital and technology, with an end result of job creation, infrastructure development and skills transfer, has been the linchpin of the various land-clearing and resettlement measures. Achieving these goals, however, appears only to be possible, if at all, by means that have dire consequences for the lives of the rural poor. There are no clear regulations on local consultation, the extent of land to be acquired by a particular agribusiness investor, and above all mechanisms to determine the short and long term impacts on the livelihoods of the affected communities. Two notable lessons that need to be drawn from the Tanzanian experience relate first to the maximum limit that needs to be imposed on the land to be transferred to a large scale agricultural investor and secondly on the matter of consultation of the local communities. The recent decision by the Tanzanian government to cap the maximum amount of land that can be

goals of reaping economic benefits through job creation, technology transfer and infrastructure development, a fee of $3-10 per hectare per year as is charged in Ethiopia is clearly insignificant.

899 See note 123 and accompanying text. The Human Rights Watch Report also raised the alarm by pointing out that '[...]farmland has been taken and many areas that contribute to livelihood provision have been taken by investors with no advance notice such as areas of shifting cultivation and forest.' Human Rights Watch, (n 887), pp 17-18.


acquired by a single large-scale agricultural investor has been praised by many of the
ternational organisations working on the subject. According to news reports citing
Tanzanian government officials, as of 2013, there are limits to large-scale land transfers
ranging from 5,000 to 10,000 hectares, depending on the type of agricultural use to which an
investor intends to put the land. It is only for sugarcane plantations, which may also be
used for electric power production, that the ceiling may go up to 10,000 hectares. The
justification put forward for the new policy direction by the government is said to relate to the
underutilisation of large tracts of agricultural land once acquired by investors.

With respect to accommodating local interests German et al. have observed that the
Tanzanian system pays attention to 'ensuring downward accountability to affected persons'
by requiring the draft investment plan be presented to stakeholders for comment and revision
and after which process it must be discussed in front of the entire village assembly. This
process has empowered the wider community having a stake in the planned investment
project to have a say on 'decisions about whether to allow land transfer and under what
terms.'

The Ethiopian government needs to reconsider its position in light of this Tanzanian
experience, in addition to the various issues of equity in terms of national distribution of the
agribusinesses, which are highly concentrated in just a few of the Federal units. The
displacements occurring in only few of the Regions not only contribute to the proliferation of
land-related disputes, but also they render the rural poor powerless and voiceless, because of
a lack of participation and the serious consequences that accompany dissent. The violent
expressions of views observed now and then in the country could be attributed to the
frustration-aggression causal relationship that Ted Gurr established on the basis of empirical
data. The decision to transfer land to investors passes through a process that operates
outside the preview of the concerned community in Ethiopia. The simplified guide provided

902 Dan Lui, Anna Rosengren and Quentin de Roquefeuil, 'Emerging Economies and the Changing Dynamics in
    African Agriculture' (June 2013) European Centre for Development and Policy Management Discussion Paper
903 Ibid.
904 German et al., (n 886), pli.
906 Gurr's writings on 'Why men rebel?' had dominated social science studies of causal theory for aggression
    and civil conflict. In one of his seminal contributions he had pointed out that 'one innate response to perceived
deprivation is discontent or anger, and that anger is a motivating state for which aggression is an inherently
for potential applicants shows vividly the marginalisation of landholders in the particular area in which the government intends to lease land for investment purposes. It lists ten steps to be followed in the processes of ‘giving farm land to investors.’ The two basic requirements are to secure a licence from an investment office and to prepare an application letter. Thereafter:

The applicant (1) submits application letter to the Agriculture Investment support Directorate; (2) which will then authenticate the document; (3) the documents will be submitted to a steering committee within the Directorate; (4) the committee authenticates the evaluation; (5) the Agriculture Investment Support Directorate in charge will approve the documents; (6) the documents will be signed on by the Directorate in charge (7) at the finance office a bill for service will be prepared; (8) at that office the amount of fee stated is paid; (9) an agreement is signed at the Directorate’s Bureau; and (10) the land is given to the applicant.907

A matter so vital to the lives of the rural community is simply regarded as an administrative decision over which the political organs alone have total control. Moreover, there are no clear guidelines as to what type of holdings (private, state or communal) may be subjected to transfer deals through the lease transfer system leaving a wider discretion to administrative officials. As discussed in the section on expropriation, the administrative taking of private holdings could hardly be justified under the ‘public purpose’ ground if it is meant for transferring the land for large scale agricultural investor.908

A cursory look at the Tanzanian land acquisition procedure provides a clearer view of the problems associated with Ethiopia’s transfer processes. Primarily, land in Tanzania is classified into three distinct categories: “General”, “Reserve” and “Village” land. The Oakland Institute’s country report provides the following description of these three categories of land in Tanzania:

Reserved Land is that which is set aside by sectoral legislation, such as for national parks and game reserves, and Village Land is defined as land within the demarcated or agreed boundaries of any of Tanzania’s 12,000 villages. Village Land in each village


908 Ambaye, (n 845), p 289; see also notes 844-845 together with accompanying text.
comes under the managerial authority of the Village Council (the village’s elected executive body), which is answerable for its land management decisions to the Village Assembly (the entire adult population of the village). *General Land* comprises the remainder of Tanzania’s land.  

These three categories of land in Tanzania are governed through The Land Act and the Village Act, which have been in force since May 2001, and the Tanzania Investment Centre, which provides a ‘one-stop shop’ style of investment promotion service, is mandated to transfer land to investors only from the General Land category. Where it anticipates the transfer of a particular piece of land within the Village land category, it first has to formally transfer the land to “general” land status, which is a procedure only the president can carry out. Most importantly, this is only possible on the condition that the affected village ‘communities have given their permission and agreed on the amount of compensation.’ The problems with regard to implementation notwithstanding, ‘the land acquisition process in Tanzania [therefore] empowers local communities to manage their own land through the Village Land Act and make at least some decisions relating to land sought by foreign investors in their villages.’

These two impediments to large-scale land transfer deals, i.e. the type of land that can be affected and the community’s participation in decisions affecting their holdings, are basic safeguards to the rural poor’s tenure security. The absence of both factors in Ethiopian land transfer processes together with a policy direction towards restricting the amount of land to be transferred are causes of both disempowerment of the community and land tenure insecurity. More precarious is the fact that such poor conditions of tenure security and governance have been identified by World Bank research as factors that attract greater demands for agricultural land deals.

---

910 Ibid., pp 10-11.
911 Ibid., p 10 and German et al., (n 886).
912 With this respect, McAuslan had commented that the terms of the law are not respected in practice. He wrote, ‘Where the laws are deliberately constructed to make it difficult to take land from the peasants as is the case with the Village Land Act in Tanzania, the government has indicated that it intends to amend the law to make it more easier to take Village land from villagers.’ McAuslan, (n 106), p 238.
913 Ibid., p 11.
914 Deininger et al, (n 91), p 49.
4.4. Displacement in the name of development

Parallel to the large-scale agricultural land transfers, the government in Ethiopia is undertaking a massive villagisation programme that has been heavily criticised as having the objective of creating more land to be rented out to investors.\(^\text{915}\) In its truest sense, villagisation involves the ‘grouping of scattered farming communities into small villages of several hundred thousand each.'\(^\text{916}\) The previous poverty reduction strategy that ended in 2010 stated that 2.2 million people had been resettled with the intention of rationalising resource use and ultimately helping food-insecure households.\(^\text{917}\) A study carried out in one of the Regions most affected by the land transfer deals, the Gambella national Regional State, indicates that there has been no consultation whatsoever regarding the resettlement measures.\(^\text{918}\) What is more disturbing is that even the local officials who are instructed by the higher authorities have little understanding of the programmes they are enacting, since both the decisions and the funding come directly from the Federal government.\(^\text{919}\)

The resettlement agenda has been attempted in the past, and it utterly failed both the people as well as the regime that attempted to carry it out. The ill-intentioned resettlement programme of the Derg – and its dire consequences – are well-recorded.\(^\text{920}\) That historic act of the Derg was overtly meant to protect those people from the drought conditions which were affecting the area. The covert agenda, though, was to depopulate the rebel areas and thereby prosecute the purposes of war through other means.\(^\text{921}\) The Derg was also very keen on state farms from as early as 1979, though most of the farms operated at low efficiency and economic loss. What has changed now is not the focus on large-scale agriculture and the resultant interest in resettling smallholders; rather, the change relates to the choice of agent, which now is the private investor with capital and no longer the already over-stretched state.

---

\(^{915}\) Human Rights Watch, (n 887).

\(^{916}\) Ibid, p 12.

\(^{917}\) *Ethiopia, Building on Progress: Plan for Accelerated and Sustained Development to End Poverty, 2005/06-2009/10*, p 95.

\(^{918}\) Rahmato, (n 90), pp 20-21.

\(^{919}\) The matter no longer enjoys the support of those Regional officials, as Rahmato’s account reveals, where he describes, “the officials interviewed stated that they themselves were not consulted on the matter and were only instructed by authorities higher up to convey the decision to the people concerned. One official told our team that he was at first positive about the investment project but now is having second thoughts.” Rahmato, (n 90), p 21.

\(^{920}\) See for instance Dawit Wolde Giorgis, *Red tears: War, famine and revolution in Ethiopia*, (Red Sea Press 1989). As Relief and Rehabilitation Commission Commissioner at the period, the author of this book provides the most authoritative account of the period.

Large-scale agriculture instead of smallholder peasant agriculture is acquiring renewed popularity among the political elites, as if they have carefully read Paul Collier’s analysis that was published on *Foreign Affairs* in 2008.\(^922\) Accusing peasant agriculture of being a stumbling block to sustained growth and production, he urged policymakers to confront and slay this unwanted romanticism.\(^923\) Collier commented on African peasant agriculture as having ‘fallen further and further behind the advancing commercial productivity frontier,’ and he continued to suggest the presence of huge areas ‘that could be used far more productively if properly managed by large companies.’\(^924\) Going to the core of his proposals for commercialising land, he wrote:

> At the heart of the matter is a reluctance to let land rights be marketable, and the source of this reluctance is probably the lack of economic dynamism in Africa’s cities. As a result, land is still the all-important asset (there has been little investment in others). In more successful economies, land has become a minor asset, and thus the rights of ownership, although initially assigned based on political considerations, are simply extensions of the rights over other assets; as a result, they can be acquired commercially.\(^925\)

This must sound too familiar for those African leaders who have now hosted unprecedented numbers of agribusiness companies looking to do business. One European example, Collier mentions, the English enclosure movement, was a movement which was ‘encouraged by periods of high prices and agricultural prosperity, by the need to convert land to a different use, and by the concentration of land ownership into a few hands.’\(^926\) It was a prolonged and heavily criticised measure that was called ‘a revolution of the rich against the poor.’\(^927\) Collier cites this presumably not because he was unaware of the criticisms but precisely because it was a movement that indeed worked; as Boyle stated, ‘this innovation in property systems allowed an unparalleled expansion of productive possibilities:

---

\(^923\) Ibid.
\(^924\) Ibid., p 73.
\(^925\) Ibid., p 74.

187
By transferring inefficiently managed common land into the hands of a single owner, enclosure escaped the aptly named “tragedy of the commons”. It gave incentives for large-scale investment, allowed control over exploitation, and in general, ensured that resources could be put to their most efficient use.\textsuperscript{928}

Even being aware of Collier’s intent in citing this movement as an example to show the possibilities of private investment in agriculture, it sits quite uncomfortably with, for instance, Ethiopia’s present conditions. Where the country has 84% of its population leading a rural life and establishing its livelihood on subsistence agriculture, that same peasant agriculture is by far the better development partner, albeit slow, which would also ensure even distribution of wealth without much ado. Resettlement in present-day Ethiopia is carried out, unlike the previous regime, in times of relatively lower risk of famine and also with private investors taking huge amounts of arable land on a long-term lease. The net effect of this, at least for the short-term, will be high levels of discontent among the population on the move and also an inability on the part of the government to provide services for these people, which also exacerbates the problem. In the long run, as the efficiency needs of agribusinesses compete with the high number of peasants-turned-unemployed yearning for jobs, the consequent crisis could be very difficult to contain.

\textbf{4.5. Pastoralists: the silent victims}

One of the communities most affected by the villagisation programme, the pastoralists, have been considered for a long time as “the others” in a country where agriculture is the mainstay of rural livelihoods. In policy formulation and infrastructure development, the pastoralist way of life is regarded as a challenge, and at times a security threat, because of the absence of a localised existence. The Derg’s efforts to demarcate and allocate communal land rights through the introduction of group ranches, on the basis of the pastoralists’ kinship, neighbourhoods and other associational grounds, have been mainly successful.\textsuperscript{929} However, this has not been further capitalised and carried out in a more systematic and sustainable manner. Davies and Bennett describe the challenges facing pastoralists in Ethiopia where they say the State has failed to put poor people at the centre of development planning by recognising their goals and aspirations, which requires ‘a sound knowledge of poverty and of

\begin{footnotesize}
\textsuperscript{928} Ibid.
\end{footnotesize}
what people lack when they are impoverished." By adopting Sen’s capabilities approach discussed in Chapter One of this thesis to describe the livelihood approaches of the pastoralists in Ethiopia, they stress the importance of understanding local conditions while designing and implementing development goals as follows:

Development agents have long failed to understand the goals and strategies of pastoralists and have applied inappropriate theories of common resource mismanagement, supporting such claims with observations of widespread pasture degradation in the aftermath of severe droughts during the 1970s and 1980s. Misunderstanding has been compounded by distrust between central government and pastoral populations over the essential mobility of pastoralists, which has led to their steady marginalisation. This distrust, exacerbated by the portrayal of pastoralists as reckless and irresponsible users of their own natural resources, has led to the promotion of settlement policies.

Figure 8: Sketch map of pastoralist groups in Ethiopia

Therefore, there is visible discordance between traditional pastoralist rules relating to land utilisation for pasture and water and the government’s policy of transforming the “nomadic” way of life to settled agriculture. What is crucially missing in the Ethiopia’s policy of

---

931 Ibid, p 492.
932 From Pastoralism and Land, (n 466), p 2. The space left blank shows the distribution of Ethiopia’s pastoralists.
933 Beyene, (n 929), p 476.
resetting the pastoralists is a failure to understand the mobility of pastoralists in Ethiopia and elsewhere in search of pasture and water for their livestock. Little et al. aptly explain this problem of the government policy that simply aspires to totally resettle the pastoral communities in the following words:

The problem is not that Ethiopia has a pastoral settlement policy, but that it has a settlement policy that does not acknowledge the critical importance of mobility. By rural Ethiopian standards, pastoralists tend to be reasonably well off [...]. Reasonably well off pastoralists have no reason to want to become poor peasants, and since Ethiopia already has a surplus of poor peasants, the national economy has little to gain from creating more of them. Simply settling people is no solution.934

Apart from this undesirable settlement policy, the land tenure of the pastoralists has become less secure as the current registration and certification process has totally overlooked the pastoralists’ land use pattern, which is characterised by mobility. This is essentially because of the absence of clear policy and implementation tools for certifying those holdings which are distinct from the settled farming household land use patterns. It is estimated that ‘more than 40 percent, that is, an estimated 21 million plots, have not yet undergone first-level certification,’ which predominantly relates to pastoralist areas and those relating to communal holdings.935 In other words, the architectural design of the certification process itself is suited only to private holdings of farming households, with only a legal declaration that communal holdings are also to be certified.936 This is described by the World Bank Report on the options for strengthening land administration in Ethiopia as follows:

[...] there are no policies and guidelines that could be applied by any existing institution toward the management and administration of land resources in pastoral and agro-pastoral areas [...] Under these circumstances, the access to land by groups who were of weaker social and political status to begin with (women, vulnerable people) has significantly deteriorated.937

---

934 Little et al (n 80), p 10.
936 See for instance art 6(12) of SNNP Region rural land Proclamation 110/2007 which anticipates the issuance of communal holding certificate in the name of the beneficiary community which however has never been put into use so far.
State policy on transforming this way of life into the northern Ethiopian style of settled agriculture and animal husbandry underestimates the difficulty involved in this process of change. The Growth and Transformation Plan 2010/11-2014/15 period (popularly cited as the GTP) has considered the conditions of pastoral areas at relative length. It correctly asserts the intertwining of the pastoralist livelihood with livestock resources. The policy approach is set to follow two basic directions: the first is the development of the livestock resources, mainly through water resource development. In this respect, some examples of success with regard to irrigation and groundwater drilling schemes, such as the ones in Borana and Fentalie, have been referred to by the plan, and these need to be expanded to Afar, Somali and SNNPRS. Water resource development, however, may not always conform to traditional systems, as pointed out, for example, by the Comprehensive Africa Agriculture Development Programme (CAADP) Report on Ethiopia: ‘some pastoralists believe that water points contribute to pasture land degradation with human and animal population concentration around them.’

More radical in terms of pastoralists’ future is the second policy agenda that plans to execute voluntary settlement programmes, in order to enable pastoralists to lead a settled livelihood. This desire to transform their way of life has already been in place under the “Commune Centre Development Plan and Livelihood Strategy”, otherwise known as the “Commune Programme” or “Villagisation”. This plan involves moving as many as 4 million people in the most underdeveloped Gambella, Benishangul-Gumuz, Afar and Somali Regions into new communities, or “development centres”, with the alleged objective of ‘benefiting the people of the developing Regional states from sustainable and good governance outcomes.’ Since these areas are home to the large pastoralist communities in Ethiopia, the objective that underpins the villagisation programme is clearly part of the government’s plan to change pastoralists’ way of life. One report by the Oakland Institute cites an official’s statement: '[...] at the end of the day we do not really appreciate

939 Ibid.
940 Ibid.
942 GTP, (n 937), p 46.
943 DFID, USAID, UN and Irish Aid, ‘Multi-agency ‘villagisation’ mission to Gambella Regional State, Ethiopia Report’ (3-8 June 2012), p 3.
944 Ibid.
pastoralists in the forest like this[...] pastoralism is not sustainable[...] we must bring commercial farming, mechanised agriculture, to create job opportunities to change the environment.\textsuperscript{945}

This top-down and paternalistic approach by the government significantly undermines the communities’ agency to control their own future and to decide either their continuation with or re-orientation away from their past. The joint donors’ mission report by DFID, USAID, UN and Irish Aid, cited above, found that half of the people interviewed at the “development centres” said they did not want to move, and there were reports of ‘some pressure used.’\textsuperscript{946}

With the widespread allegation that the process is a measure of clearing the land for the purposes of transferring it to investors, the total absence of the concerned community’s participation in the programme has left them disempowered and disfranchised. Therefore, policies on pastoralist and agro-pastoralist communities, as well as the communal holding system in the country, require attention through administrative as well as legislative measures. As the World Bank Report on options for Ethiopia’s land administration suggested:

The adoption of legislation for pastoral and agro-pastoral areas is particularly challenging and requires careful study and a participatory process. Such legislation needs to clarify the legal status of customary systems and recognize the communal nature of associated resources. This legislation should be combined with the definition and establishment of institutional arrangements. They could include the definition and registration of user groups and authorized representatives of such groups, model bylaws outlining mechanisms for groups to discipline members and ensure adherence to agreements, and ways to individualize land tenure if the group consensus exists to do so. If such arrangements are in place, it will be possible to use results from systematic land-use planning to record rights to different types of land and to ensure that these rights are recognized. Doing so will be particularly important if land is required for other purposes, including to deal with demand for land from outside investors.\textsuperscript{947}

\textsuperscript{946} DFID et al., (\textit{n 943}), p 8.
In addition, the top-down approach which is currently practiced violates the principles for agricultural investment issued by the World Bank Group, especially the first and the fourth principles. The first principle states that ‘existing rights to land and associated natural resources are recognised and respected.’ In the explanatory note, it is stated that:

Recognition of rights to land and associated natural resources, together with the power to negotiate their uses, can greatly empower local communities and such recognition should be viewed as a precondition for direct negotiation with investors. Specific attention to land rights by herders, women and indigenous groups that have often been neglected in past attempts is critical to achieving inclusive outcome.

The fourth principle, meanwhile, requires participation and consultation, in that ‘all those materially affected are consulted, and agreements from consultations are recorded and enforced.’ The combined reading of these two principles is suggestive of the importance of acknowledging communities’ place both as beneficiaries and potential victims of planned development projects. A plan to change the pastoralist way of life to a settled livelihood, as anticipated under the GTP, requires a forum where the two livelihoods can negotiate with each other and take stock of each one’s pros and cons. In this process, where the two are presented as negotiators represented by the concerned community, and through the simplified policy that embodies the alternative, the government must assume a facilitator’s role.

Both the GTP and the other policies and laws in this area are characterised by observable blind spots. Even though the 1995 constitution declares that ‘pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their lands,’ the trends of displacement under the villagisation project leave this promise largely unmet.

To make matters worse, the communities who are being moved, either under the villagisation programme or because of the need to clear the land for investment purposes, do not have any legal title to the land, and therefore their claims for compensation may not be tenable. This particularly flows from the fact that there are no communal land certificates or otherwise

949 Ibid.
951 Art 40(5) of the FDRE constitution.
952 Though the constitution makes no distinction among types of holdings and forms of livelihoods in matters of entitlement to compensation during expropriation, the implementing legal and institutional framework systematically excludes pastoralists from this right. See art 40(8) of the FDRE Constitution.
provable titles on which basis compensation claims could be made. The joint research report of the ILO and the African Commission on Human and Peoples Rights has, after expressing concern to the forced removal of pastoralists from their land, also indicated that even if an estimated ‘1.9 million hectares of pastoral grazing land have been taken for agriculture and 466,000 hectares for national parks, the right to be compensated ‘commensurate to the value of property’ has not been implemented.’ Therefore, a pro-poor, participatory and principled approach must be adopted to address the plight of the pastoralist communities in Ethiopia whose land holdings and way of life is being threatened by both large-scale agricultural land transfer deals as well as the government’s top-down policy of wanting to impose, rather than suggest, a settled livelihood.

Little et al.’s suggestions with regard to improving the land tenure of Ethiopia’s pastoralists is worth paying attention to in ensuring their empowerment and sustainable livelihood. As they re-iterate, what is required is to build upon existing customary systems and clarify their relationship to government, ‘a process of legal and administrative evolution, not radical change.’ Citing the positive practices in Mali, they underscore the risks associated with the sedentarisation agenda that does not take into account mobility. Accordingly, they put forward three topical agendas that the Ethiopian government needs to seriously consider which relate to recognition of livestock mobility; protection of pastoral resources which are threatened, among other things, by the large scale agricultural transfers and they propose with this respect a communal or group ‘registration format that secures pastoral land and water rights, but does not compromise mobile pastoralism’; and setting up, through the promulgation of procedural and substantive land law, arbitration and enforcement procedures.

953 Thornberry and Viljoen, (n 304), p 95.
954 Little et al., (n 80), p 8.
955 According to Mali’s law, ‘pastoral routes are classified as part of the public domain and under government protection, and movement is sanctioned for purposes of nomadism or transhumance across the whole national territory “subject to restrictions on protected areas and animal sanitation requirements.”’ Little et al., (n 80), p 8. See also Lorenzo Cotula and Paul Mathieu (eds), Legal Empowerment in Practice: Using Legal Tolls to Secure Land Rights in Africa (IIED and FAO 2008), p 47.
4.6. Rural land rights of women

4.6.1. Background

Women are exposed to various forms of discriminatory social and legal conditions that require special treatment. This is especially true for rural women, who are victims of multi-layered levels of exclusion and marginalisation, both within the public and domestic domains. In Ethiopia, 49% of the population are female and 84% of these are defined as rural. Specifically, in the SNNPRS, 50% of the total population are female and 90% are rural residents.\textsuperscript{956} Despite this distribution of women in Ethiopia, the number of female landholders, as well as their productivity, is abysmally low compared to their male counterparts. According to the World Bank, in Ethiopia, as elsewhere in Africa, addressing their access to land and other productive resources would improve women’s agricultural yields, which at present are 26% less than those of male farmers in Ethiopia, by 10 to 30 per cent.\textsuperscript{957}

Since land is the primary resource that the rural poor rely on for their livelihood, the absence of land holding is directly equated to a lack of a means of livelihood, social recognition and consequently lack of voice. In this section, women’s rural land rights are examined in light of the relevant land legislation, at both the Federal and Regional levels. To demonstrate the deeply entrenched problems relating to women’s land rights, the practice of polygamy will be explored more closely. This particular issue has been selected because it combines both traditionally entrenched problems in relation to land access as well as the legal issues that exacerbate these problems. The discussions in this section are largely informed by the empirical research mentioned at the beginning of this Chapter, together with the published work of the researcher.\textsuperscript{958}

Land administration for the purpose of rural land holdings, as mentioned before, is a process whereby rural land holding security is provided, land use planning is implemented, disputes between rural landholders resolved, the rights and obligations of any rural landholders are enforced and information on farm plots and grazing landholders is gathered, analysed and

\textsuperscript{956} 2007 Population and housing census, Ethiopian statistics Agency.
\textsuperscript{957} This is high compared to Kenya’s 4 percent, and relatively better compared to Nigeria, where the average gender difference in productivity is 40 percent. The World Bank, \textit{World Development Report 2012: Gender equality and development}, (World Bank 2012), p 202; see also Byamugisha, (n 94), p 14.
\textsuperscript{958} Fikre, (n 23) and Ethiopian Institution of the Ombudsman Report, (n 491).
made available to users.\footnote{This is a comprehensive definition provided under Art 2(2) of the Federal Proclamation 456/2005.} Accordingly, guaranteeing security, formulating and implementing land use plans and policies, resolving land-related disputes and collecting, storing and availing information relating to land are all tasks that need to be carried out within the Federal state structure.

The administration of rural land has taken substantial strides forward in recent years, largely owing to the certification process.\footnote{See the discussion at section 4.3.1.2. above.} The certificate is expected to indicate at the minimum 'the size of the land, land use type and cover, level of fertility and borders, as well as the obligations and rights of the holder.'\footnote{Art 6(3) the Federal Proclamation 456/2005.} This process of certifying possession and possession rights has been ongoing in Ethiopia for the last few years in a bid to clarify title, secure rights on land and reduce land-related conflicts in this predominantly agricultural society.

Even if the purposes are clear, relevant and timely, however, the process primarily benefits those who already have a land holding based on the previous regime's land distribution measures, which were carried out in the late 1970s after the promulgation of the groundbreaking law to nationalise all land and extra houses. This historic distribution was enacted based on household units as beneficiaries, and thus it was households, represented by their heads – husbands – rather than individuals per se that obtained land use rights.\footnote{Art 4 of Proclamation 31/1975 provided for important principles on distribution of privately owned rural lands. It had stipulated the principle of equality and non-discrimination, the maximum size of land to be allotted to a particular family and a prohibition on the use of hired labour to cultivate one's holding. Particularly, Art 4(3) stated, 'the size of land to be allotted to any farming family shall at no time exceed 10 hectares.' Therefore, it was a 'farming family' rather than an individual that was taken as a beneficiary of the holding right.} This largely excluded women from obtaining land, since the husband was normally the head of the family/household and the title was therefore issued in his name. Secondly, because of the fact that they cannot plough land by themselves, there was no way that even those female-headed families would have had the opportunity to obtain any title. The combination of the patriarchal laws that made the husband alone the head of the family and the tradition that undermined the agency of women in agriculture has served to exclude women from accessing land. In consequence, the certification process is in reality merely a way of measuring, certifying and granting land possession certificates to those persons who already have land holding, provable by and to the members of the land administration committee members, and it is thus perpetuating these historic inequalities.
The framework legislation issued by the Federal legislature has specific provisions seeking to acknowledge the equal rights of women and men in respect to access to and control of rural land. For instance, the provision that lays down the guiding principles relating to the acquisition and use of rural land declares that ‘women who want to engage in agriculture shall have the right to get and use rural land.’ In a sense, it is a legislative acknowledgement of the reality that prevails in a rural society in which women do not normally plough, while in cases where they have holdings of their own, the norm is for them to contract it out to male farmers under share-cropping or other similar schemes. Even the rental arrangements are far from being fair because, as observed by Bezabih and others, women are ‘persuaded into renting out land to relatives and in-laws, who assume informal access rights towards the land.’ In a comparative research on gender and governance in rural services, carried out on Ghana, India and Ethiopia, it was also stated about Ethiopia’s women that:

Anyone who has spent time in rural Ethiopia can readily observe that in most parts of the country women are intimately involved in all aspects of agricultural production, marketing, food procurement, and household nutrition. Despite this reality, the view is widely held that “women do not farm.” This cultural perception remains strong even though numerous agricultural tasks are deemed “women’s work,” including weeding, harvesting, preparing storage containers, managing all aspects of home gardens and poultry raising, transporting farm inputs to the field, and procuring water for household use and some on-farm uses.

Therefore, when the law stipulates the right of access to rural land to women who want to engage in agriculture, it is a reflection of this perception of considering farming as a male-only engagement. In any event, this guarantee of equal access to agricultural land for women is reinforced by a further Proclamation which allows the joint certification of possession rights over land belonging to both husband and wife. This provision states that ‘where land is jointly held by husband and wife[...] the holding certificate shall be prepared in the name of

---

964 Under the Derg Proclamation 31/1975 too, the use of hired labour to cultivate land was exceptionally permitted for “a woman with no other adequate means of livelihood.”
965 Bezabih et al., (n 24), p 6.
all the joint owners.\(^{967}\) This piece of legislation, however, omits what its predecessor established as an important principle of land administration, namely in Article 5(4), which reads:

The land administration law of a Region shall confirm the equal rights of women in respect of the use, administration and control of land as well as in respect of transferring and bequeathing holding rights.\(^{968}\)

It is difficult to understand why there has been this regression in respect to the establishment of a comprehensive equality framework within the new legislation. One area where this general equality clause would have served a purpose is, for instance, in guiding the Regional laws to ensure gender balance in constituting the various land administration institutions, particularly the *Kebele*-level Land Administration Committees.\(^{969}\) The LACs are composed of five to six elected members of the community, who are expected to be traditional leaders and of high standing in the particular locality.\(^{970}\) These Committees have the highest responsibility in the implementation of the certification in terms of identifying individual plots, demarcation, boundary marking, validating their findings through popular participation, measuring plots and recording personal details once they are validated, and then forwarding the information to the *Kebele* for registration and the issuance of the certificate. The composition of the LACs, however, rarely includes even a single woman member, and it is suggested that ‘the heavy workload demands on members of the LAC, and the need at times to stay overnight in distant locations, may have limited the inclination of woman to undertake such an assignment.’\(^{971}\)

Regional laws stipulate various equality clauses with regard to rural women’s access, control and use of land. The SNNPRS stipulates the following key provisions on the matter:

---

\(^{967}\) Art 6(4) of the Federal Proclamation 456/2005.

\(^{968}\) Art 5(4) of the Federal Proclamation 89/1997 which has been expressly repealed by Art 20(1) of Proclamation 456/2005.

\(^{969}\) It is particularly a common practice in traditionally patriarchal societies to impose legal minimums of female membership in various institutions that are empowered to make crucial decisions on matters as vital as land. For instance in neighbouring Uganda the Land Act requires land management bodies and institutions to have women representation. ‘The Uganda Land Commission must include at least one female among its five members, one-third of the membership of the District Land Boards must be female, and Land Committees at the parish level must have at least one female among their four members.’ Jacqueline Asiimwe, ‘Making Women’s Land Rights a Reality in Uganda: Advocacy for Co-Ownership by Spouses’ (2001) Yale Human rights & Development LJ Vol 4, 171, pp 177-78.

\(^{970}\) See discussions under section 4.3 (i) concerning institutions and certification.

Article 5(3): Women who want to engage in agriculture shall have the right to get and use rural land.
Article 5(5): A husband and a wife have equal use right on their common land holdings. They do not lose their land holding because of their marriage that they possessed individually before.
Article 5(6): Women household heads shall have full use right on their land holdings.
Article 5(7): Women whose husbands are found being engaged in government services or in any other activities shall have the right to use rural lands.

The first provision is a direct endorsement of the Federal rural land Proclamation which we mentioned above. It hardly adds any value to the efforts of tackling women’s problems in relation to rural land rights, except in acknowledging the unfounded categorisation of agriculture as being principally a male activity. This is because it unnecessarily submits as law a presumption that there are rural women who do not want to engage in agriculture. The next provision has two important guarantees: first, spouses shall have equal use rights on their commonly held rural land, and secondly, neither spouse should lose rural land holdings that they possessed before the conclusion of the marriage. While the first is self-evident, the second requires closer examination in light of the customary practices that prevail in the country.

When a woman gets married it is customary that she leaves her family’s locality to join her spouse, and accordingly she leaves behind all the belongings she had except for her personal items. This provision, therefore, serves to negate this practice by stating that the spouses shall maintain the land holdings they had before the conclusion of the marriage. Even if it does not single out women, it is meant to address this unwanted custom that particularly affects women. The regulation issued to implement the Region’s Rural Land Act has further expanded this provision by stipulating two important details. The first is Article 5(2)(A), which states ‘husband and wife shall jointly use their possession which they got before their marriage.’ This is corroborated by another provision that deals with certification and states ‘if the husband and wife have land holding before their marriage, they shall jointly get a land use right certificate after their marriage.’ These two Articles, apart from confirming the

guarantee of continuing pre-marriage land holdings of spouses, also require the creation of a
new joint holding right on the previously private holdings of each of the spouses, and in
doing so, they do not appear to require the consent of the spouse who was the sole holder
prior to the marriage to the conversion of that land to a joint holding thereafter. This is
problematic, since it impacts on individuals’ rights to have their private holdings kept intact
after entering into the marriage institution. Ultimately, therefore, the institution of marriage
could be regarded as doing damage to the institution of private property. In practice,
individuals have been observed as being sceptical of marriage vis-à-vis their land holdings
and ended up divorcing, or in other cases removing the pictures of their wives from the land
holding certificate after they are given a joint holding right certificate. Taking into account
this practice, the Amhara Rural Land regulation has clearly stipulated that where a marriage
is known to exist at the time of land certification, and where the husband deliberately
excludes his wife from being included in the registration document and obtains one in his
own name only, the document is rendered invalid. This obligatory joint titling scheme, and
the effect of non-compliance, is not, however, equally embraced by the other Regions, even
though its implementation would, according to the 2012 World Development Report,
enhance women’s voices within households.

Articles 5(6) and 6(5) aim to dispel the longstanding legal and traditional presumption that
regarded the husband as the head of the family and which accordingly marginalised female­
headed households for land allocation. These provisions emphasise the entitlement of women
to acquire land holding as heads of family, without any distinction from male-headed
households, as well as their entitlement to have a certificate of holding issued in their name.
Articles 5(7) and 6(6), meanwhile, serve as recognition that where the husband of a rural
woman might be engaged in a non-agricultural means of livelihood, she nonetheless retains
her right to engage in agriculture and thus the right to thereby obtain rural land rights. There
are situations, therefore, where a wife has a rural land holding for the purposes of agriculture
and the husband is working elsewhere in government or non-governmental services. The
absence of a similar stipulation for a rural husband whose wife is carrying out a non-agrarian
profession could simply be explained by the belief that to provide for such a circumstance
explicitly would be stating the obvious. When looked at the issue from a gender perspective,
however, it provides a clear picture of the deeply entrenched patriarchy that presumes that

973 Art 20(5) the Amhara Rural Land Regulations 51/2007.
only a husband living in a rural area may rise to a government or other non-agrarian way of life. A balanced statement of the law would therefore have been neutrally worded by referring to both spouses and only stating the principle that where either spouse has opted for a non-agrarian profession, this must not bar the other from having a rural land holding for purposes of agriculture.

Article 6(4) speaks about the issuance of a certificate for land held jointly by husband and wife or any other persons. Here, a simple reading of the provision reveals that spousal land is represented by a certificate that proves it is the joint property of the couple. There may be situations, nonetheless, where a person has more than one wife and also has land holdings for which a certificate will have to be issued. In this situation, the manner of issuing the certificate as a proof of land holding of a man and his multiple wives poses a problem, particularly considering the diverse practices observed across the Regions. It is to be noted also that according to Article 650 of the Ethiopian Criminal Code, polygamy is a criminal act.

4.6.2. Polygamy and rural land administration

According to Federal criminal law, as a rule, the act of polygamy is punishable by a term of imprisonment of up to five years. The Code, nonetheless, makes an exception to this general prohibition under Article 651, stating 'the preceding Article shall not apply where bigamy is committed in conformity with religious or traditional practices recognised by law.' Therefore, for a polygamous act to be condoned under this provision, the existence of a law acknowledging this particular religious or traditional practice must be proved. This was likewise stipulated under the 1957 Penal Code, while the civil Code also categorically prohibited acts of plural marriages. The original position taken under the 1957 Penal Code (which remains unchanged under the 2004 Criminal Code when it comes to the crime of bigamy) was meant to create a compromise, because of the prevalence of polygamy, in such a way that 'Muslims would be allowed to practice polygamy in what was basically a monogamous society.' A polygamous marriage is therefore always a crime in Ethiopia, though it is only punishable if it occurs in a Region where family law expressly prohibits that form of behaviour. The recognition or proscription of polygamy has occupied a central place

976 Arts 616 & 617 of the Penal Code of the Empire of Ethiopia, Proclamation 157/1957; See also the Art 585 of the Civil Code of Ethiopia.
in discussions of family law revision in Ethiopia, and there have been instances where express permission for polygamy in one of the Regional family laws has later been rescinded.\textsuperscript{978} As family laws stand now, all the Regions contain an express prohibition on polygamy, and accordingly it continues to be punishable under criminal law.

When one looks at the certification of rural land holding practices, though, this prohibition appears to have been set aside. For the purposes of reviewing the SNNPRS Region’s practices with respect to polygamy and land administration, a comparison is made with one other Region, the Oromia national Regional state. Wherever necessary, the laws of the other Regions are also mentioned for purposes of comparison.

Since polygamy is outlawed in the laws of the Regions, it is important to examine how this has been reflected in the rural land administration. Three Woredas/villages from each of the two Regions have been looked at, so as to reveal the discordance between the law and institutional practices, with data being collected in June 2010 by a team of researchers which also included the author. The complete raw data and documentation are available at the library of the Ethiopian Institution of the Ombudsman.\textsuperscript{979} Although the research was undertaken under the broader topic of women’s rights under the rural land administration laws of Oromia and the SNNPRS, it is only those facts with a bearing on polygamy that are referred to in this section. Both Regions’ rural land laws contain catalogues of guarantees of equality for women and men with regard to access to and control and use of rural land.\textsuperscript{980}

When one looks at the facts on the ground, however, women’s access to and control of rural land still remain far from realised. The following table shows data from three Woredas from each of the Regions, depicting the proportion of rural land certificate holders by gender.

\begin{table}[!h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
Rgns | Woreda | Female holders & Male holders | Total   \\
     |        | No     | %       | No   | %  \\
\hline
      | Welmera | 2,860  | 28.21%  | 7,280 | 71.79% |
      |         | 10,140 | 100%    |       |       |
\hline
\end{tabular}
\caption{Certificate holders in six sample Woredas of Oromia and SNNPRS}
\end{table}

\textsuperscript{978} Art 32 of the repealed Tigray Family law Proclamation 33/1998, 10 November 1998.
\textsuperscript{979} Ethiopian Institution of the Ombudsman, (\textit{n} 491).
\textsuperscript{980} Arts 5 and 6 of SNNPRS Proclamation 110/2007 and Arts 5(2), 6(14), 15(8), (9) & (10) of the Oromia Proclamation 130/2007.
<table>
<thead>
<tr>
<th>Woreda</th>
<th>Area (ha)</th>
<th>%</th>
<th>Population (ha)</th>
<th>%</th>
<th>Total (ha)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tiyo</td>
<td>2,813</td>
<td>27.08%</td>
<td>7,573</td>
<td>72.91%</td>
<td>10,386</td>
<td>100%</td>
</tr>
<tr>
<td>Lume</td>
<td>1,958</td>
<td>24.09%</td>
<td>6,169</td>
<td>75.90%</td>
<td>8,127</td>
<td>100%</td>
</tr>
<tr>
<td>SNNPR</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Halaba</td>
<td>3,365</td>
<td>12.95%</td>
<td>22,607</td>
<td>87.05%</td>
<td>25,972</td>
<td>100%</td>
</tr>
<tr>
<td>Sodo Zuria</td>
<td>3,331</td>
<td>13.40%</td>
<td>21,509</td>
<td>86.60%</td>
<td>24,840</td>
<td>100%</td>
</tr>
<tr>
<td>Hulbareg</td>
<td>1,913</td>
<td>16.56%</td>
<td>9,645</td>
<td>83.44%</td>
<td>11,558</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Drawn by the author from information gathered during the field research from each Woreda’s rural land administration bureau (Oct. 2010)

Moreover, the certification process in the Oromia and SNNP Regional states is conducted in a slightly different manner when it comes to certifying the land holdings of a person who is living within a marriage. The Oromia National Regional State Agricultural and Rural Development Bureau established a land administration, use and environmental protection bureau, similar to its SNNPRS counterpart, mandated to, inter alia, issue land possession certificates to individuals. They each adopted a standard certificate in a slightly different way with regard to the right holder’s particulars’ entry, photographs and the manner of registering a title holder married to more than one person at the same time.

Under the Oromia Region’s certificate, a person’s holding is to be entered in his own name as ‘holder’s name.’ The second person whose name is to be entered into the certificate will be the wife or wives’ name or names. In this regard, the model certificate is numbered 1-4 downwards. At the back of the document is a space to post one person’s picture, i.e. that of the holder. Accordingly, the registration is done in such a way that a man will have his name mentioned as the holder and then his wife’s/wives’ names are listed, with, finally, his picture alone posted on the back. Having one’s picture at the back, from a lay person’s perspective,

---

981 Both of the Proclamations speak about the Bureau of Agriculture and Rural Development as having the power to administer rural land and endowed with the responsibility of issuing rural land holding certificates. Art 2(21) of Proclamation 130/2007 of Oromia Region and Art 6(1) (B) of SNNP Region Regulations 66/2007. In practice, however, both of the Regions have established a Bureau for rural land use, administration and environmental protection.

982 Maqqa Aba Qabiyyee means yebaleyizotaw sim or holder’s name. See Appendix II.

983 Maqqa hadda manna/mannotta means Yebelebetu/Yebalebetochu sim or wife/wives name/names.

984 Whether that caps the maximum wives one may have or just describes the Share’a law’s maximum number of wives that one may possess is unclear. One may even say that it just is meant to be economical in the use of the paper space and more may also be welcomed.

203
symbolises exclusivity, security and sense of superiority. Thus, the practice, unlike the SNNPRS and Amhara practices, renders the certificate of value only to the husband. According to the World Bank Report, referred to at the beginning of this Chapter, this practice undermines women’s rights:

While less than 9% of certificates are in the husband’s name in Amhara, 58% and 21% are so in Oromia and the South, respectively. Analysis to identify reasons for such differences would be desirable. An intriguing possibility is that the requirement to include women’s picture on the certificate in Amhara and the South but not in Oromia is at the source of the neglect of women’s rights in the latter.985

When we look into the SNNPRS’s approach to the matter, there are slight differences to the Oromia case. In the SNNPRS certificate the title holders will be two where it is a couple’s property,986 and the entry is to be done in the order of holder no 1 and holder number 2. By default the husband’s name is to be written first, with the wife’s following thereafter. Legally speaking, however, this has no effect whatsoever, and there is no legal requirement that it should be the husband’s name that comes first. The picture is to be posted on the front page of the certificate just above the names list, and here lies the second difference, because the certificate has to carry the picture of both the husband and the wife.987 Where a polygamous marriage exists, here too the land administration bureau is not in a position to refuse certification. It achieves this in a slightly different way, though, and with some form of novelty distinct from the country-wide practice of possession certifications. The husband has to decide which one of the wives is the primary one in his married life, and then he gives her the chance to be registered as second to his name in the land holding, where his name appears as holder number one. For the remaining wives, parcels are allocated and each one of them is registered in a separate certificate and in one or more parcels, and in these circumstances, the wife’s name is written as the first holder with the husband as the second on the list. This

985 Deininger et al., (n 25), p 1800.
986 A land could be the common property of the spouses because one of the spouses has decided to make it a common property upon the conclusion of the marriage, because they have obtained it through donation from a person in common, or because either of them has obtained it through succession or donation personally and has not requested for it to be a separate property to that of the spouse. Art 62 of the Federal Family Code which is similarly endorsed by the various Regional family laws. See Appendix I.
987 In one of the Woredas, it was observed that the spouses should appear together in a photo printed on a single paper and that shows the strict desire on the part of the land administration bureau to creating a certificate that proves equality of the holders, at least on paper.
makes the assertion of inferior-superior relations between the holders more valid, because writing the second wife’s name first, and not second, shows some distinction in relation to status. In this manner, therefore, the person remains married to multiple wives, and in cases where division of the property is tabled, each one of them possesses that for which her name has been registered.

Primarily, the law prohibiting polygamy and this land certification practice directly contradict each other, because the former’s prohibition is disregarded by the latter. Furthermore, well-established rules on legal construction cite that where two rules on the same topic conflict, meaning must be sought by construing the status of laws in pari materia, and the one having higher authority must be given precedence over the other. In this specific situation, the land certification process is conducted based on some form of administrative decision or directive. Accordingly, family laws’ provisions regarding polygamy must be observed. As simple a solution as this might appear, its practicality cannot be underestimated. What the land administration bureau personnel stated was that in this registration process they are not permitting polygamy and neither can they refuse to register a person’s land in his own name and then in the name of those he calls ‘his wife/wives’ in Oromia, or stipulate the order of holder number one and holder number two in SNNPR.

Polygamy, contrary to legal prohibitions, is a widely practiced act, particularly in the eastern and southern parts of the country. And as reported by Holden and Tewodros, the original attempt by the Oromia and SNNPRS to have the husband registered on one certificate and only with one wife was resisted vociferously by rural landholders, eventually compelling the land administration institutions to design the system of registration with multiple wives.

---

988 An attempt to find any authoritative legal instrument that stipulates this form of registration process has not been successful except the model certificate that can at least be considered as an administrative directive of the respective Regional councils.

989 This was during an interview with Halaba Woreda (SNNPRS) Head of Rural Land Administration, Use and Environmental Protection Bureau Head, Ato Surafel Adem on 9 Oct 2010.

990 When it comes to the SNNPRS things are straightforward because the certificate does not say husband or wife, rather only has two places in which are to be written the name of holder number I and holder number II. In the Oromia national Regional state, though not as objective as the SNNPR, it states wife/wives without entering into the issue of whether the marriages co-exist or not. When asked about the matter, an official explained as follows: “If the marriage is declared as bigamous and illegal then we will, based on the court’s decision and the parties’ request partition the property and until then we have no right to refuse registration of a parcel/parcels in the name of a person and his wife/wives.” Interview with Ato Arega Eshetu, Lume Woreda (Oromia Regional State) Deputy Head of Rural Land Administration, Use and Environmental Protection Bureau and leader of the Rural Land Administration Desk on 5 Oct 2010.

991 Holden and Tefera, (n 804), p 5.
The law on polygamy – and the practice itself – are therefore incompatible, in that polygamy continues to prevail even in the face of clear legal proscriptions. Therefore, the rural land administration system operates within such a social setting and, as affirmed by the World Bank Report, ‘proper rural land administration can be a very effective instrument to empower women socially and economically.’ Although women are generally disadvantaged regarding the division of property, particularly following divorce, research has found that when in polygamous households they are in an even more disadvantaged position. Therefore, the alliance the rural land administration system has made with the practice of polygamy, by issuing land holding certificates to a person with multiple wives, exacerbates gender biases in Ethiopian society.

The family law on polygamy and the rural land administration should have been made to work in harmony. For instance, under the Amhara system of registration, where a person has multiple wives, he will not be allowed to register the land holding as belonging to a husband and wives; rather, the registration will be made as a common holding between all three, four or more persons within the marriage. This approach maintains a neutral position towards polygamy, without affecting the rights of women to have their holding rights recognised. By definition, common holding gives rise to an equal use right over the land. This is better than the registration system of the Oromia Region, which simply lists the wives as “wives” of the holder-husband and affixes only the latter’s photo to the back of the certificate. It is also preferable compared to the SNNPRS, which registers the husband as the first holder, the first wife as the second holder and then with the rest of the wives having the husband as a second holder after putting the other wife as the first, which is repeated in the successive certificates issued, based on the number of wives within the marriage. Holden and Tefera argued that the approach of these two Regions creates differentiations between wives according to the timing of their marriage:

There was also a difference in the perceptions of the first wife vs. later wives of polygamous men. Thirty-five percent of the first wives perceived their positions had

994 Yigremew Adal, ‘Rural Women’s Access to Land in Ethiopia’ in Dessalegn Rahmato and Taye Assefa, (eds), Land and the Challenge of Sustainable Development in Ethiopia, (Forum for Social Studies 2006), p 34.
995 Amhara Region Rural Land holding Registration and Updating Guideline, (April 2008 Amhara National Regional State Environmental Protection Land Administration and Use Authority-EPLAU), on file with the author.
996 Art 2(10) of the Amhara Proclamation 133/2006.

206
been strengthened in cases of divorce and death of the husband, while 51% of the later wives perceived so. The difference may be due to the weaker initial position of later wives as compared to the first wives. We found evidence that the polygamous wives had a weaker position than other wives and that the later wives of polygamous households had even weaker position than the first wife of such households, as measured by their expectations about how much land they would keep upon divorce.  

Moreover, by taking a firm position on polygamy, the rural land administration system would contribute towards the enforcement of the law prohibiting such an act, which is said to degrade women’s position ‘as low-rank wives,’ thereby ‘reducing their agency and well-being.’ This has even become, in the African context, a human rights concern, as can be gathered from the Protocol to the African Charter on Human and People’s Rights. This protocol, which also replicates most of the provisions of the United Nations Convention on the Elimination of all forms of Discrimination against Women, enunciates in Article 6 those rights as they relate to marriage. Specifically, the protocol imposes an obligation on member states to enact appropriate laws to guarantee that:

\[
\text{[...] monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected.}^999
\]

Here the authors of the Protocol are not confident enough to proscribe polygamy and declare monogamy as the exclusive norm. What the provision does, though, is set a ‘norm of aspiration’ for state parties, which must do their best to encourage monogamy and at the very least promote and protect women’s rights in any form of marital relationship, polygamous marriages included. This is therefore an area where national legislation will have to take precedence in determining the right path, albeit with adequate regard being given to ensuring gender equality. The laws and practices of African countries also differ on this subject.\(^{1000}\)

997 Holden and Tefera (n 804), pp 5-6.
999 Art 6(d) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. It is important to mention that Ethiopia, though a signatory, is yet to ratify this Protocol.
1000 For instance, Art 143 of the Code of Individuals and Family of Benin allows a man to marry more than one woman and not vice versa. Accordingly, the Constitutional Court of Benin reviewed the legislation on the basis of Art 26(1) & (2) of the country’s constitution that declares ‘the state ensures for all equality before the law without distinction...of gender...Men and women have equal rights...’ See Benin Constitutional Court, Decision DCC 02-144, 23 Dec 2002, reported in the African Human Rights Law Review, Vol. 127, [2004]. In the case of Bhe and Others v Magistrate, Khayelitsha and others, the Constitutional Court of South Africa has
They range from express legalisation, as is the case in Uganda, to express prohibition, as we have seen in the laws of Ethiopia. Indeed, in 2013, a new Marriage Bill was introduced to the Kenyan Parliament defining marriage as 'the voluntary union of a man and a women whether in a monogamous or polygamous union and registered in accordance with this Act.' In polygamous societies ensuring equity among land right holders, as was found to be the case in Uganda by Diana Hunt, is becoming very difficult. The Amhara system of registering as a joint holding the holdings of a person with more than one wife brings all those mentioned in the certificate as joint holders to the presumption of equal rights, and to a degree it conforms to the overall legal position taken towards polygamy in the Region as well as in the country.

1003 Under the Ugandan Customary Marriage (Registration) Act, 1973, section 4(2) declares that 'customary marriage may be polygamous.'
1002 Republic of Kenya Bill for the Introduction into the National Assembly, the Marriage Bill, 2013, Kenya Gazette Supplement, 5 July 2013, Nairobi, Section 3(1).
Chapter V: Enabling governance and institutional conditions for collective action

5.1. Introduction

Today’s Ethiopia typifies Samuel Huntington’s heavily criticised concept of ‘authoritarian transition,’ the groundwork for which was provided in his seminal book Political Order in Changing Societies. Francis Fukuyama, writing a foreword to the 2006 edition of Huntington’s Political Order, describes this concept as ‘a development strategy[...] whereby a modernising dictatorship provided political order, a rule of law, and the conditions for successful economic and social development.’1005 The Ethiopian government’s sincere conviction on the benefits of authoritarianism as a modus operandi has been explained nowhere better than in the words of the late Prime Minister, Meles Zenawi, when, in May 2012 at the World Economic Forum held in Addis Ababa, he said:

My view is that there is no direct relationship between economic growth and democracy historically or theoretically[...] And in Africa most of our countries are extremely diverse [and] democracy may be the only viable option for keeping these diverse nations together. So[...] We need to democratize in order to survive as united sane nations. But I don’t believe in this night-time, you know, bedtime stories and contrived arguments linking economic growth with democracy. There is no basis for it in history and in[...] economics.1006

The country has recorded an annual average upsurge of 10% in its GDP for seven uninterrupted years since 2004, as shown in Figure 9 below. Even so, many destitute Ethiopians go hungry by the day. As recently as 2011, together with Somalia and parts of Kenya, the East African nation experienced yet another drought that threatened the lives of many. Any ordinary citizen of this second most populous African country would simply disagree with the assertion that conditions of poverty in Ethiopia are being alleviated. There is also a rather unpopular elitist discourse in the country that growth and inflation, as a matter

1005 Samuel Huntington, Political Order in Changing Societies, (Yale University Press 2006), Forward by Francis Fukuyama, xiii
of fact, go together, and thus the fact that the poor’s survival is irresistibly challenged is legitimately related to the country’s overall development.

Figure 10: Annual (%) GDP Growth

![Graph showing GDP growth in Ethiopia](image)

Source: The World Bank Group: World databank (generated by author on 4 May 2012)

This thinking is partly explained by the lack of independent media outlets and civil society organisations in the country to verify the figures the government is producing for its own credit. In other words, the sole provider of data and information to the World Bank and other global organs in the country is the government itself, and there is a serious lack of authenticity in these economic figures and variables. It is rightly said that empty promises are used as smokescreen to camouflage the destitute lives that many are leading, and the truth of the matter is ‘if words were food, nobody would go hungry.’ Land policy in Ethiopia is simply one tool for political control, and accordingly any opposition directed at these state-sponsored investment projects and large-scale farmland deals is seen as political opposition.

As discussed in the previous Chapter, large-scale agricultural land deals are coming at the cost of displacing many rural people, who receive nominal compensation and no guarantees regarding substitute land. In other cases, the massive movement of people under the villagisation programme has left a large section of society in hopeless conditions and at times

---

1007 Rahmato explains how figures included even in a single government policy document openly conflict in a manner that reveals ‘a good measure of guess work and arbitrariness.’ Rahmato, (n 90), p 10.

1008 ‘Feeding the World: If words were food nobody would go hungry,’ The Economist, 19 November 2009 <http://www.economist.com/node/14926114> accessed 17 June 2014.


1010 See section 4.3.2.4. above.
with the total loss of livelihoods.\textsuperscript{1011} The preference given to large-scale over smallholder agriculture, as discussed elsewhere, is not sustainable in the long run\textsuperscript{1012}, and instead what must be done is creating an enabling environment for smallholders to organise, act and influence collectively. Here we discuss some of the critical preconditions that need to exist, to realise collective action. Of crucial significance is creating a participatory, democratic and accountable governance system that ensures the autonomy and independence of farmers’ organisations. Moreover, overcoming the problems of access to credit facilities by rural people is equally significant for the full operationalisation of those organisations.

5.2. \textit{An enabling environment for collective action}

We have noted that there is a need for smallholders to act collectively so that they can best protect their interests, particularly against market (input as well as output) pressures.\textsuperscript{1013} Moreover, acting collectively would also mean becoming more vocal and empowered. In this section, therefore, we outline the crucial prerequisites for such collective action to exist and become effective.

The cooperative movement in Ethiopia dates back to the 1960s and has been heavily influenced by the political agenda of successive regimes ever since. Under the feudal system, it was meant to protect the few absentee landlords and therefore hardly conformed to the crucial objective of cooperatives to protect vulnerable individuals in a social setting that would otherwise have exposed them to negative financial, political and social influences. When the Derg assumed power in the mid-1970s, it revitalised the cooperatives’ agenda and saw them as vital instruments for the implementation of its socialist policies. Accordingly, membership of and participation in these social organisations were compulsory, and non-members were made to suffer deliberate exclusion and disadvantage. Where access to fertilisers, seeds and other agricultural inputs was contingent upon an individual’s membership of a particular cooperative, it was a matter of survival for vulnerable rural farmers and households to subscribe to such organisations. Therefore, historically, the prominence of cooperatives can be traced back to the Derg regime, which strengthened and

\textsuperscript{1011} Human Rights Watch, \textit{(n 887)}. And see the discussions made in section 4.3.2.4. under the heading ‘displacement in the name of development.’

\textsuperscript{1012} See section 4.3.2.4. above.

\textsuperscript{1013} See discussions under section 1.4.
institutionalised what had actually begun back in the 1960s. Under the Derg regime, however, these organisations operated much more like grassroots tools for the implementation of socialist policy than anything like what their actual purpose required. Commenting on this disorientation, one ILO-sponsored research states:

The Derg regime considered cooperatives as a mass movement that could ensure equitable mobilisation and distribution of resources. They were thus viewed as instruments for planning and implementation of socialist policies. Cooperatives were, therefore, established to achieve these objectives. It was in the same vein that cooperatives would also be used as a means to mobilize community support for the ruling party. During the Derg regime, this was more conspicuous as cooperatives were forced to operate in line with socialist principle, where production and marketing of produce were done collectively and members pooled their land resources under communal tenure.

In its early days following the assumption of power, the incumbent regime severely constrained the existence and operation of cooperatives, largely owing to its free market orientation and because it had accused the Derg regime of using these organisations as a means of implementing socialist political policies. It was in 1993, two years before the adoption of the current constitution, that the importance of voluntarily established and operated cooperatives for smallholder farmers’ development was acknowledged. Accordingly, a new law on cooperatives was promulgated, although this has now undergone a number of revisions. The continued interest in such instruments of collective action can also be observed from the successive treatment of the subject under the various development plans adopted by the country, the latest being the Growth and Transformation Plan (GTP), which has mandated the Federal Cooperative Agency (FCA) to formulate an Agricultural Cooperative Sector Development Strategy, which was accordingly adopted in June 2012 and which will guide the cooperative’s strategic directions for the next five years. The strategy aspires, ‘as part of the country’s vision of achieving middle income status by 2025, to

1014 It was Decree no 44/1960 (Farm Workers Cooperatives Decree) that for the first time provided legal bases for agricultural cooperatives. However, the Derg took it to a more substantial level in the Cooperative Societies Proclamation 138/1978 that considered cooperatives as having the objective to ‘bring an end to capitalist exploitation, and to prevent the re-emergence of capitalism in agriculture.’ See Yuka Kodama, ‘New Role of Cooperatives in Ethiopia: The Case of Ethiopian Coffee Farmers Cooperatives’ (2007) African Study Monographs Vol 35, 87, p 88.
increase smallholder farmers’ productivity and income by leveraging the activities of agricultural cooperatives.\textsuperscript{1016} The strategy adopts the definition proposed for a cooperative under the International Labour Organisation’s Recommendation 193, which describes it as ‘an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.’\textsuperscript{1017}

Irrespective of these law and policy developments, however, the growth and prevalence of agricultural cooperatives remain, as is shown in the Figure below, still very low at a staggering 26.5 per cent of the total number of cooperatives in the country.\textsuperscript{1018}

Figure 11: Registered Cooperatives by Region as at 2012 (Source Federal Cooperatives Agency)

<table>
<thead>
<tr>
<th>Region</th>
<th>Total Primary Cooperatives</th>
<th>Membership Male</th>
<th>Female</th>
<th>Total</th>
<th>Agricultural Cooperatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tigray</td>
<td>3,746</td>
<td>441,600</td>
<td>171,000</td>
<td>612,600</td>
<td>1,927</td>
</tr>
<tr>
<td>Amhara</td>
<td>7,050</td>
<td>2,006,800</td>
<td>438,600</td>
<td>2,445,400</td>
<td>2,599</td>
</tr>
<tr>
<td>Oromia</td>
<td>11,321</td>
<td>1,414,400</td>
<td>304,400</td>
<td>1,718,800</td>
<td>4,734</td>
</tr>
<tr>
<td>SNNP</td>
<td>7,905</td>
<td>1,016,300</td>
<td>193,000</td>
<td>1,209,300</td>
<td>1,388</td>
</tr>
<tr>
<td>Benishangul-Gumuz</td>
<td>309</td>
<td>18,100</td>
<td>5,900</td>
<td>24,000</td>
<td>130</td>
</tr>
<tr>
<td>Harari</td>
<td>448</td>
<td>9,900</td>
<td>4,700</td>
<td>14,600</td>
<td>41</td>
</tr>
<tr>
<td>Gambella</td>
<td>238</td>
<td>4,800</td>
<td>4,000</td>
<td>8,800</td>
<td>124</td>
</tr>
<tr>
<td>Afar</td>
<td>365</td>
<td>10,600</td>
<td>5,900</td>
<td>16,500</td>
<td>180</td>
</tr>
<tr>
<td>Addis Ababa</td>
<td>9,482</td>
<td>183,200</td>
<td>253,900</td>
<td>437,100</td>
<td>----</td>
</tr>
<tr>
<td>Dire Dawa</td>
<td>1,060</td>
<td>23,300</td>
<td>14,000</td>
<td>37,300</td>
<td>64</td>
</tr>
<tr>
<td>Somali</td>
<td>1,332</td>
<td>24,200</td>
<td>18,100</td>
<td>42,300</td>
<td>265</td>
</tr>
<tr>
<td>Total country</td>
<td>43,256</td>
<td>5,153,200</td>
<td>1,413,500</td>
<td>6,566,700</td>
<td>11,452</td>
</tr>
</tbody>
</table>


\textsuperscript{1017} Art 1(2) of the ILO Recommendation Concerning Promotion of Cooperatives (no 193), 20 June 2002 (hereinafter referred ILO R193).

Considering the country’s large rural population, almost 85 per cent of Ethiopia, and the contribution agriculture is making to the country’s economy, this low level of agricultural cooperatives indicates ‘the majority of the population [have] not yet been able to explore and utilise the potential services of cooperatives.’ In the following sections, some of the critical challenges that affect collective action within the context of Ethiopia’s agricultural cooperatives laws and policies will be examined.

5.2.1. Autonomy and independence

While governments have the responsibility to create legal and institutional frameworks, to facilitate the establishment and operation of cooperatives, this responsibility must be exercised with caution, so as not to compromise the autonomy and independence of the cooperatives. The ILO, under its “Promoting Cooperatives Recommendation 193”, weighs up this delicate balance by providing for the central cooperative principles of:

Voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; and concern for community.

In these principles, autonomy, independence and democratic control by members feature prominently and are regarded as central to the smooth functioning of cooperative societies. On the other hand, the Recommendation outlines the role of governments in providing supportive policy and legal frameworks which have to be ‘consistent with the nature and function of cooperatives’ and ‘which respect their autonomy.’ This could also be explained in terms of the assumption that cooperatives operate on the basis of a legal framework that blends both public and private characteristics and that this requires vigilance on the part of government so as not to upset the balance. As pointed out by the International Cooperative Alliance Guidelines for Cooperative Legislation, which was published by the ILO, the role of the state in a market economy must be restricted to legislation, registration, deregistration and general normative control and:

1020 ILO R193, Art 3.
1021 ILO R193, Art 6.
this implies the prohibition for governments to convert cooperatives into transmission belts for national policies. The private character of cooperatives should prevent their being used as instruments for political, developmental, social or other goals. Any such use of cooperatives endangers their economic efficiency.\[1022\]

From the initial formulation of the law, governments make political choices to emphasise either the private or public character of the cooperatives, depending on what objective they intend to pursue with the cooperative legislation. This choice is succinctly summarised in the ILO Guidelines as follows:

The legal nature of the cooperative law depends on the definition of its objective. If it is to regulate the activity of the cooperative sector, it will be part of public economic law and should include, besides rules on the formation, structure, operations and dissolution of cooperatives, also rules on the establishment, the set-up and the powers of a supervisory authority. If, on the other hand, it is to only propose to potential cooperators a mode of organisation which will permit them to develop their activities in an autonomous manner, then it will be part of private law.\[1023\]

The guidelines go on to suggest that it is in fact preferable to adopt the private law paradigm, which is appropriate if we are to create a structure for lasting rules governing the formation, operation and dissolution of the cooperatives, irrespective of government and policy changes. If we give attention to past experiences of the country, where the cooperative movement was put in complete abeyance mainly because of the high levels of politicisation, then excessive control must not be regarded as the correct path. The Ethiopian law of cooperatives, it appears, has chosen the public economic law model, as evidenced by the contents of the law that attempt to create not only the legal framework under which cooperatives may be established, but also the detailed regulatory rules and institutions.\[1024\] In terms of content, rather than empowering the cooperatives to set their own objectives, the law has itself exhaustively crafted the possible cooperative objectives from which they will have to

\[1023\] ILO Coop Guidelines, p 56.
\[1024\] The detailed provisions (with 60 arts) of the Coop Proclamation 147/1998 anticipate the establishment of an appropriate authority which was instituted by a later Proclamation 274/2002, Cooperative Commission Establishment Proclamation; apart from providing some core tasks that include registration, inspection and audit of cooperative, the Coop Proclamation also addresses the second aspect cooperative law on the formation, operation and dissolution of cooperatives.
choose.\textsuperscript{1025} It appears, as the law stands, that only peripheral matters are left for the statute or constituting document of the self-initiated cooperative society, thus undermining the principle of subsidiarity by which only matters of public concern should be spelt out in government legislation, with the rest being left to bylaws. This principle is explained under the ILO Guidelines as follows:

The autonomy of cooperatives will only be achieved and/or maintained by respecting the principle of subsidiarity. Only matters which surpass the competence of an individual cooperative, which are of a democratically defined public concern or involve third party interests may be regulated through public norms, while everything else must be left to be determined through bylaws/statutes.\textsuperscript{1026}

As self-help and self-initiated establishments, they must, if they are to be effective and efficient, be given the necessary institutional autonomy, so long as they operate within the confines of legality and fairness. As indicated in the definition of cooperatives, therefore, the success of these community organisations is highly dependent on their being ‘autonomous associations’ and their being ‘democratically controlled’.\textsuperscript{1027} Autonomy at the level of establishment and operation must be guaranteed, both in law and practice.

In Ethiopia, both historically and at present, however, the establishment and operation of cooperatives is highly politicised. Apart from the paternalistic motives that derive the government’s continued intervention in the activities of these collective action institutions, they are also regarded as the best grass-roots establishments to garner political support for those in power. The serious assault on the democratic features of the Ethiopian cooperatives movement during the Derg era was the result of the effective absence of their voluntary nature. The Derg’s open embrace of the socialist policy was reflected in its direct legal imposition of the duty on individual farmers to join their local agricultural cooperatives. Bezabih commented on this lack of freedom of association during the Derg period as follows:

During the socialist government, cooperatives were formed to assist the implementation of the government’s policy of collective ownership of properties. Under this system, cooperatives were forced to operate in line with socialist principles, which meant that

\textsuperscript{1025} Art 4 of the Coop Proclamation 147/1998 which begins by saying, ‘the society to be established under this Proclamation shall have one or more of the following objectives’ and lists 9 objectives that exclusively deal with economic concerns.

\textsuperscript{1026} ILO Coop Guidelines, p 58.

\textsuperscript{1027} See the definition of cooperatives under the ILO R193.
production and marketing of produce were undertaken through collective mechanisms. Membership to a cooperative was also compulsory, which contravened the basic cooperative principle of voluntary participation.\textsuperscript{1028}

This twisting of the purposes and goals of cooperatives accordingly rendered institutions, to borrow Pollet's expression, as mere 'vehicles for policy execution rather than as co-authors in policy design.'\textsuperscript{1029}

The current regime, after assuming power in 1991, had initially shown disinterest in cooperatives, considering them as one of the makings of its predecessor's socialist regime against which it had waged a 17-year armed struggle, which Pollet correctly classifies regarding the initial position of the current regime as those 'massive cooperatives abolition waves.'\textsuperscript{1030} Some four years had to pass, therefore, before the regime decided to reinstitute the cooperatives through Proclamation 85/1994, which was amended by two subsequent legislations, namely Proclamations 147/1998 and 402/2004. The overall policy thrust of this government exhibits once again a degree of confusion between the desire to provide support to cooperatives as partners in economic and social development efforts, on the one hand, and a desire for excessive control of a potentially politically powerful structure on the other. In other words, it misses the legitimate role of government as a 'facilitator of an enabling environment' for active, socially and economically viable cooperatives, as pointed out by Pollet, and exercises extensive control that denies these organisations their autonomy, both at establishment and operational levels. The challenge the Ethiopia's cooperatives face with regard to autonomy and independence is fittingly summed up by Develtere and Pollet as follows:

In Ethiopia, the government has gone a step further. The governmental Federal Cooperative Agency seconds personnel to cooperative unions, while at local level, leaders of primary cooperatives often have key positions in the local authorities. The government also instituted cooperative studies in four universities. Lacking a proper

\textsuperscript{1028} Emana, (n 1015), p 1.
\textsuperscript{1030} Ibid, p 15.
movement leadership in the form of apex bodies or federations, cooperatives do not have much countervailing power against so much political interest.\textsuperscript{1031}

The ten-point registration requirements that the Cooperative Societies Proclamation provides under Article 9 undoubtedly pose a significant hurdle to rural people's attempt to come together with the aim of creating a platform for collective action. These requirements are: (a) minutes of the founders meeting, (b) by-laws of the society in three copies, (c) names, addresses and signatures of members, (d) names, addresses and signatures of the members of the management committee of the society, (e) a detailed description which proves that the registered members of the society have met the requirements for membership in accordance with the provisions of this Proclamation and the bylaws of the society, (f) names, addresses and signatures of members of the societies above primary level, (g) plan of the society, (h) documents showing the amount of capital of the society and that the capital has been collected and deposited in a bank account, and if there is no bank in the area, that it has been deposited in a place where the appropriate authority has designated, (i) a description of the land on which the society operates and (j) other particulars that may be specified in the regulations or directives issued for the implementation of this Proclamation.\textsuperscript{1032}

The second of these registration preconditions clearly shows the level of rigidity imposed on the establishment of an agricultural cooperative in a way that significantly impacts free enterprise. The requirement to present a form of business plan would be very difficult for a group of rural people who have had hardly any educational exposure. Furthermore, the registration of a cooperative society is conditioned on adducing documents that contain not only a declaration of the amount of capital of the society, but also proof of the collection and deposit of the same in a bank account.\textsuperscript{1033} Noting the imbalance in the geographic distribution of banking institutions, where the complete absence of even a single bank is normal in most of the rural communities in the country, this provision attempts to ameliorate this challenge by allowing alternate proof of the depositing requirement. This is where the cooperative seeking registration provides evidence of depositing the paid-up capital of the society in a

\textsuperscript{1031} Patrick Develtere and Ignace Pollet, "Renaissance of African Cooperatives in the 21st Century: Lessons from the Field" in Develtere et al., (n 1019), p 69.

\textsuperscript{1032} Art 9(2) (a)-(j) of Cooperative Societies Proclamation 147/1998, which has been slightly amended by Cooperative Societies (Amendment) Proclamation 402/2004 (hereinafter referred to as Coop Proclamation 147/1998 and Coop (Amendment) Proclamation 402/2004).

\textsuperscript{1033} Ibid, (h).
place where ‘the appropriate authority’\textsuperscript{1034} has designated. Even though there is no minimum capital requirement, the very fact that those interested in coming together under the institutional arrangement of cooperative societies will have to raise capital becomes cumbersome, as rural communities mainly have just their land holdings and their crops at their disposal as capital (i.e. their capital is largely illiquid). As can be observed from the discussion below, the lack of clarity on the possibility of contributions in kind also makes it more difficult for the founding members to meet this registration requirement. For example, in producer or primary cooperatives, individuals collectivise their labour and physical assets rather than monetary contributions, in order to further their objective of enhancing their socio-economic conditions. This particular point emanates partly from the legislator’s failure to disaggregate the requirements on the basis of the various types of cooperatives — the failure of which has ultimately created a formative constraint.\textsuperscript{1035} Proclamation 402/2004 introduced some important amendments to Proclamation 147/1998, in that it provided for a number of new ideas under Article 16 on “payment of shares”. The hitherto total payment requirement of the capital appears to have been dropped, and now any cooperative society shall:

Collect, upon its formation, from the members at least 1/5 of the amount of the share that the general assembly has decided to be sold. And it shall sell the rest of the shares within four years as of the time of its establishment[...] The share that the society sells may be sold either in cash or in kind. Shares paid in kind shall be determined by the by-law of the society.\textsuperscript{1036}

This has not tackled the problem, though, since it continues to restrict the founding members from making contributions other than in monetary terms. The ILO Guidelines on Cooperative Legislation also suggest that cooperative members must be allowed to make contributions in cash, kind, labour, service or by leaving a part of the surplus to which a member is entitled, with the cooperative.\textsuperscript{1037}

\textsuperscript{1034} This authority is defined as ‘an organ established at federal level, or a bureau or an organ established for the same purpose at Regional or City Administration level, to organise and register cooperative societies and to give training, conduct research and provide other technical assistances to cooperative societies.' See Art 2(7) of the Coop Proclamation 147/1998.

\textsuperscript{1035} It is interesting to note that even Business Organisations are allowed to make contributions in kind under the Commercial Code art 229(1) which stipulates, ‘Each partner shall make a contribution which may be in money, debts, other property or skill.’ Commercial Code of the Empire of Ethiopia, Proclamation no 166/1960.

\textsuperscript{1036} Art 16(1) and (4) of Coop (Amendment) Proclamation 402/2004.

\textsuperscript{1037} ILO Coop Guidelines, p 83.
As long as cooperatives do not function with the required level of autonomy and independence from the political establishment, their bargaining power will be undermined. In regard to the broad objective of cooperatives to be able to contribute to the efforts of ‘job creation, mobilising resources, generating investment and their contribution to the economy,’ the Agricultural Cooperatives Sector Development Strategy of Ethiopia also stipulates that:

Agricultural cooperatives help farmers solve a collective action problem, i.e. how to procure inputs most efficiently and market their outputs on more favorable terms than they could achieve by themselves.\textsuperscript{1039}

More specific objectives have also been provided for under the five-year Ethiopian Agricultural Cooperatives Sector Development Strategy as well as the Cooperatives Proclamation. Almost all of these specific objectives relate to improving the economic conditions of the agricultural communities, without any socio-political- or rights-related issues. These objectives are stated as follows: ‘The society to be established under this Proclamation shall have one or more of the following objectives: (1) to solve problems collectively which members cannot individually achieve; (2) to achieve a better result by coordinating their knowledge, wealth and labour; (3) to promote self-reliance among members; (4) to collectively protect, withstand and solve economic problems; (5) to improve the living standards of members by reducing production and service costs by providing input or service at a minimum cost or by finding a better price to their products or services; (6) to expand the mechanism by which technical knowledge could be put in to practice; (7) to develop and promote savings and credit services; (8) to minimize and reduce the individual impact of risks and uncertainties; (9) to develop the social and economic culture of the members through education and training.’\textsuperscript{1040} The independence and autonomy of cooperatives is further undermined by the serious consequences of operating outside these objectives, in that this would result in the appropriate authority suspending the cooperative from carrying out its activities.\textsuperscript{1041} As the authority has the power to inspect and audit cooperatives, there is tight control over these collective action establishments, thus rendering them in effect no different from the government’s economic policy executors. As we have

\textsuperscript{1038} ILO R193, Preamble para 2.
\textsuperscript{1039} Coop Strategy 2012-2016 (n 943), p 11.
\textsuperscript{1040} Art 9 of the Coop Proclamation 147/1998.
\textsuperscript{1041} Art 9(8) of Coop (amendment) Proclamation 402/2004.
observed in our discussion on empowerment\textsuperscript{1042}, an all-encompassing approach is needed for
the poor’s empowerment which goes beyond alleged improvements that are explainable only
in economic terms.

The Sector Strategy establishes the institutional framework for its implementation at the
national and Regional levels to be organised as project steering committees to be instituted at
both levels and a Secretariat at the national level.\textsuperscript{1043} A closer look at the composition of
these institutions shows lack of adequate representation of cooperatives themselves,
particularly at the national level, which instead refers to a non-existent Cooperative
Federation. The strategy states ‘Since no national-level agricultural cooperative exists at the
inception of this Strategy, but one is planned to form in 2012, that cooperative (the National
Agricultural Cooperative Federation) will become a member of the PSC (Project Steering
Committee) when able to do so.\textsuperscript{1044} As pointed out above by Develtere and Pollet, this leaves
the cooperatives unrepresented at the apex level denying them a ‘countervailing power
against so much political interest.’\textsuperscript{1045} As discussed in Chapter One, this denial of the right to
participate, either directly, or through elected representatives, undermines people’s agency
and to that extent constitutes denial of capabilities.

5.2.2. Access to credit facilities

This rather crucial access problem can also be considered as posing another barrier to the
challenges that cooperatives face within the Ethiopian context. In particular, the
inaccessibility of lending financial institutions to agricultural cooperatives reduces the ease
with which rural communities can organise themselves with the objective of transforming
their lives. With respect to particularly access to finance, the Cooperative Strategy of the
government also identifies as one of the threats facing agricultural cooperatives which it says,
‘collateral requirement at financial institutions is beyond the current capacity of most
agricultural cooperatives in the country.’\textsuperscript{1046} And it further states, ‘Government and private
banks, and micro finance institutions, are not well- positioned to lend to cooperatives due to
the limited capacity of cooperatives to meet the requirements of these financial

\textsuperscript{1042} See discussions in section 1.4.
\textsuperscript{1043} Coop Strategy 2012-2016, p 75-78.
\textsuperscript{1044} Coop Strategy 2012-2016, p 75. To the knowledge of the author, there has not been a single cooperative
 federation established so far.
\textsuperscript{1045} Develtere and Pollet, (n 1031).
\textsuperscript{1046} Coop Strategy 2012-2016, p 13.
Although the agricultural sector contributes over 45% to the country's GDP, its share in the credit system is dismally low, comprising just 9.6% of the overall loans granted by the various lending institutions operating in the country during the five-year period between 2005 and 2009. The primary reason for this low level of financing is said to be the high risk involved in the agricultural sector and the absence of collateral such as a transferable right in rural land. As a result, even much of this negligible amount of loan extended to the sector goes to investment in export facilities for internationally traded commodities rather than towards primary farm activities in production and distribution. A detailed treatment of the country's financial sector by the World Bank revealed that Ethiopia has the lowest financial inclusion ratios in East Africa, mainly because of the very low rural banking density:

This [low rural banking density] has been long identified as one main reason for low investment in agriculture, especially smallholder agriculture. When it comes to banking in general, branches are concentrated in the urban areas and while the overall ratio of the total number of people in the country to a commercial bank or MFI [Micro-Finance Institution] branch has been put at 45,000 people per branch; with regards to only rural population the ratio is far lower with 125,158 people per branch or 0.80 branch per 100,000 people. Recent estimates show that only 1 per cent of rural households maintain bank accounts, a condition generally required by most banks for prospective creditors and borrowers.

Apart from the formal commercial lending institutions, semiformal and informal lending services that are provided account for a total of 40% of the business-financing loans extended in the country, while the remaining 60% is covered by the formal commercial banking sector. Of particular importance within the semi-formal financial service providers are the MFIs and the Rural Savings and Credit Cooperatives (RUSACCOs). These cooperatives are meant

---

1047 Ibid.
1049 Ibid., p 34.
1050 Ibid., p 33.
1051 Ibid., p 35.
1052 It is important to note that the law of Cooperatives in Ethiopia comprehensively deals with both the production and service rendering societies and is applicable across all hierarchies at primary, union, federation and confederation levels. Although, in principle, establishing these vertical hierarchies is permissible, the apex level of cooperation (federation and confederation) is less developed, with a few exceptions like the one in the SNNP Region. In this Region, with the support of the Cooperative Department of Hawassa University, the
specifically to provide credit and loans to small-scale producers in the agriculture sector, although they have a minimal overall share of just about 0.1 per cent of the total credit in the economy.\textsuperscript{1053} As these cooperatives are farmers-for-farmers types of establishment, governed by the same cooperatives legislation, their contribution in terms of raising and dispersing the required amount of funding for the agriculture sector is undoubtedly minimal. The government has made a significant leap forward, however, by supporting the establishment of the Oromia Cooperative Bank of Ethiopia, which specialises exclusively in agri-financing.\textsuperscript{1054} Because of its geographic limits within one of the Federal units (Oromia), the nationwide impact of this initiative on the agricultural sector is minimal, unless the rest of the Federal units take similar initiatives.

The Cooperatives Strategy, further underscores this financing problem as one of the bottleneck because 'the financing system for agricultural cooperatives does not sustainably enable their access to the variety of financial services required to become well-functioning,' and it proposes a strategic intervention to tackle this challenge as follows:

Make the financing system for agricultural cooperatives sustainable (1) by establishing a dedicated revolving fund and credit guarantees for cooperatives working toward or possessing advanced certification and (2) by strengthening existing MFIs/RUSACCOs and expanding the capacity of Commercial Bank of Ethiopia (CBE)/Development Bank of Ethiopia (DBE) to lend to agricultural cooperatives.\textsuperscript{1055}

The strategy accordingly aims only at addressing the problems of weak capacity among the cooperatives through the provision of revolving funds as well as by tackling financial institutional challenges. It falls short, however, of solving the land rights problems that would have provided an answer to the various issues of concern regarding lending institutions. If properly implemented, it is of the author’s view that this will tackle the financial challenge that agricultural cooperatives are facing. A further effort, however, needs to be exerted by

\textsuperscript{1053} The World Bank, \textit{Agribusiness Indicators: Ethiopia}, (n 418), p 32.

\textsuperscript{1054} According to Emana, on June 2008, the Bank had a capital of USD 13.3 million, 73.51 per cent of which is owned by 1,303 primary cooperatives. Emana, (n 1015), 10.

\textsuperscript{1055} Coop Strategy 2012-2016, p 58; as explained in the World Bank Report, these two state-owned Banks are mentioned because of their dominance within the financial sector. The report states, 'The formal financial market in the country is dominated by the commercial banking sector which consists of one state-owned development bank (Development Bank of Ethiopia (DBE)), two state-owned commercial banks (Commercial Bank of Ethiopia (CBE), Construction and Business Bank (CBB)), and 12 private commercial banks.' The World Bank Report, \textit{Agribusiness Indicators: Ethiopia} (n 368), p 32.
addressing land-related problems, particularly by lifting the various restrictions discussed on renting land use rights which would in turn enable members of cooperatives to engage in off-farm employment.
Chapter VI: Conclusions and implications on law and policy

We have observed in this work that empowerment means the expansion of the capabilities and assets of individuals, thereby combining both the process and outcome aspects of development. Expansion of capabilities and the capitalisation of assets of rural people in Ethiopia is conditioned on, among other things, the fundamentals of rural land rights, as discussed at length in Chapters Three, Four and Five. The analyses we have undertaken on the various provisions of the land laws of the country have demonstrated multifaceted gaps and inadequacies that call for the urgent attention of policymakers. In the Ethiopian context, where the overwhelming majority of the population is rural and depends on agriculture, the task of improving the livelihoods and empowerment of the poor must be seen as inextricably linked to the land rights questions that relate to non-discriminatory access, security of tenure, proper institutional and administrative functionalities and protection against arbitrary expropriation. Moreover, the work has demonstrated the relevance of collective action for the empowerment of the poor.

In present-day Ethiopia, the government’s efforts in achieving economic development have been commended by various international financial institutions and other donor agencies. According to the World Bank, in 2012, ‘Ethiopia managed to grow faster than African countries such as Rwanda, Mozambique, Zambia and Ghana as well as China and India.’ There is, however, little evidence to suggest any meaningful changes in the lives of the rural

---

1056 Narayan, (n 117).
1057 In section 4.2.2 the thesis has examined at length the various mechanisms that rural communities may gain access to rural land holding rights and the associated challenges. In section 4.6 a separate discussion is made on women’s rural land rights that treated how these vulnerable groups of the rural community’s access to and security of land holding rights are threatened.
1058 In sections 4.3, discussions are made on the various legal and frameworks that exist to provide security of tenure to rural land holdings and the associated short-comings. Moreover, in section 4.5, pastoralist communities’ land holding and use rights problems are examined separately.
1059 See section 4.3.1.3.
1060 See section 4.3.2.1.
1061 Issues of collective action and the various governance challenges that need to be addressed for the presence of well-functioning smallholder agricultural cooperatives is discussed in a separate Chapter Five.
1063 Geiger and Moller, ibid, p 8.
poor and the vulnerable, including women, where the rural poverty rate is still 45 per cent. At a more conceptual level, the economic gains measured by the growth in GDP have not been translated into societal transformation in terms of expanded capabilities and assets which are, according to the discussions in Chapter One of this thesis, key determinants for the empowerment of the poor. The economic assets of individuals remain meagre, and policy design and implementation is still a top-down, rather than a participatory, process.

This thesis has examined, through systematic analyses of rural land laws and policies, the critical shortcomings associated with Ethiopia’s legal and policy directions on the subject. One of the most important topics tackled, which to the author’s knowledge has not been noted elsewhere, is the conceptualisation of the fine distinction between rural land holding and land use rights. A wider legal recognition and enhanced awareness by rural land administration officials of the need to look at rural land holding rights and rural land use rights within the Ethiopian state ownership system of tenure will have significant implications for ensuring the robustness of transfer of rights. The law in its present state only enables farmers to obtain a land holding right that brings with it various rights of use that only go with the holding rights. In one of the Regions, however, express recognition exists of the separate lives of these two rights, so as to enable the rural landholder to transfer, in full or in part, the use right for a relatively longer duration, without losing the holding right. Lack of inter-Regional dialogue, access to legal information and harmonisation in areas that are neutral to local conditions such as this distinction, have not allowed this conceptualisation to be widely accepted. This work, through its comparative examination of the relevant provisions, would be a step towards creating a national consensus on the subject.

Apart from these conceptual and analytic discussions, some of the core points made, insofar as making rural land laws serve as tools for the empowerment of the poor and areas that require state policy and legal intervention, are summarised in this concluding Chapter.

1064 Gender and Governance in Rural Services, (n 966), p 36; according to the 2012 World Development Report in rural Ethiopia, female farmers have limited access and use for agricultural extension services due to gender biases that demonstrates their special vulnerability. World Development Report 2012, p 231.
1065 Narayan, (n 117). See also the discussions in section 1.4.
1066 See discussions in section 1.2, particularly note 123 and accompanying text; see also note 899.
1067 See discussions in section 4.2.1.2.
1068 See discussions in section 4.2.2.
1069 The Amhara Region’s rural land Proclamation has provided, in its Arts 16, 17 and 18, for the possibility of transferring only the use right through rent, bequest, or donation without losing the land holding right. Some of these distinctions have also been recognized under the Benishangul Gumuz Proclamation. See sections 4.2.1.2. for detailed discussions in this regard.
6.1. Access to rural land

6.1.1. Equity versus efficiency

It was explained in the first Chapter that inequitable access to land disempowers the poor, and this access problem was identified as one of the major causes of rural poverty. As examined in the discussions on the human rights framework, the State has the duty to ensure equitable and non-discriminatory access to land which provides a basis for the right to adequate food and housing. The controversial debate on the equity versus efficiency arguments for guiding land policy choices assumes a central place in modern Ethiopia’s socio-political discourse. Accordingly, it is argued on one side that, in order to ensure equitable access, land should remain under government ownership, while on the other side of the coin, some claim that for efficient utilisation of land and ensuring tenure security, private ownership should be adopted. However, on the basis of both economic theories and human rights perspectives, the research suggests that the realisation of both equity and efficiency objectives is possible in any one of the ownership structures that a particular state policy ventures to advance. Although a central argument of classical economic theory is a concern for externalities associated with the public ownership of productive assets such as land, scholars in the socio-economic field have successfully refuted this argument. One such scholar is the late Economic Sciences Nobel Prize winner Elinor Ostrom, who provided a conclusive response to the externalities argument on the basis of the common pool resource management strategy. Where communities are empowered to design controlling, distributing and enforcing tools for the benefits and costs of a particular resource pool, a more robust system is possible, irrespective of private or public ownership policies relating to land and other natural resources. In this thesis it has been shown that an efficient utilisation of rural land is possible under the present state ownership structure, which embraces the principle of equity so long as its various shortcomings are addressed. Accordingly, some of the critical

1071 See generally discussions in section 2.4.2, and particularly notes 285 through 297 together with the accompanying texts.
1072 Halie and Mansberger, (n 399).
1073 This is particularly the position taken by the current government in Ethiopia and both the literature and policy directions that are considered to justify the position are well documented in Rahmato, (n 58) and Bruce et al., (n 50). See also notes 196-203 together with the accompanying texts.
1074 Arguments favouring private ownership are based on its alleged benefits for tackling externalities (Demsetz), its effect of stabilising expectations about the behaviours of others (Leblang) and on grounds of enhancing free enterprise (shleifer). See note 189 and accompanying text.
1075 Ostrom, (n 181), Clarke, (n 229). See also the discussions in section 2.3.
challenges with respect to equitable access within the Ethiopian state ownership structure that need to be tackled through legal and policy intervention are summarised below.

6.1.2. Lack of clarity on the residence requirement

Rural land access could be obtained through either government grants or transfer from a previous holder through rent, donation or inheritance. The general requirement in some of the Regions, such as Amhara and SNNPR, for obtaining access to rural land relates to being a resident of the particular rural Kebele.\textsuperscript{1076} Two interrelated problems exist insofar as residence as a requirement for obtaining rural land access is concerned. One is that in those Regions where the requirement exists\textsuperscript{1077}, there is a lack of clarity on what it implies in relation to the various modes of access, i.e. government grant, donation, rent or inheritance. Though it may well be understood to impose the residence requirement for obtaining land holding access through a government grant, it may not be that simple when it comes, for instance, to cases of rental arrangements. The second crucial issue relates to the question of whether a person who is temporarily absent from the rural Kebele for various reasons, including public service, may or may not be regarded as a rural resident. In this respect, the Amhara Region has provided for detailed circumstances that include, for instance, a person who is temporarily absent because of military service, which will enable him to maintain his rural residence status totally unaffected.\textsuperscript{1078} This lack of clarity on this requirement of access needs to be addressed, in order to avoid loopholes that may lead to arbitrary administrative action. Another problem with respect to a Region that has residence requirement also relates to how to treat a former urban resident of the particular Region who now moves to a rural Kebele with a resolve to establish his livelihood on agriculture.

6.1.3. Redistribution/distribution/reallocation

Another problem examined in this thesis relating to access to rural land in Ethiopia is redistribution. This term has been used rather confusingly across multiple rural land laws,

\textsuperscript{1076} Art 5(2) of SNNPRS Proclamation 110/2007, the Amhara Proclamation 133/2006 (see also Art 6(1) of the Amhara Proclamation together with Art 5(2)) and the Benishangul Gumuz Proclamation 55/2010 and Art 5(1) of the Oromia Proclamation 130/2007. See notes 591-594 together with the accompanying text.

\textsuperscript{1077} It has been noted that there is no residence requirement under the Tigray Region Proclamation and instead the law, in line with the Federal Proclamation, states ‘any citizen of the country’ may obtain rural land access. Art 5(1)(d) of the Tigray Proclamation 136/2007 and Art 5(1)(b) of Proclamation 456/2005. See also note 592 and accompanying text.

\textsuperscript{1078} Art 4(2) of the Amhara Rural Land Regulations 51/2007 provide for ‘persons temporarily residing in urban centres for purposes of education, national service or any similar duty’ as having been exempted from the residency requirement. See note 596 and accompanying text.
including the Federal framework legislation that employs the term “distribution” to describe both situations of reallocating vacant, communal or state land to new claimants as well as redistributing lands of existing holders, where this becomes the only option and is based on 'the wish and resolution of peasant farmers, semi-pastoralists, or pastoralists.' On the other hand, the SNNPRS Proclamation employs “reallocation” to connote the same meaning attached by the Federal Proclamation to distribution. The Amhara legislation, however, distinguishes distribution as referring exclusively to reallocating vacant, communal or state land to new claimants, while redistribution refers to measures by which the lands of existing holders are redistributed to new claimants. These complexities of terminologies notwithstanding, the use of redistribution as one mode of administrative allocation has been associated, both historically and at present, with primary sources of tenure insecurity. When implemented, it has been used historically for political ends by discriminatorily dispossessing old regime supporters and granting access to the current regime’s sympathisers. This is not only inequitable and constitutes a violation of the State’s duty to provide non-discriminatory access as discussed in Chapter Two, as a legally recognised redistribution will also be an enduring source of tenure insecurity. Therefore, a total ban on redistribution, as is done by the Oromia and the Tigray Regional Proclamations, must be encouraged in all the remaining Regions as a matter of national land policy.

6.1.4. Access through Inheritance

A further problem that was examined with regard to access relates to questions of inheritance and the possibility of bequeathing land holding and land use rights together or separately. Unlike the Amhara legislation, the other Regional Proclamations, together with the Federal framework legislation, do not allow the deceased to transfer the land use right and holding right separately, and they also do not provide the possibility of drawing up a will. The Amhara legislation, by recognising this distinction of land use right and land holding right, has accorded protection to the spouse of a deceased person who would otherwise have been

1079 Art 9(1) and (3) of Proclamation 456/2005.
1080 Art 9(3) of Proclamation 456/2005 and note 624 together with accompanying text.
1082 Adal, (n 59).
1083 Ege, (n 627) and Adal, (n 59).
1084 See note 282 and accompanying text.
1085 This Region’s Proclamation has banned redistribution except for irrigation lands under Art 14(1). Proclamation 130/2007.
excluded from becoming a beneficiary of the inheritance. Accordingly, a deceased person would be succeeded by his descendants, and in the absence of descendants the normal rule would be to call on ascendants to inherit the land holding right. In the latter case, however, Article 11 (3) of the Amhara Rural Land Regulations 51/2007 provides that the spouse of the deceased shall continue to exercise the land use right, while the holding right shall be transferred permanently to the deceased’s ascendants. This has crucial equity implications, particularly where female spouses would otherwise be excluded from inheriting the land use right upon the death of their husband. In no other Region, therefore, is this form of express protection for a spouse made in cases of inheritance, and what normally would happen is to call upon descendants and/or ascendants where a person with rural land holding right dies. Therefore, there is a need to further articulate the rights of female spouses who ostensibly gain access through marriage and which right must be protected also upon the death of the husband. Moreover, the complete silence, except under the Amhara Region, on possibilities of drawing up a will concerning rural land holding/use rights must be reconsidered.

6.1.5. Access through rent

When it comes to access to land use rights through rent, the stringent formalities and substantive conditions attached to the approach render this mode of access rather precarious. Unlike the Amhara, most of the Regions do not, for instance, allow the renewal of the rental agreement once rented for the specified and relatively shorter durations that range between two and 20 years. Most of the laws, including the Federal framework legislation, impose, unlike the Amhara and Benishangul Gumuz Proclamations, restrictions on the size of the land on which the land use right can be transferred via rental agreement. These requirements, which furthermore have marked differences across the Regions, affect both the person who wants to transfer as well as the person who wants to gain access to rural land for a

---

1087 See note 547 and the accompanying text.
1088 Ibid. And see also Art 11(8) of the Amhara Rural Land Regulations 51/2007.
1089 See note 701 together with the accompanying text.
1090 See note 711 and accompanying text, including Figure 6.
1091 See notes 439, 740-745 and the accompanying texts.
1092 Art 8(1) of the Federal and SNNPRS Proclamations, Art 6(1) of the Tigray as well as Art 10(1) of the Oromia Regions’ Proclamations put some semblance of ‘size’ restriction. While the latter two put the size to be rented to go up to half of the holding, the former two only describe this vaguely by stating that the renting must not ‘displace’ the holder. See also notes 437-442 and 728-731 together with the accompanying texts.
1093 As pointed out in section 4.2.2.5. while discussing access through rent, some vulnerable members of the rural community such as women, minor children and people with disabilities may want to transfer the whole land through rent to someone who has interest to engage in farming and restricting the size of the land and/or duration of the contract will hardly serve a purpose. See note 738 and the accompanying text.
relatively longer duration and on a relatively wider plot. These substantive requirements relating to size and duration, together with the formality requirements, must be reconsidered to ease transferability. If not, they may end up making access to rural land cumbersome or otherwise run the risk of being not adhered to, as people will try to "circumvent" the restrictions. 1094

6.2. Tenure security

Security of tenure, according to Place, emerges from the demands of breadth, duration and assurance relating to a person's land holding right. 1095 Ethiopian rural land policy, in accordance with the constitution, recognises individuals and communities' rights of holding for an indefinite duration. 1096 A process of registering and certifying holding rights has been underway since 1998 in various Regions of the country. The full range of problems and challenges relating to the rural land registration and certification process that this work has identified are summarised separately below. Apart from these, other shortcomings in the rural land policies and laws affecting tenure security are pointed out here, too.

6.2.1. Rural Land Administration Committees

When it comes to institutions that have a role in managing and administering rural land, the Land Administration Committees (LACs) are one of the primary grass-roots institutions with wide-ranging powers and functions. 1097 However, the law has failed to specify the selection criteria, membership composition (except the fact that they be from five to seven in number) and the role of the respective rural communities in the selection and/or removal of these committee members. This not only undermines the people's right of participation 1098 in choosing those who decide on the fate of their land holding right, but it also threatens tenure security, as there are no checking mechanisms on committee members' malfeasance. Moreover, the absence of legal stipulations regarding women's adequate representation in these committees has contributed to the complete absence of their participation as committee members. It was pointed out, by referring to Uganda's experience, that it is common practice

1094 Paraczynski, (n 721).
1095 Place, (n 770).
1097 See discussions in section 4.3.1.3 and particularly note 833 together with the accompanying text.
1098 The legal basis of participation and its relations with empowerment have been discussed in section 1.2 of the first Chapter. See particularly note 123 and the accompanying text.

231
in traditionally patriarchal societies to impose legal minimums of female membership in various institutions that are empowered to make crucial decisions on matters as vital as land. Therefore, there is a need to legally govern the institutionalisation with respect to composition, membership qualifications, women representation as well as their relationship with the community in terms of appointment and/or removal.

6.2.2. Politicisation of the Committees

The politicisation of the works of the Committees has significantly undermined the objective undertaking of their responsibilities, and, as pointed out by Rahmato, this has left ‘very little opportunity for alternative voices to be heard.’ Therefore, for the effective functioning of these rural land administration institutions which are meant, among other things, to ensure tenure security, there is an urgent need to professionalise membership, and above all, political allegiance must not be used as a criterion for becoming a member of these committees.

6.2.3. Expropriation of rural land for ‘public purpose’

Expropriation as a government’s prerogative is recognised both in the constitution as well as in the various Proclamations at the Federal and Regional levels. This thesis has examined the different legal principles that regulate expropriation at the Federal and Regional levels with an emphasis on the meanings behind “public purpose” and “commensurate compensation”. The vaguely defined “public purpose”, as referring to “limat” or “development”, gives extensive discretion to local land administration officials in justifying measures of expropriation. Unlike the Kenyan Land Act referred to in this thesis, there are no indicative, let alone exhaustive, listings regarding what may be regarded as “public purpose”. There is therefore a need to at least come up with some form of legislative standard that will guide the application of the “public purpose” caveat, either through exhaustive listings of what may justify expropriation or limiting it by excluding, for example, those instances that may not qualify as “public purpose”.

---

1099 Asiimwe, (n 969).
1090 Rahmato, (n 67). See also note 834 together with the accompanying text.
1091 See note 850 and accompanying text.
1092 Section 2 of the Land Act, (n 851).
1093 For instance, a Woreda official must not be allowed to justify expropriation of land for purposes of hotel construction. See Ambaye, (n 845), p 289.

232
6.2.4. Absence of a judicial review on the expropriation decision

Another crucial point, which is related to the third issue, is that the public purpose determination is regarded as purely administrative, without any possibility of judicial involvement through appeal. Therefore, according to the law, a person whose land has been expropriated can only challenge the amount of compensation and not the decision to expropriate the land. However, and equally as important, if not more, is the decision to expropriate a particular piece of land that is made by local officials on the basis of an alleged public purpose, which must be checked by an impartial organ such as the courts whenever the holder disputes the administrative finding. Otherwise, it would tantamount to permitting the administrative official to be a judge in his own case, thus strengthening the subordination of the rural poor to local officials and further exacerbating their state of disempowerment.

6.2.5. Agribusiness and tenure security

An additional point made in this thesis relates to the ongoing large-scale agricultural land transfers which rely on policy direction that gives preference to large-scale over smallholder agriculture. This has led to extensive measures of displacement, forced relocation and the destruction of livelihoods. In this respect, serious policy re-orientation is required to encourage collective action by smallholder farmers, to create an avenue whereby landholders negotiate compensation for land taken for purposes of large-scale agriculture instead of relying on the “public purpose” provision, as well as to reconsider the forced movement of people for purposes of clearing up the land for massive agricultural investment purposes. Moreover, even where there are justified grounds to believe that the transfer of land to an agribusiness establishment or individual investor is acceptable, there is a need to consider seriously the efficacy of the process which in its present form does not respect the affected communities’ rights of participation. Apart from lack of participation, the law in Ethiopia, unlike, for instance, Tanzania, does not specify in clear terms which types of holdings (private, communal or state) may be subjected to transfer deals for the purposes of large-scale agriculture and how this could be balanced with the interests of the concerned

1104 See note 854 and accompanying text.
1106 Rahmato, (n 67, and 856).
1107 Collier, (n 922).
1108 Human Rights Watch, (n 887) and the accompanying text.
1109 Byamugisha, (n 94). See also note 900 together with the accompanying text.
1110 Oakland Institute, (n 909). See also notes 901 and 902 together with the accompanying text.
Lack of consultation with local communities as well as the absence of any limit to the land to be transferred for a particular investor are matters that this thesis has identified as important areas for reform.

6.3. The certification process

The certification of rural land holding rights is one crucial aspect of the formalisation process, and it is said to be ‘the largest land administration program carried out over the last decade in Africa, and possibly the world.’\textsuperscript{1112} The unsophisticated and low-cost project of issuing holding certificates has demonstrated the possibilities for an easy transformation of hitherto undocumented and uncertain titles into legalised and formalised land holding/use rights within the country’s state ownership structure. A large proportion of rural households have obtained the first-level certificate, though there are many Regions that are yet to commence this process.\textsuperscript{1113}

However, the certification process, which started in some Regions in 1998 has a number of shortcomings that have been examined in this thesis and require the legal and policy intervention of the state. First, it has been pointed out in this thesis that the formalisation of holding rights in the presence of peasant-to-state subordination, as noted in Chapter Four, may not yield much regarding empowering the poor.\textsuperscript{1114} The various challenges that affect the tenure security of the poor as a result of the greatly enhanced state power of expropriation, the highly restrictive rights of transfer that limit the size and duration of the land to be transferred via rent, need to be addressed if the certification process is to contribute to improved conditions for the poor.

Secondly, the major achievement that the certification process has so far recorded is alleged to be the creation of tenure security. Whether or not an individual or group of individuals are tenure-secure, nevertheless, is a question that involves a complex assessment of multidimensional factors. Deininger and Jin formulated objective and subjective factors in

\textsuperscript{1111} Deininger et al., (n 91).
\textsuperscript{1112} Deininger et al., (n 76), p 312. They compare these achievements with past experiences of Vietnam, Peru and the like. Accordingly, Ethiopia’s certification process is ‘similar in size to the 11 million certificates awarded in Vietnam from 1993 to 2000 and the issuance of 8.7 million titles in Thailand during 1980–2005. Its accomplishments compare favourably to what was achieved by other land administration programs, for example, the 2.7 million titles (1.2 million urban and 1.5 million rural) issued in Peru from 1992 to 2005 and the 1.8 million titles issued in Indonesia since 1996.’ P, 315.
\textsuperscript{1113} These Regions are named as ‘Emerging Regions’ and they include Afar, Benishangul Gumuz and Gambella. See note 782.
\textsuperscript{1114} Rahmato, (n 67) and see note 835 together with accompanying text.
their World Bank-commissioned research on Ethiopia’s tenure security and land-related investment. According to these researchers, a particular household or Woreda’s state of being tenure-secure can be objectively assessed on the basis of the presence or absence of the past redistribution of land that might have affected their holdings. Subjectively, the household’s perception of the risk of land redistribution in the future could also determine how secure the holdings are. By assessing these elements on the basis of empirical data, the research found prevailing low levels of land tenure security in rural Ethiopia that in turn negatively affect land-related investment. This 2006 conclusion conforms to more recent findings made by Deininger et al., in which they conclude that although certification has a positive effect, the fact that considerable tenure insecurity remains, largely from the threat of expropriation, implies that certification alone cannot eliminate or compensate for the effects of the policy environment. Although individuals are acquiring a document through the certification exercise that evidences their holding right with a unique identification of the particular plot to which that right relates, this simply provides an evidentiary statement, without providing protection against acts of expropriation for various purposes that the government may deem necessary. Though it may not be argued that expropriation must not be carried out, the two important aspects of the expropriation measure, i.e. public purpose and commensurate compensation, as discussed above, should be clarified both in law and practice with adequate guarantees for judicial review. As it stands now, however, the certification only secures the holder’s right vis-à-vis his neighbours in the sense that he is better off in convincingly defending his title before any tribunal or community organisation with the land certificate at hand than without it. The certification process also poses serious problems for pastoralists and for women, as explained in 6.5 and 6.7 below.

6.4. Administrative versus market allocation of holdings

The certification of land use rights, though commendable for its benefits of partially securing tenure against neighbours, does not achieve much with regard to empowering the poor. In this regard, the thesis has raised some critical points that must be addressed so that the certification process yields some benefits to the rural poor’s empowerment. The first point

1115 Deininger and Jin, (n 619).
1116 Ibid, p 1249
1117 Ibid, p 1269
1118 Deininger et al., (n 76), p 313.
relates to making the rural land holding right more robust, by further easing transferability. To demonstrate this problem, Ethiopia’s land reform was briefly compared with the Vietnamese reform agenda of the 1990s. Although both countries abandoned collective farming under the socialist system, almost around the same period, they have since followed their own distinct paths. The Vietnamese 1988 land reform granted land use rights to individual households, which fundamentally altered the previous cooperative holding system. This was later proved to play a minimal role in stimulating the market and enabling the rural poor to make use of the holding right as a means to generate capital. Accordingly, the 1993 land use law transformed the land use right in such a way that holders were now able to exchange, transfer, lease, inherit or mortgage their land use right. This latter legislation also enabled the issuance of Land Use Certificates. The economic gains of these successive reforms are well-recorded, with the widespread benefits of the growth recorded reportedly resulting in a decline in poverty rates from 75 per cent in 1984 to 55 per cent in 1993, followed by a further decline to 37 per cent in 1997-1998.

When the 1975 land reform of Ethiopia was implemented, the preoccupation of the government with the task of dismantling the feudal system and replacing it with its socialist-oriented policies did not allow any chance for private investment, land market stimulation or the creation of a conducive environment in which a mortgage system could operate. The changes that came with the fall of the socialist policy of the Derg again primarily focused on lifting the forces of the socialist institutions that heavily burdened individual households. Particularly, the Peasants’ Associations that used to wield significant influence on the lives of the rural household by controlling many aspects of the agricultural processes were done away with. The current regime, therefore, reoriented the collective toward a more individualistic approach, whereby agricultural inputs and outputs are traded in a market that remains poorly equipped for the task. When it comes to land allocation, however, the administrative apparatus is legally preferred to that of market-driven allocation, which in effect undermines the possibilities of having the land in the hands of a more efficient or productive user. When the Vietnamese allowed the chance to transfer and mortgage a use right, it necessitated the

---

1119 See section 4.2.2.2, particularly the discussion under the title ‘sale and mortgaging land use right.’
1121 Art 3(2) of the 1993 Vietnamese Law on land (n 659).
1123 Deininger and Jin, (n 1120), p 4.

236
release of the task of land allocation from administrators and the refocusing of their responsibility on ensuring compliance with the terms of contractual obligations.\textsuperscript{1124} In the Ethiopian context, land legislations, both at the Federal and Regional levels, are yet to ease market mechanisms of obtaining access, while the use of the land holding certificate as a means to generate capital has not been made possible either.

### 6.5. Communal and pastoralist holdings

The complete failure to register and certify communal land holding rights, including pastoral land use rights, features as a prominent problem of the certification process and, in consequence, the country’s rural land rights system. As discussed elsewhere, the absence of a legally provable holding right has exposed these communal and pastoralist holdings to administrative takings, without compensation, for the purposes of large-scale agriculture.\textsuperscript{1125} The laws promise that a certificate of holding over communal land will be issued in the name of the beneficiary community and then be kept at Kebele Administration office.\textsuperscript{1126} However, even if the registration of communal holdings has been undertaken as part of the ongoing first-level certification process in some of the Regions (Amhara, Oromia, the SNNPRS and Tigray), the boundaries of this land are not recorded, and the communal land overall is registered in the name of the Kebele and not in the name of specific local groups, as the laws anticipate.\textsuperscript{1127} In those Regions where large groups of pastoralist and agro-pastoralist communities exist\textsuperscript{1128}, registration of holding is yet to start, and instead these Regions are highly affected by the land transfer deals for agricultural investors.\textsuperscript{1129} Most importantly, the government’s policy of imposing a new livelihood system on the pastoralist communities, by considering their way of life as “unsustainable”, must be halted.\textsuperscript{1130} As pointed out again in this thesis, providing security of tenure to the land use rights of the pastoralist community has garnered little or no attention under the certification process, with the major problem being that ‘current rural land legislation seems to treat pastoral land synonymously with settled

\textsuperscript{1124} For example, according to the Vietnamese 2003 Land Law, the crucial role of the state in allocation of land particularly relates to cases of defaulting users in mortgage contracts whereby it shall transfer the use right through auction to new users. See Art 58 of the Law on Land, National Assembly of the Socialist Republic of Vietnam, no 13-2003-QH11; see also Do and Iyer (n 11122).

\textsuperscript{1125} Thornberry and Viljoen, (n 304), and see also note 953, where it is shown that a substantial land that has been granted to foreign and local agricultural investors comes from those pastoralist and semi-pastoralist Regions.

\textsuperscript{1126} Art 6(12) of SNNPRS Proclamation 110/2007.


\textsuperscript{1128} These are the Regions of Afar, Benishangul Gumuz and Gambella.

\textsuperscript{1129} Rahmato, (n 90) and also see Figure 7.

agricultural lands without seeking different instruments and provision to secure pastoral land use rights.\textsuperscript{1131} This is therefore one of the critical problems that need to be tackled by designing and implementing a registration and certification process that reflects the traditional values and modalities of the peoples concerned.

The legal stipulation enshrined within the Federal framework legislation and the SNNP Region Proclamation that empowers the local officials to freely convert communal holdings into private ones seriously undermines the communal holders’ tenure security.\textsuperscript{1132} This particularly affects the pastoralists’ communal holding and livelihood whose land holding falls within this category without any legislative attempt to recognise, protect and promote their distinct type of holding that is largely characterised by mobility and transhumance. As has been suggested in Chapter Four, there is an urgent need to take into account these peculiarities of the pastoralists’ land use pattern as well as the protection of their holdings from various incursions including government actions in the forms of leasing out for private investors. As aptly explained by Little et al., there may not necessarily be a need to reinvent the wheel, rather providing validity and legal recognition to the customary rules that are already in use by these communities and defining the manner of interaction with the State would provide a significant improvement to the pastoralists’ land tenure system as well as livelihood.\textsuperscript{1133}

\section*{6.6. Land information system}

Across the Regions, there is general lack of legal principles on the need and mechanisms of updating land information relating to those holdings that are already registered and certified. This requires the establishment of a land information system that continuously tracks changes to land holdings caused by life events, including divorce and death, as well as various transactions such as rental agreements and donations. This must involve revisiting the design of the land registry book\textsuperscript{1134}, employing and strengthening the use of relevant technology and the design of legal rules that create the duty of reporting changes to land use rights as well as the corresponding administrative structure to handle the task. In the absence of a periodic


\textsuperscript{1132} Art 5(3) of Proclamation 456/2005 and Art 5(14) of SNNPR Proclamation 110/2007. See also note 509 and accompanying text.

\textsuperscript{1133} See note 954 and accompanying text. See also Little et al., (n 80).

\textsuperscript{1134} See note 817 and accompanying text.

238
updating mechanism for all of these factors, information will quickly become out-of-date, thus defeating the whole purpose of registering and certifying possession.

6.7. Women and rural land rights

The thesis further examined, as part of the broader rural land rights and empowerment context, women’s land holding conditions. Rural women in Ethiopia are highly marginalised and excluded from the entitlements that come with being a rural landholder. This emanates from the long-standing patriarchal tradition and law that considers the husband as the head of the family and who alone could obtain land holding rights when the original redistribution took place. As pointed out in the discussions on registration and certification, the current process of land reform has only legitimatised the exclusion instead of correcting historic inequities. Some of the critical challenges that require legal and policy intervention can be summarised in the following four points.

6.7.1. Bigamy and Women’s Land Rights

Of paramount importance is the issue of a landholder husband with polygamous relations, which has been examined in this thesis. Apart from the negative implications of polygamy that undermine women’s right to equality, the complex problems it poses on the registration and certification process must be addressed. Though it requires prolonged community education and cultural transformation to raise the awareness level of communities on the ills of polygamy, in the meantime rural land registration must not be used to legitimatise this unwanted and legally proscribed behaviour. One option that this thesis has suggested is to have all the “wives” and the husband registered as “joint holders” instead of the current practice in the Oromia and SNNPR that acknowledge all the relationships of the holder-husband to his multiple wives.

6.7.2. Gender equity in rural land administration institutions

Moreover, the land administration institutions must ensure gender equity in their composition, and this must go beyond numerical adjustments by including a few women here and there without actual influence in the running of the institutions. There is a need, therefore, to work significantly on capacitating women, once they become members of those institutions, through training and taking seriously any act of stigma and discrimination

\footnote{See note 1004 and accompanying text.}
directed against them. In a country where 49% of the population are female and 84% of these are defined as rural (in the SNNPRS, 50% of the total population are female and 90% are rural residents\textsuperscript{36}), the actual number of women taking part in rural land administration institutions is alarmingly low.\textsuperscript{37}

6.7.3. Lack of uniformity in issuing joint titles to a married couple

There is a lack of uniformity across the Regions in creating a joint titling system for a husband and wife. Even though Regional variations may be tolerated in some instances, there is hardly any justification to consider a woman in Tigray as having less entitlement than a woman in the SNNPRS. While the Amhara Region makes joint titling of spouses obligatory and renders a certificate obtained in violation of this condition invalid\textsuperscript{38}, it is not a practice similarly followed in the other Regions. Particularly, in Tigray Region, though the law stipulates that certificates of holding should be issued in the names of both spouses, in practice the certificate is given only in the name of the husband.\textsuperscript{39} Moreover, the Oromia certificate of holding has a space only for the husband’s picture and conspicuously provides “name of the holder” to be entered as the primary holder, followed by “names of the wives”, to be listed from 1 up to 4.\textsuperscript{40} These Regional variations relating to women’s rural land holding registration and certification must be reconsidered in such a way that across the Regions, the joint titling system is being enforced strictly.

6.7.4. The “confirmation of exclusion”

Finally, with regard to the certification process, it has failed to account for the historic injustices against women that exist with regard to land holdings. Because the previous distribution of holdings was made on the basis of households rather than individuals, it was the husband, and not the wife, who obtained land. What the certification does, in registering existing holdings, is simply, as mentioned elsewhere, ‘[confirm the] exclusion’ of women.\textsuperscript{41} One important strategy to correct this injustice, as suggested above, would be to strictly enforce the joint titling requirement across all the Regions. Moreover, legal and policy intervention is required in such a way that landless women must be given priority, for

\textsuperscript{36} 2007 Population and housing census, Ethiopian statistics Agency.
\textsuperscript{37} World Bank Report, Options for Strengthening Land Administration in Ethiopia, (n 26).
\textsuperscript{38} Art 20(5) the Amhara Rural Land Regulations 51/2007 and see also note 971 and the accompanying text.
\textsuperscript{39} World Bank, World Development Report 2012, p 304.
\textsuperscript{40} See notes 982 and 983 as well as accompanying texts.
\textsuperscript{41} Kanji et al., (n 807).
purposes of rectifying historic inequities, whenever vacant rural land holdings are to be redistributed.

6.8. Decentralisation in rural land rights administration

Ethiopia’s Federal arrangement is a departure from the prolonged tradition of centralisation of power in the hands of those elites who wanted to rule the country’s vast territorial reaches from their capital cities. The design of the Federal constitution attempted to balance the demands for complete self-rule, on the one hand, and for a total centralisation with some delegation of power to the peripheries on the other. The constitution endeavours to find a middle ground through the creation of administratively stronger peripheries balanced by a centre that has enhanced political power exercised through a nationwide, dominant party system. Accordingly, while the constitution has allowed the Regions to administer natural resources, including land, in a manner in which they consider appropriate, the central legislature’s framework law is expected to provide the overall guidance and policy principles. In other words, detailed administration is decentralised, while the integrity of the broader land policy discourse is informed by the central political establishment through the framework legislation. For instance, no Region is free to set aside, through its peculiar legislation, the cardinal principle of land being owned by the state and the peoples of Ethiopia.

The thesis has delved into the historical and presently applicable legal and institutional arrangements on rural land rights. Under the Federal state structure of Ethiopia, national land policy flows from a Federal constitution which broadly defines the general direction that needs to be followed. On the basis of the negotiated power-sharing scheme, the Federal legislature has to maintain the mandate of overseeing compliance with the constitutional land policy principles by issuing framework legislation that will provide validity to norm-setting and administrative action at Regional levels. The nine units of the federation, which are alternatively referred to as “States” or “Regions”, thinly articulate these framework principles while exercising their constitutional mandate to administer natural resources in general, and land in particular, within their own boundaries. The centralisation of macro-policy principles, therefore, negotiates with the decentralisation of micro-level administration and implementation. In some instances, direct duplication of Federal law texts has been observed,

142 See notes 407 and 408 together with the accompanying text in section 3.4.1.
143 See note 398 and the accompanying text that discuss Art 40 of the FDRE Constitution.
revealing the lack of articulation of and response to local dynamics, as originally anticipated by the constitution. In this light, horizontal comparisons have also been made, in order to examine the extent to which rural land laws differ from one another in matters of access, security of tenure, transfer and administration, which are crucial elements of rural land rights affecting the poor’s empowerment. It is important also to mention the definitional intricacies involved in matters of communal versus state land holdings, where there are marked differences among two of the Regional laws and the Federal rural land administration law, particularly with regard to scope.\textsuperscript{1144}

The constitution’s decentralised approach to land administration, however, has not always been respected, particularly owing to the Federal government’s interest to centralise large scale agricultural transfer deals.\textsuperscript{1145} For instance, the recent measure by the Federal government to create a land bank infrastructure, and the institutionalisation of the Agricultural Investment Support Directorate, as well as the creation of the Directorate for Rural Land Administration and Use within the Federal Ministry of Agriculture, in a way shows that decentralised administration is not meeting expectations.\textsuperscript{1146} While the former handles agricultural land transfer deals in excess of 5000 hectares, the latter was established in 2010 and mandated, among other things, ‘to harmonise Federal and Regional land policy and legal reform.’\textsuperscript{1147}

As extensively examined in this work, the various rural land administration laws lack cohesion and coherence in a manner that hinders the development of nationwide land policy and land law. Even though the law does not create a social reality and only aims to restructure it\textsuperscript{1148}, the duplication of efforts observed across the Federal units has not made any meaningful contribution towards improving the conditions of the poor. Not only do the Regional variations render a comprehensive study of Ethiopia’s land legislation prohibitively difficult, but the protracted pieces of legislation are also inaccessible, to end-users and researchers alike. Moreover, holding the concerned authorities and officials accountable for any mal-administrative practices becomes difficult in the absence of accessible, adequately

\textsuperscript{1144} See discussions under section 4.2.1.3.
\textsuperscript{1145} See note 417 and accompanying text.
\textsuperscript{1147} Ibid., pp 14-15.
\textsuperscript{1148} ILO Coop Guidelines, 58.
clarified and communicated land policy principles and norms. In a way, this thesis, by analysing the contents of these diverse laws, duplicating some of the important provisions for purposes of analysis and by pointing out the major variations, will to an extent, apart from tackling problems of access, contribute to the harmonisation debate.

6.9. Collective action and rural land rights

The other area that the thesis has examined relates to smallholder cooperatives that emphasised the need for building on some of the gains of the certification through support for collective action. Particular challenges identified in this regard relate to first, access to finance that is significantly affecting the rural people’s capabilities to act collectively, and this is mainly attributed to the inaccessible rural financial infrastructure. In this regard, Ethiopia should consider the lessons that might be learned from land reforms in countries such as Tanzania, where large-scale farming is effectively combined with the mainstream smallholder agricultural model.1149 Moreover, the growth of cooperatives inevitably provides a degree of collective strength and protection to smallholders, who are otherwise at risk of being overpowered by the relatively rich merchants and supermarket chains.1150 This difference in bargaining power could be brought back into balance were smallholders to have a platform for collective action and adequate access to financial infrastructure.

The second challenge that this thesis has identified with respect to cooperatives relates to lack of autonomy and independence. The country has regulated agricultural cooperatives since the early 1960s, and at present there exists a Proclamation that sets the normative and an institutional framework at the Federal level, namely the Federal Cooperative Agency. The 2004 Cooperatives Proclamation, by exhaustively setting out the objectives of cooperatives, significantly undermines their autonomy and independence, as they are not allowed to decide

---

1149 This is, however, notwithstanding the difference on land ownership where the Tanzanians have for long assigned private ownership on land together with a substantial mix with customary holdings. The 1999 Tanzanian land reform that generally aimed at creating better administrative systems to secure land rights and facilitating a market in land is deemed to have improved agricultural productivity and economic growth. See Rasmus Hundsbaek Pedersen, ‘Tanzania’s Land Reform: The Implementation Challenge’ DIIS Working Paper 2010:37 http://www.econstor.eu/bitstream/10419/44673/1/641581548.pdf accessed 13 June 2014.

1150 Smallholder farmers’ bargaining power is lower where they act individually as a result of high transaction costs, lack of market information and the involvement of various layers of intermediaries. In these conditions collective action is considered highly significant for effective participation of smallholders in the market. See Helen Markelova and others, ‘Collective Action for Smallholder Market Access’ (2009) Food Policy Vol 34, 1, 2.

243
their own strategic goals in the constituting document, and any deviation from the legally prescribed objectives will result in the suspension of the cooperative.

Moreover, the stringent registration requirements that include, among other things, the submission of a business plan that the Cooperatives Proclamation has set are prohibitively difficult for smallholder farmers in a rural community in Ethiopia. The absence of any clear indication as to the possibility of contributions in kind by way of fulfilling the capital requirement for instituting cooperatives is also an area that requires reform. According to the ILO guideline, ‘shares may be contributed in cash or by leaving a part of the surplus, to which a member is entitled, with the cooperative, in kind (by transfer of title, if any), as work/industry or as service.’ As most rural people’s main asset is their land holding, as evidenced by the land holding certificate, it might enlarge their option if the law permits the possibility for the land use right to be given as a contribution for membership of an agricultural cooperative. As the laws permit the renting of the land use right, cooperatives may use the rental arrangement to fulfil the financial contribution of a member who has made in-kind contributions via his land use right.

By addressing these and other shortcomings of the law, the government must actively encourage collective action and thereby facilitate the poor’s empowerment, because often, as emphasised by the ILO guideline, the ‘formation of cooperatives remains the only choice that disadvantaged people have.’ Moreover, when the rural land holders become more organised, it will have created an environment for effective micro-financing schemes to flourish. With rural land holding being the single most important asset that the rural poor possess, any influence that the holders can make depends greatly on the nature and content of the rights. In turn, organised action will, where it is allowed to exist genuinely, contributes tremendously to the shaping of rural land policy.

6.10. Conclusion

Therefore, addressing the short-comings outlined in this Chapter would make rural land rights economically more useful, socially transformative and ultimately facilitate the poor’s empowerment. The political will at both the Federal and Regional levels must exist to do what is right for the rural poor. Resetting Ethiopia’s land policy discourse that for long

1151 Art 4 of the Coop Proclamation 147/1998. See also note 1024 and accompanying text.
1152 ILO Coop Guidelines, p 83. Also see note 1035 and accompanying text.
1153 ILO Coop Guidelines, p 2.
emphasised the private versus state ownership debate is required so that the laws and policies could usefully and effectively address the real problems that shape rural land rights and rural livelihoods in Ethiopia. Addressing the short-comings examined in this thesis is not only important for improving the poor’s livelihood, it is also equally vital that the reform process be participatory in the sense of putting the communities in control of their choices and their future.
Annex I: Southern Nations, Nationalities and Peoples’ Region Land Holding
Certificate sample
Annex II: Oromia Region Rural Land Holding Certificate Sample
## 1. Maqaa Fi Teesso Abbaa Qabiyyee
### 1.1 Maqaa Abbaa Qabiyyee

<table>
<thead>
<tr>
<th>Maqaa guutuu</th>
<th>Saala</th>
<th>Umurii</th>
</tr>
</thead>
</table>

### 1.2 Haadha manaa/manoota

<table>
<thead>
<tr>
<th>Maqaa guutuu</th>
<th>Saala</th>
<th>Umurii</th>
</tr>
</thead>
<tbody>
<tr>
<td>a)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 1.3 Teessoo Abbaa Qabiyyee

<table>
<thead>
<tr>
<th>Nannoo</th>
<th>Godina</th>
<th>Aanaa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ganda</td>
<td>Gooxii</td>
<td></td>
</tr>
</tbody>
</table>

Lakk.enyummaa abba qabiyyee

## 1.4 Miseensota Maatii

<table>
<thead>
<tr>
<th>Maqaa guutuu</th>
<th>Saala</th>
<th>Umurii</th>
<th>Firooma</th>
</tr>
</thead>
<tbody>
<tr>
<td>a)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>f)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>g)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>h)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>j)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>k)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>l)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2.2. Lakk. 2.1 Iratti qabiyyeen lafaa ibsame hasbaan akka ittifiyaddamaniff
abbaa qabiyye lafak. 2.1 Jalatti ibsamee waraqaa ragaa sadarkaa f'na
kun kennameeraaf.

2.3 Kan raggaasiie
Maqaa ______________________
Itti gasfintummaa:
_____________________
Mallattoo ______________________
Goyyaa ______________________

Stamp

Mallattoo Abbaa Qabiyye

Goyyaa ______________________

Miraa fi Dirqama Abbaa Qabiyye:
Abbaa qabiyye miraa ittifiyaddama fi wabiin qabiyye lafak labhii
bulkiinisa fi ittifiyaddama lafaa baadiyaa Gromiyaa tiiin arge
aanqaa tokko malee kan eegumuf yoo la'u qabiyye isa akkaataa
abii fi qajeeftama labhii kana raawatulkuuf qaphaa'e'en
ittifiyaddamuf dirqama qaba.

[Signature]
Annex III: Ethiopia’s core land and cooperative-related laws timeline

1931 Constitution

The Constitution of Ethiopia, established in the reign of His Majesty Emperor Haile Selassie I, July 16, 1931: The first written constitution of the country; amongst the ‘rights acknowledged to the nation by the Emperor’, Article 27 for the first time had guaranteed to all Ethiopian subjects protection against confiscation of movable or immovable property except for cases of public interest.

1955 Constitution

Article 43 on the right to life, liberty and property; Art 44 on protection of the right to property including protection against arbitrary expropriation; art 130 that imposes duties of conservation and appropriate exploitation of natural resources including land, and declared ‘All property not held and possessed in the name of any person natural or juridical, including all land in escheat, and all abandoned properties, whether real or personal, as well as all products of the sub-soil, all forests and all grazing lands, water courses, lakes and territorial waters are State Domain.’

1960 Civil Code

Divided into 5 Books, 22 Titles and 3,367 Arts, the Civil Code is the first to systematically approach private law in Ethiopia that has a substantial part on property relations including land law, mortgage and registration of immovable properties. Relevant sections are Family Law Title IV; Successions Title V; Property and Land Laws Titles VI-IX; Registers of Immovable Property Title X; Contracts Relating to Immovables including mortgage Title XVIII. Most of the statutes relating to land are already repealed.

Public Ownership of Rural Lands Proclamation 31/1975 (Amended by Peasant Associations Consolidation Proclamation 223/1982)

The Proclamation is divided into 6 Chapters: Introduction (1); Public Ownership of Rural Lands (2); Establishment of Associations for the Implementation of the Proclamation (3); Powers and Functions of the Minister of Land Reform and Administration (4); Communal and Nomadic Lands (5); General Provisions (6). The Proclamation declares all rural lands to be the collective property of the Ethiopian people and abolishes private ownership of rural land (sect. 3). Peasant Associations are in charge of the redistribution, cultivation and administration of rural lands. (Description from FAOLEX)

Government Ownership of Urban Lands and Extra Houses Proclamation No 47/1975

The Proclamation is divided into 7 Chapters: Introduction (I); Urban Lands (II); Urban Houses (III); Rent (IV); Cooperative Societies of Urban Dwellers (V); Powers and Duties of the Ministry (VI); General Provisions (VII). The Proclamation vests all urban lands in the Government (sect. 3). (Description from FAOLEX)

Settlement Authority Establishment Proclamation 76/1976

255
An autonomous public authority is established to take care of persons that have little or no land, the utilization of idle lands, the alleviation of unemployment, and the conservation of forest, soil and water resources in consultation with appropriate Government agencies. Powers and duties of the Authority are set out in section 6. The Authority shall have a Board consisting of specified ministers and a General Manager, the duties of which are set out in section 11. Section 13 specifies criteria for eligibility for the benefits of the settlement programme. Settlement shall take on unoccupied lands and on lands indicated by the Authority under section 13 with the consent of the Government. (Description from FAOLEX)

State Farms Development Authority Proclamation 142/1978

An autonomous public authority is established under section 3. This Authority shall be in charge of the overall direction, supervision and co-ordination of the management and operation of agricultural development organizations established by the Authority pursuant to this Proclamation ('corporations'), shall draw up a coordinated common plan for all corporations, ensure efficient function of the corporations and carry out studies requires to establish agro-industrial complexes. Powers and duties of the Authority are set out in section 6. The Authority shall have a General Manager, the duties of which are set out in section 8. (Description from FAOLEX)

Agricultural Development Corporations Regulations 60/1978

These Rules shall apply to agricultural development organizations established by the Authority pursuant to the State Farms Development Authority Proclamation of 1978 ('corporations'). It provides for juridical personality of corporations, capital and liability, powers and duties of each corporation, powers and duties of the General Manager of each corporation, keeping of books and accounts, budgeting, report of activities, reserve funds, auditing, dissolution, winding up and amalgamation of corporations. (Description from FAOLEX)

Peasant Associations Consolidation Proclamation 223/1982 (Amends Public Ownership of Rural Lands Proclamation 31/1975)

The Proclamation regulates the following matters: objectives, powers and duties of Peasant Associations, organization and method of work of Peasant Associations, membership; rights and duties of members. Further provisions regard the Kebele Peasant Association; Provincial, Awraja and Woreda Peasant Associations, and all Ethiopian Peasant associations. Moreover, the Proclamation deals with judicial tribunals, the Revolution Defence Committee and the Permanent Secretariat. (Description from FAOLEX)

People's Democratic Republic of Ethiopia Constitution Proclamation 1/1987

The 1987 People's Democratic Republic of Ethiopia Constitution had provided for the State ownership of 'key production, distribution and services enterprises' as well as 'natural resources in particular land, minerals, water and forest' under Art 13. And Arts 16 and 17 recognise
and protect, on the one hand, personal property, and on the other, they had made allowances for the State’s right to ‘purchase, requisition up on payment of compensation, or nationalise up on payment of compensation any property in accordance with the law.’

1991 Transitional period Charter

Except creating self-administrative Regions and recognising the right to administer their own affairs within their own defined territories and to effectively participate in the central government, there are no specific provisions on matters of land rights.

Relevant laws by the Transitional Government

Urban Lands Lease Holding Proclamations 80/1993 (Repealed by Re-Enactment of the Urban Land Lease Holding Proclamation 272/2002, which itself was repealed by Urban Lands Lease Holding Proclamation 721/2011)

A Proclamation to provide for the utilization of urban land. Urban land is defined as all land within the boundaries of a town (sect. 2). The Proclamation shall not apply to land previously utilized for the construction of dwellings (sect. 3). Section 4 provides for applications of persons who desire to hold urban land in lease. Such applications shall be submitted to the town administration. The town administration shall issue the leaseholding permit and a title document in accordance with provisions city master plans or, where such a plan does not exist, in accordance with regional self-government directions. Also shall the permit be subject to competitive public tendering (sects. 5 and 6). Section 7 prescribes the duration of leases in various areas. The rates of rent shall be determined by a law issued by the appropriate national/regional council (sect. 8). Section 10 makes provision for the transfer of mortgage of use rights, section 11 for the termination of lease agreements. (17 sections). (Description from FAOLEX)


A society established under this Proclamation shall have as objectives: (1) to improve the living conditions of its members; (2) to promote self-reliance among members; (3) to solve problems collectively; (4) to obtain modem technologies for its members; (5) to process agricultural products; (6) to promote teaching and training for its members (sect. 3). Provisions of Part II, concerning the formation and registration of societies, distinguish between a Primary Society and a Higher Level Society. A Primary Society shall be established on a voluntary basis by not less than ten peasants living in a given area (sect. 5). A Higher Level Society is a union or federation of Primary Societies (sects. 6-8). The field or area in which a Society may engage shall be determined in its By-laws (sect. 7). Any society shall be registered by the appropriate authority (sect. 9). Provisions of Part III describe the rights and duties of Societies and its members. Other provisions of this Proclamation deal with internal procedures, special privileges of societies, funds and properties as well as the winding up of societies. The Proclamation
Federal Democratic Republic of Ethiopia Constitution Proclamation 1/1995

Article 35 defines the right of women to acquire, administer, control, use and transfer property. In particular, women have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.

Article 40 defines the right to property. 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. Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The Constitution defines duties of State organs in respect to land and natural resources. With respect to land administration, the Federal Government shall enact laws for the utilization and conservation of land and other natural resources. States shall administer land and other natural resources in accordance with Federal laws (Art. 52).

Federal Democratic Republic of Ethiopia Rural Land Administration Proclamation 89/1997

This basic piece of legislation sets out principles and lays the foundations for laws relative to land tenure and administration of rural land are to be enacted by Regional Councils in respect of each Region of Ethiopia and in accordance with the present Proclamation, laws on environmental protection and land utilization policies. (Rural) land is declared to be a common property of the “Nations, Nationalities and Peoples” of Ethiopia and it is prescribed that land shall not be subject to sale or other means of exchange. Article 6 prescribes contents of the laws to be enacted, including matters such as assignment of land rights, demarcation of land, grazing, forestry and communal use. Regional governments shall determine rates of land-use fees and royalties on the use of forest resources.


The text consists of 60 articles divided into 10 Parts: General (1); Formation and registration of cooperative societies (2); Rights and duties of members of a society (3); management bodies (4); Special privileges (5); Asset and funds societies (6); Audit and inspection (7); Dissolution and winding up of societies (8); Settlement of disputes (9); Miscellaneous provisions (10). “Cooperative societies” shall include, amongst others, agricultural cooperative societies and fishery cooperative societies. Article 4 defines the objectives of a society, whereas article 5 outlines the guiding principles of a cooperative society. Cooperative societies may, according to their nature, be
established at different levels, i.e. from primary up to deferral level (art. 6). Societies shall be registered by appropriate authority (art. 9). Societies shall have juridical personality and issue proper by-laws (arts. 10 and 11). Articles 46 to 52 concern mediation and arbitration of disputes specified in article 9. (Description from FAOLEX)

Cooperatives Commission Establishment Proclamation 274/2002

This Proclamation provides for the establishment and functioning of a Commission that shall promote cooperative organization. The Commission shall be an autonomous Federal Government Organ and shall be accountable to the Ministry of Rural Development. The Commission shall formulate policies and prepare draft legislation, encourage organization of cooperative societies in line with international principles, carry out training and research, promote cooperative principles, organize, register and grant licences to cooperative societies and, audit and inspect societies and carry out other functions specified in article 5. There shall be a Commissioner who shall be the Chief Executive of the Commission. (Description from FAOLEX)


This Proclamation amends the Cooperative Societies Proclamation in relation with, among other things, control on registered societies, membership and shares and the settlement of disputes. (Description from FAOLEX)

Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation 456/2005

This Proclamation provides for a new system of administration for rural land management and use and for sustainable rural land use planning based on the different agro-ecological zones of the country necessary for the conservation and development of natural resources. This Proclamation shall apply to any rural land in Ethiopia, i.e. any land outside of a municipality holding or a town designated as such by the relevant law. The Proclamation, among other things: provides rules relative to acquisition and use of rural land by peasant farmers or pastoralists, transfer of rural land use rights, distribution of rural land, resolution of disputes, restrictions on the use of rural land; and defines responsibilities of the Federal Ministry of Agriculture and Rural Development and Regions. (Description from FAOLEX)

Rural Land Administration and Use Proclamations by the Regional Governments

• Tigray National Regional State Rural Land Administration and Use Proclamation 136/2000 (E.C.)
• Proclamation 133/2006 of the Amhara National Regional State Rural Land Administration and Use Proclamation
• The Amhara National Regional State Rural Land Administration and Use System Implementation Council of Regional Government Regulations No 51/2007
• Oromia National Regional State Rural Land Administration and Use Proclamation 130/2007
• Southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Utilisation Proclamation 110/2007
• Southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Use Regulations 66/2007
• Gambella National Regional State Rural Land Administration and Use Proclamation 52/2007
• Afar National Regional State Rural Land Administration and Use Proclamation 49/2009
• Benishangul Gumuz National Regional State Rural Land Administration and Use Proclamation 85/2010
References

**Domestic laws**

Amhara National Regional State Rural Land Administration and Use Proclamation 133/2006, *Zikre Hig*, 11th Year No 18, Bahir Dar, 29 May 2009


*Benishangul Gumuz* National Regional State Rural Land Administration and Use Proclamation 85/2010


Ethiopian Civil Code, *Negarit Gazeta*, 19th year, no 1, 5th May 1960, Addis Ababa


Government ownership of urban lands and extra houses Proclamation no 47/1975, *Negarit Gazeta*, 34th year, no 41, 26 July 1975


Public ownership of rural land Proclamation 31/1975, *Negarit Gazeta*, 34th year, No 26, Addis Ababa, 29 April 1975

Revised Constitution of 1955, Proclamation proclaiming the revised constitution of Ethiopia, 4th Nov 1955, Addis Ababa, Ethiopia


*Tigray* National Regional State Rural Land Administration and Use Proclamation 136/2000 (E.C.), *Negarit Gazeta Tigray*, 16th Year No 1, Mekele, 5 December 2000 (E.C.)


The Amhara National Regional State Rural Land Administration and Use System Implementation Council of Regional Government Regulations No 51/2007


Afar National Regional State Rural Land Administration and Use Proclamation 49/2009


**Cases**


*The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, The Inter-American Court of Human Rights, Judgment of August 31, 2001

*Mikmaq v Canada*, Communication No 78/1980, adopted on 29th July 1984 by UN Human Rights Committee,
Lubicon Lake Band v Canada, Communication No 167/1984, adopted on 24th March 1990 by UN Human Rights Committee
Marckx v Belgium App no 6833/75 (ECtHR, 13 June 1979)
Sporrong and Lonnroth v Sweden App no 7151/75 and 7152/75 (ECtHR, 23 September 1982)
James and others v The United Kingdom App no 8793/79 (ECtHR, 21 February 1986)
Matos e Silva v Portugal App no 15777/89 (ECtHR, 16 September 1996)
Chapman v The United Kingdom App no 27238/95 (ECtHR, 18 January 2001)
Hentrich v France App no 13616/88 ECtHR, 22 September 1994)
The Holy Monasteries v Greece App no 13092/87 (ECtHR, 9 December 1994)
Pressos Compania Naviera S.A. and others v Belgium App no 17849/92 (ECtHR, 23 September 1998)
Aka v Turkey, App no 19639/92 (ECtHR, 23 September 1998)
Papachelas v Greece App no 31423/96 (ECtHR, 4 April 2000)
Brumarescu v Romania App no 28342/95 (ECtHR, 28 October 1999)
Immobiliare Saffi v Italy App no 22774/93 (ECtHR, 28 July 1999)
Spacek, s.r.o. v The Czech Republic App no 26449/95 (ECtHR, 9 November 1999)
Beyeler v Italy App no 33202/96 (ECtHR, 28 May 2002)
Carbonara and Ventura v Italy App no 24638/94 (ECtHR, 30 May 2000)
S. v The United Kingdom App 11716/85 (European Commission of Human Rights Decision, 14 May 1986)

Books and Articles

——, ‘Rural women’s access to land in Ethiopia’ in Rahmato D and Assefa T (eds), *Land and the challenge of sustainable development in Ethiopia* (Forum for Social Studies 2006)


Admassie Y, Twenty years to nowhere: *Property rights, land and conservation in Ethiopia* (The Red Sea Press 1995)


——, ‘Land Rights and Expropriation in Ethiopia’ (DPhil thesis, Royal Institute of Technology, Stockholm 2013)


Blackstone W, Commentaries on the laws of England (Childs and Peterson 1860)
Bookman A and Morgen S (eds), Women and The Politics of Empowerment (Temple University Press 1988)


Byamugisha F K, Securing Africa’s land for shared prosperity: A program to scale up reforms and investments (World Bank 2013)


Carter C, ‘The political economy of conflict and UN intervention: Rethinking the critical cases of Africa’ in Ballentine K & Sherman J (eds), The political economy of armed conflict: Beyond greed & grievance (A Project of the International Peace Academy 2003)

Chapman S, Polygamy, Bigamy and Human rights (Xlibris Corporation 2001)


Clark G, ‘Rights, property and community’ (1982) 58(2) Economic Geography 120


Cohen J M, and Koehn P H, Rural and urban land reform in Ethiopia (Land Tenure Center University of Wisconsin-Madison 1978)

Crummey D, Land and society in the Christian Kingdom of Ethiopia: From the thirteenth century to the twentieth century (James Curry 2000)
Davis K E and Trebilock M, ‘Legal Reforms and Development’ (2001) 22(1) Third World Quarterly 21


268
— —, ‘Toward a theory of property rights’ (1957) 57 (2) American Economic Review 347
Eggertsson T, Economic Behavior and Institutions (Cambridge University Press 1990)
— —, Onchan T, Chalamwong Y and Hongladarom C, Land policies and farm productivity in Thailand (World Bank Research Publication) 1988
Feeney D, Berkes F, McCay B, and Acheson J, ‘The tragedy of the commons: Twenty-two years later’ (1990) 18(1) Human Ecology 1
— —, Federalism and the accommodation of diversity in Ethiopia: A comparative study (Wolf Legal Publishers 2005/6)
French P A, ‘The corporation as a moral person’ (1979) 16(3) American Philosophical Quarterly 207
Dharam Ghai, Participatory Development: Some Perspectives from Grass-Roots Experiences (UNRISD, Geneva 1988)
GRAIN, ‘Seized: the 2008 land grab for food and financial security’ GRAIN Briefing Paper 200
Hardin G, ‘The tragedy of the commons’ (1968) 162 (3859) Science 1243
Helland J, ‘Land alienation in Borana: Some land tenure issues in a pastoral context in Ethiopia’ in Babiker M (ed), Resource alienation, militarisation and development:
Case studies from East African Drylands (Organization for Social Science Research in Eastern and Southern Africa-OSSREA 2002)

— —, ‘Pastoral Land Tenure in Ethiopia’ Colloque international (Les frontières de la question foncière – At the frontier of land issues 2006)


— —, ‘“This land was made for you and me”: The Global Challenge of Land Management’ (Papers in Land Management No 1, June 2007)


Huntington S, Political order in changing societies (Yale University Press 2006)


Johnson H, ‘There are worse things than being alone: Polygamy in Islam, past, present and future’ (2005) 11 Wm. & Mary J. Women & L 563


Kebede M, Survival and modernisation: Ethiopia’s enigmatic present: A philosophical discourse (The Red Sea Press 1999)


Kugelman M and Levenstein S L (eds), Land grab? The race for the world’s farmland (Woodrow Wilson International Institute 2009)


272


Locke J, The two treatises of government: An essay concerning the true original, extent and end of civil government (Blackswan, London 1690)


McConville M and Chui W H (eds), Research Methods for Law (Edinburgh University Press Ltd 2007)

Meinzen-Dick R and Mwangi E, ‘Cutting the web of interests: Pitfalls of formalizing property rights’ (2008) 26 Land Use Policy 40


Mill J, Principles of political economy with some of their applications to social philosophy (Augustus M. Kelly 1973)

Ming-Chuan X, ‘Compensation method and rational standard of arable land expropriation’ (2009) 1(3) Asian Agricultural Research 41

---, ‘Comments on the Southern Nations, Nationalities and Peoples (SNNP) draft land administration and land use Proclamation,’ (2006) Ethiopia Land Tenure Administration Program (ELTAP) implemented under Rural and Agricultural Incomes with a Sustainable Environment (RAISE), Task Order 831, 15 Feb 2006


---(ed), Measuring Empowerment: Cross-Disciplinary Perspectives (World Bank 2005)


Ogden C K and Richards I A, The meaning of meaning: a study of the influence of language upon thought and of the science of symbolism (Umberto Eco 1989)


---, ‘Efficiency, Sustainability and Access under Property Regimes’ Paper presented at IMUAVIDER project, Held I Sandiago, Chile, April 27-29, 1998

---, governing the commons, The Evolution of institutions for collective Action (Cambridge University press 1990)


Peaslee A J, ‘The constitution of Ethiopia, established in the reign of His Majesty Haile Sellasie I, 16 July 1931’ (1950) 1 Constitutions of Nations 768


— —, *Land to investors: Large-scale land transfers in Ethiopia* (Forum for Social Studies 2011)


— —, Searching for tenure security? The land system and new policy initiative in Ethiopia (Forum for Social Studies 2004)


Ravallion M and Datt G, ‘Why has economic growth been more pro-poor in some States of India than others?’ (2002) 68 Journal of Development Economics 318


Rawls J, A theory of justice (OUP 1999)


Schlager E and Ostrom E, ‘Property rights regimes and natural resources: A conceptual analysis’ (1992) 68(3) Land Economics 249


Sen A, Development as freedom (OUP 1999)

— —, Inequality Re-examined (Oxford Scholarship Online 1995)

— —, Poverty and famines: An essay on entitlement and deprivation (Clarendon Press 1981)


276
Resources, values and development (Blackwell 1984)


Symeonides S, ‘One hundred footnotes to the new law of possession and acquisitive prescription’ (1983) 44 Louisiana Law Review 69

Tafesse M, ‘An overview and analysis of the history of public policy towards the development of pastoralism in Ethiopia’ in proceedings of the National Conference on pastoralist development in Ethiopia (2 Feb 2000), organised by the Pastoralist Forum Ethiopia


The World Bank and International Food Policy Research Institute, Gender and governance in rural services: Insights from India, Ghana and Ethiopia (World Bank 2010)


US Constitution Amendment V (1791), *Trial and punishment, Compensation for takings*, ratified on 15th Dec 1791

US Constitution Amendment XIV (1868), *Citizenship rights*, ratified on 9th July 1868

USIAID, ‘Ethiopia’s land policy and administration assessment’ (May 2004), under the ‘Broadening Access and Strengthening Input Market System (BASIS)’ Program


Waldron J, ‘Enough and as good left for others’ (1979) 29 Philosophical Quarterly 319

Weber H, ‘Demography and democracy: The impact of youth cohort size on democratic stability in the world’ (2012) Democratisation, iFirst, 1-23


**United Nations Documents**

Charter of the United Nations (24 October 1945) 1 UNTS XVI

Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (29 March 2000) UN Doc CCPR/C/21/Rev.1/Add.10

General Recommendation No 23 by the UN Human Rights Committee on Article 27 of the ICCPR, (1994)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)


UN Committee on Economic, Social and Cultural Rights, ‘General Comment No 4’ in ‘Note by the Secretariat Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I)


UN Human Rights Committee, ‘General Comment No. 12’ in ‘Note by Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (13 March 1984) UN Doc HRI/GEN/1/Rev.1

UN Human Rights Committee, ‘General Comment No. 28’ in ‘Note by Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (13 March 1984) UN Doc HRI/GEN/1/Rev.1

UN Human Rights Council (UNHRC) ‘Report of the UN Special Rapporteur on the Right to Adequate Housing as a component of the right to an adequate standard of living Mr. M. Kothari’ (5 February 2007) UN Doc A/HRC/4/18

279
UNCHR (Sub-Commission), ‘Report by Special Rapporteur Mr. Rajindar Sachar 1995/12’ UN Doc E/CN.4/Sub.2/1995/12
UNGA ‘Vienna Declaration and Programme of Action’ (Vienna 14-25 June 1993) UN Doc A/CONF. 157/23
UN-HABITAT Habitat Agenda Goals and Principles, Commitments and Global Plan of Action (13 November 2003)

United Nations Development Programme, Emergencies Unit for Ethiopia, Horn of Africa Review, covering the period 21 Feb – 28 April 1997


Regional Treaties

Additional Protocol to the European Social Charter providing for a system of Collective Complaints, Strasbourg, 9.XI.1995


American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948) Reprinted in Basic Documents


**Reports**


European Court of Human Rights, (31 Dec 2010), *violation by Article and by country*, 1959-2010

FAO, (2004), *Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security,* Adopted by the 127th Session of the FAO Council

Human Rights Watch, “*Waiting here for death*: Displacement and ‘villagisation’ in Ethiopia’s Gambella Region (January 2012)


Report of the UN Special Rapporteur on the Right to Adequate Housing, Mr. M. Kothari, A/HRC/4/18, 5 February 2007

281


