



## Ethiopia history of land tenure and the present land governance: The case of Oromia region

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### Abstract

In Ethiopia land has been considered as an important economic and social asset where the status and prestige of people is determined. Because of such a high importance given to land, as compared to other properties, the legal protection accorded to land is always strict in nature. Ethiopian political and economic history has been clearly demarcated through its land policy. The history shows just how easily land tenure issues can politically divide a country and it has been the land policy which has driven the politics for more than century. The feudal system of land ownership in southern part of the country particularly, Oromia brings to an end its most democratic form of social and political organization which allowed free access to land. From the time of Menelik land was in few hands like the emperor, nobility and Ethiopia Orthodox Church.

This writing focus on examining laws and policies as to access, use and transfer of rural land under the previous and current legal regime in Ethiopia, particularly in Oromia. Specifically it address the relevance of previous regimes land laws and policies to the present land governance of Oromia, the effects of these land laws and policies to the peasant farmers of Oromia. From the time of Derg to the present land is exclusive property of state and peoples, and its objective is to ensure social equity and tenure security. But state ownership of land in Ethiopia, particularly in Oromia, creates tenure insecurity and failed to ensure equality of citizens in accessing land. Because Oromia Rural Land Administration and Use Law prohibited land redistribution, unoccupied agricultural and community lands has been given to investors, and shorter period of lease made difficult to access land for persons who wants to engage in agriculture. This writing shows that from the time of emperor to the present what changed only was land policy but failed completely to guarantee tenure security and social equality of accessing land. The governing body in Ethiopia used land as political weapon by giving and taking it away as the case may be.

**Keywords:** access, administration, institution, land, laws, policies, transfer, rural, and use

### 1. Introduction

Land is the source of all material wealth; it provides us with all our needs to sustain on. It is also a major economic asset from which people and nation get significant profit. In many developing countries, land has been considered as an important economic and social asset where the status and prestige of people is determined. Because of such a high importance given to land, as compared to other properties, the legal protection accorded to land is always strict in nature. Land is one form of property that is a subject of ownership or other form of use rights. Property is everything that has material or moral value for human beings.... And guaranteed and enforced by law <sup>[1]</sup>. For legal scholars, property refers to entitlements to resources protected by formal legal institutions <sup>[2]</sup>. Land tenure broadly understood as property relations in land and their administrations <sup>[3]</sup>, FAO has defined the term land tenure as the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land... it is an institution, i.e., rules invented by societies to regulate behavior regarding on how land accessed or used

<sup>[4]</sup>. Similarly, Middleton has defined land tenure as a system of relations between people and groups expressed in terms of their mutual rights and obligations with regard to land <sup>[5]</sup>. Ogolla and Mugabe, on the other hand, maintained that land tenure defines the methods by which individuals or groups acquire, hold, transfer or transmit property rights in land <sup>[6]</sup>. The question of land tenure has been pivotal and sensitive political issue in contemporary history of Ethiopia. Given, the agrarian nature of the country, where agriculture is the principal source of the economy, this is not surprising. Agriculture is a main source of income and livelihood for between 85 percent and 90 percent of the country's population <sup>[7]</sup>. It is a source of raw materials for industry and a major source of export earnings. Moreover, agriculture accounts for 90 percent of foreign exchange earnings and 50 percent of gross domestic product (GDP) <sup>[8]</sup>.

Land is the ultimate resource, for without it life on the earth cannot be sustained and good stewardship of the land is essential for present and future generations. Good land resource management will help to promote economic and

<sup>1</sup> Aubry and Rau, *Driot civil Francis-property*; Translated by the Louisiana State Law Institute West Publishing Co. Vol. II, 1966, p. 1.

<sup>2</sup> Merrill, T.W. & Smith, H.E., *the Oxford Introduction to U.S. Law: Property*, New York, Oxford University Press, 2010, p. 3.

<sup>3</sup> Gudeta Seifu, *Rural Land Tenure Security in the Oromia National Regional State*, in Muradu Abdo Eds., *Land Law and Policy in Ethiopia Since 1991: Continuities and Changes*, Ethiopia Business Law Series, Vol III (2010) P. 112

<sup>4</sup> FAO Corporate Documentary Repository, *Land Tenure and Rural Development*, Rome (2002), p. 7

<sup>5</sup> Yegremew Adal, *Some queries about the Debate on Land Tenure in Ethiopia*, Institute of Development Research, Addis Ababa University, p. 52

<sup>6</sup> *Ibid n* (3)

<sup>7</sup> Johan Helland, *Land Alienation in Borena: Some Land Tenure Issues in a Pastoral Context in Ethiopia*, *East African Social Science Research Review* (1999), pp 1-15

<sup>8</sup> Tadesse Beriso, *Agricultural Development and Food Security in Ethiopia: Policy constraints* (1999)

social development both in urban and rural areas<sup>[9]</sup>. Good governance based on a set of principles that includes: participation; rule of law; equity; accountability; transparency; consensus; inclusiveness and efficiency. Land governance has been defined as policies, process, and institutions by which land, property and natural resources are managed. Sound land governance requires a legal regulatory framework and operational processes designed to implement policies consistently within a jurisdiction or country, in sustainable ways<sup>[10]</sup>.

Land governance is the rules, process and structures through which decisions are made regarding access to, and the use and transfer of land, the manner in which those decisions are implemented and the way that conflicting interests in land are managed.

The main objective of this writing focuses on examining laws and policies as to access, use and transfer of rural land under the previous and current land legal regime in Oromia. Specifically this writing addresses the relevance of previous regimes land laws and policies to the present land governance of Oromia, the effects of these land laws and policies to the peasant farmers of Oromia.

This paper is mainly based on review of secondary sources of data that probable includes short writing on the subject matter or paper or books or journals.

## 2. Land Tenures in the Pre- Imperial and Imperial Era of Ethiopia.

A historical record clearly shows that the rulers (kings) were sustained by taxing and collecting tributes from the farmers and tenants, and hence the chronicles often refer to the life of the peasants, the taxing system, and the land tenures while ascribing the accounts of the kings. Ethiopian state and rulers affected the life of ordinary people and limited their productive autonomy, through the centuries, was through its system of taxation and tribute, known by the term *gult*, an institution of land tenure which brought together producers and privileged farmers and rulers, and provided the means whereby the former supported by the latter<sup>[11]</sup>. Before 1975, there were several types of land tenure systems which differed from province to province. There is general tendency to divide Ethiopia tenure in to those of the North and those of south, because the north is the historical heartland of the empire and characterized by the communal tenure, and the south is a conquest area that has come under the domination of the north through essential private tenure system only within the last century<sup>[12]</sup>.

### 2.1 Land Tenure of the North

In most of the northern Ethiopia, the dominant tenure arrangement before the land reform of 1975 was a communal form called the *rist* system<sup>[13]</sup>. *Rist* has several different layers of meaning. Its most basic sense is one of a general right to inherit the patrimony of one's parent's birth

rights<sup>[14]</sup>. In central and northern Ethiopia, land use was dominated by the *rist* and *rest* type tenures, so often misleadingly termed communal. Although ultimate ownership resided in the extended family of an extremely remote and often legendary ancestor, cultivation and distribution of production were rigorously individualistic. In other words, in the *rist* system, land is commonly owned by members of a lineage that are supposed to be descendents of the first settler or occupier of the land or the area. Although most peasants with *rist* rights are not tenants, there were evidences of tenancy in the northern part of Ethiopia which otherwise is the typical land tenure system of the southern part of Ethiopia during the late 19<sup>th</sup> century and 20<sup>th</sup> century. Donald claimed, even in the twentieth century, significant numbers of farmers within the Christian society were tenants<sup>[15]</sup>. Another and more genuinely communal land use pattern found in the north was the *village* or *diessa* tenure, in which land was redistributed to family heads every 5-7 years, with lots being drawn in each of three fertility grades<sup>[16]</sup>.

### 2.2 Land Tenure of the South

The history and nature of the land regime had to be seen in light of the expansion policy of the high land kingdoms of the north. Before the reign of Tewodros II and the final expansion phase of Menelik II, the southern part lived under its own communal ownership of land where the customary rules of each locality governed the land regimes. Hence, the land regimes range from the most democratic system of the Oromo, to the king's land of the *Kembata*, and to the pastoral clan ownership of the entire land. The Oromo's landholding system survived ages before the occupation and ultimately the ethnic groups' social structure was based on a democratic form of social and political organization which allowed access to land according to age group<sup>[17]</sup>. The land system forcefully put in place by Menelik II was a feudal system of land ownership and agricultural production. Put simply, citizen owed general obligations to the land owners who were primarily the church and the nobility<sup>[18]</sup>. In this feudal society, the ownership of land carried the bulk of power in Ethiopia<sup>[19]</sup>. The Emperor, feudal nobility, and the Ethiopian Orthodox Church controlled the land in Ethiopia, meaning they controlled this primarily agrarian society<sup>[20]</sup>. Before 1975, particularly in southern part of the country, land was concentrated in the hands of absentee feudal land lords, tenure was highly insecure and arbitrary evictions were a serious threat<sup>[21]</sup>. In southern part of the country extreme form of exploitation ensued following the conquest, and the establishment of the tenant land lord relations among the unequal was a dreaded phenomenon. Land was often granted by the monarch to the northern occupiers in consideration of their service to the crown. The land lords then rent out the land to the peasants who fell to the expansion. In southern part of the country eviction was common place, and an extreme form of exploitation bred lots of anger, a cause latter espoused by university students,

<sup>9</sup> United Nations economic commission for Europe (UNECE), Land Administration guideline, New York (1996), pp 10-13

<sup>10</sup>United Nations committee of experts on Global geospatial information management (UNCEGGIM), The application of geospatial information, Land Administration and Management, UN-GGIM Version 3.1 (2015)

<sup>11</sup> Donald Crummey, Land and Societies in the Christian Kingdom: from the Thirteenth to the Twentieth Century (2000) p.5.

<sup>12</sup> Id, p.7

<sup>13</sup> Bereket Kebede, Land Tenure and the Common Pool in Rural Ethiopia: A Study Bases in Fifteen Sites (2002) p. 119.

<sup>14</sup> Ibid (n) 11, p.9

<sup>15</sup> Ibid,(n) 11, p.9

<sup>16</sup> Ibid (n) 13, p. 122

<sup>17</sup> Dustin Miller and Eyob Tekalign Tolina, Land to the Tiller Redux: Unlocking Ethiopia's Land Potential (2008) p. 351.

<sup>18</sup> Miller and Eyob, p. 351-352

<sup>19</sup> Miller and Eyob, p. 352

<sup>20</sup> Id

<sup>21</sup> Id

activists, and elites and ultimately to the demise of the imperial regime in general. Menelik II was replaced latter by Haileselassie I who pursued similar policy and even established a private land ownership system in the southern part of Ethiopia.

Bahiru Zewde described the extent of tenancy in southern part of Ethiopia and the extent of private property enjoyed by the occupiers:

The most important consequence of the growth of private tenure was the concomitant spread of tenancy. Some 50%-65% of all holdings were estimated to fall under this category<sup>[22]</sup>.

Accordingly, there was mass exploitation of tenants by often absent landlord. Tenancy was widespread in southern province. Most tenancy agreements were verbal, involving sharecropping arrangements known as erbo (quarter), siso (one third), or equal arash (half)<sup>[23]</sup>.

### 3. Land Tenure during Derg Regime: Land to the Tiller

Ethiopia political and economic history has been clearly demarcated through its land policy, with each new era offering the hope that the previous administration promised but could not provide. This history illustrates just how easily land tenure issues can politically divide a country and it has been the land policy which has driven the politics in Ethiopia over the past one hundred years.

When the Derg come to power in 1975 they were welcomed due in part to their policy of Land to the Tiller. This slogan promised that the previous imperial feudalism would be eliminated and land policy would allow for farmers to own the land they were working<sup>[24]</sup>. The Derg ultimate purpose was to abolish the feudal system in order to release for the industry the human labor suppressed within such system<sup>[25]</sup>. After a century of imperialistic rule and a feudal land system, the people of Ethiopia rose up against the emperor. The overthrow of the emperor in September 1974 by a military government and the elimination of the highest ranking officials of the imperial regime soon after heralded the downfall of a socioeconomic system many have characterized as feudal<sup>[26]</sup>. The 1974 coup cause a break from the feudal system motivated by socialistic slogan, Land to the Tiller<sup>[27]</sup>. Instead of failed system of patronage to the nobility, peasants saw an opportunity to gain value from the land they had worked so hard<sup>[28]</sup>. The military government, titled the Derg, offered the promise of land being for the benefit of those who worked it and not for the absent landlords<sup>[29]</sup>.

In March 1975, the Provisional Military Administration Council (PMAC), or Derg, proclaimed a sweeping land reform which aimed at bringing about a complete transformation in the country's complex land tenure system and in its social and political structure. More than land reform, the measure should be called a land revolution, for

there was nothing reformist in the Derg's approach<sup>[30]</sup>. The 1975, Land Reform Proclamation effectively destroyed the land lord-tenant relationship that had caused massive suffering and exploitation especially in the southern part of Ethiopia. The 1975, Land Reform Proclamation set forth the land policy that Ethiopia citizens would fall under for the following twenty years. The land policy abolished inequitable land ownership arrangements and set the farm sector on a path of semi-collectivist land use<sup>[31]</sup>. This included the nationalization of land and the dismantling of previous interests in land and rights<sup>[32]</sup>.

The preamble of the proclamation states that it is essential to fundamentally alter the agrarian relations so that the Ethiopian peasant masses, which have paid so much in sweat as in blood to maintain an extravagant feudal class, shall be liberated<sup>[33]</sup>. And, it did liberate them. The preamble also address issues pertaining development of the future; it forecasted an increase in agricultural production, catered to distribute land which was implemented effectively, and confirmed to abolish the feudal system and narrow the wealth gap which was done accordingly. Thus, no one was allowed to have private property in terms of rural land. There were temporary confusions as to the nature of urban land holding, but soon was followed by urban land and extra houses nationalizing proclamation<sup>[34]</sup>.

All land under the Derg land system became the property of the country of Ethiopia<sup>[35]</sup>. Transfer of land has been strictly prohibited. No person may sell, exchange, or give on succession, mortgage, antichrists, and lease or otherwise transfer his holding to another<sup>[36]</sup>. The revolutionary approach of the proclamation was clear from the very outset that it simply allowed tenants to stay on and cultivated the land they had been given by the landlords under the tenancy contract. They were prohibited to transfer, but they were granted full use right (usufruct rights) to the land they had been cultivating pending redistribution. The revolution abolished feudalism but it did not create economic autonomy for Ethiopians or security for landholders. The Derg government kept a large measure of control over peasants' lives<sup>[37]</sup>. The economy did not provide the economic stimulus for political stability. Instead, the economy became stagnate and fell behind the rest of the world<sup>[38]</sup>. Although the Derg initiated reform on a popular premise, their policy was fundamentally flawed and failed to alter measurably the organizational, technological and incentive constraints facing Ethiopian agriculture<sup>[39]</sup>.

### 4. Post 1991

Soon after the fall of Derg regime, speculations were running as to the direction of the land policy to be pursued by the new government, Ethiopia People's Revolutionary Democratic Front (EPRDF). Judging from the process of the

<sup>22</sup> Bahiru Zewde, A History of Modern Ethiopia 1855-1991 (Addis Ababa University press, reprint 2007) p. 192

<sup>23</sup> Bahiru Zewde, *ibid*

<sup>24</sup> Public Ownership of Rural Lands Proclamation, No. 31 Purpose (Ethiopia 1975)

<sup>25</sup> *Id*

<sup>26</sup> Bereket Kebede, n(13), p. 127

<sup>27</sup> Public Ownership of Rural Lands Act Proclamation, No. 31, Chapter 2 (Ethiopia 1975)

<sup>28</sup> *Id*

<sup>29</sup> *Id*

<sup>30</sup> Marina Ottaway, Land Reform in Ethiopia 1974-1977 (African Studies Review 1977) p. 79

<sup>31</sup> Miller and Eyob, p. 353

<sup>32</sup> *Id*

<sup>33</sup> Preamble, A Proclamation to Provide for the Public Ownership of Rural Lands No. 31/1975

<sup>34</sup> A Proclamation to Provide for Public Ownership of Urban Land and Extra-houses No. 47/1975

<sup>35</sup> *Ibid* n(33)

<sup>36</sup> Article 5 of Proclamation to Provide for Public Ownership of Urban Land and Extra-houses No 47/1975

<sup>37</sup> Miller and Eyob, p. 354

<sup>38</sup> *Id*

<sup>39</sup> *Id*

post socialist transition that had been carried out by the Transitional Government, and above all the free market economy type of policy that it embraced, many hoped the new Constitution would allow private ownership of land<sup>[40]</sup>. The current government, in its declaration on economic policy in November 1991 announced the continuation of the land policy of the Derg regime. By inserting the land policy in the constitution, the current government has approved and confirmed state ownership of land in Ethiopia<sup>[41]</sup>. The Constitution explicitly states that, the right to ownership of rural and urban land is exclusively vested in the state and in the peoples of Ethiopia<sup>[42]</sup>. It goes on add land is a common property of Nations, Nationalities and Peoples' of Ethiopia and shall not be subject to sale or other means of transfer. As one writer commented by inserting the land policy into the constitution, the current government has effectively eliminated the possibility of flexible application of policy<sup>[43]</sup>.

In many countries land ownership is not a constitutional issue, but in Ethiopia, because of its socio-economic importance, land ownership goes beyond a mere policy matter. Rather, it is inserted in the constitution and the issue of its ownership has become a settled subject. The argument forwarded by the ruling party for the continuation of land as public or state property rests mainly on two policy objectives: social equity and tenure security. The FDRE Constitution provides right to obtain land without payment for Ethiopia peasants for grazing and cultivation purpose as well as a right to be protected against evictions from the possessions<sup>[44]</sup>. The amount of land to be provided to peasant farmers, as far as possible, is made equal. Accordingly, the policy objective is to ensure equality of citizens in accessing the land. Tenure security is the other policy objective and concern of state. State ownership of land is considered to be the best mechanism to protect the peasants against the market force<sup>[45]</sup>. In particular, it has been argued that private ownership of rural land would lead to massive eviction or migration of the farming population, as poor farmers would be forced to sell their plots to unscrupulous urban speculators, particularly during period of hard ship<sup>[46]</sup>. This argument of the government is criticized for lack of corroborative evidence. Some conclude that farmers would not sell their land wholly or partial if given the right to own their plots<sup>[47]</sup>. Another study, conducted by the World Bank, reveals that most farmers would rather rent their land during stressful periods compared with any other alternative, such as selling<sup>[48]</sup>. The study concludes that the availability of formal land rental

markets will serve as a caution to enable farmers to withstand unfavorable circumstances by temporarily renting their land than selling it.

The state ownership of land has been criticized by researchers and international donors who favor neo liberal thinking. That means favoring free transfer of rights thereby adhering to the principles of private ownership of land. The deadlock appears ostensibly clash in principles, namely, the principles of fairness and the principles of efficiency<sup>[49]</sup>. The usual argument forwarded by these people against public ownership of land is one that focuses on lack of tenure security<sup>[50]</sup>. For them, state ownership of land by default creates tenure insecurity since, they argue, the government may use land as political weapon by giving and taking it away as the case may be<sup>[51]</sup>. They argue that absence of tenure security for land users provides little or no incentive to improve land productivity through investment in long term land improvement measures, increases transaction cost because of land dispute, and hinders the emergence of property market such as credit availability or land mortgage<sup>[52]</sup>. However, the government rejects such fears as groundless; on the contrary, it claims that government provides better security as is now taken by regional governments<sup>[53]</sup>. A good example is the land registration and certification.

## 5. The Present Governing Land Laws

Ethiopia is a federal state constituting two administrative cities (Finfine and Dire Dawa) found in Oromia region that are accountable to the federal government and nine other administrative national regional states, which are autonomous in the administrative affairs of their people. The powers and functions of federal and regional governments are provided in the FDRE Constitution. The power to enact laws for the utilization and conservation of land and other natural resources, historical sites and objects is provided, under the constitution to the federal government<sup>[54]</sup>. Regional governments are empowered to administer land and other natural resources in accordance with the federal laws<sup>[55]</sup>. To this effect, the federal government enacted land administration and use proclamation (RLAUP) in 1997 (Proc. 87/1997), and then replaced it within the current legislation, proclamation No. 456/2005. This proclamation delegates regional states with the power to enact rural land administration and land use law<sup>[56]</sup>, which is consistent with it (i.e. Proc. 456/2005) in order to implement the FDRE Rural Land Administration and Use Proclamation at regional level. Besides, there are other legislations in Ethiopia related to land matters among which the Urban Land Lease Proclamation (Proc. 721/2011) and the expropriation proclamation (Proc. 455/2005) are the main ones. Further, six of the regional states (Tigray, Amhara, Oromia, SNNPRS, Beni Shangul Gumz and Afar) have adopted their own Rural Land Administration and Use

<sup>40</sup> Daniel W Ambaye, Land Rights and Expropriation in Ethiopia (KTH Architecture and the Built Environment, 2013) p. 70

<sup>41</sup> Article 40 (3) of the Federal Democratic Republic of Ethiopia Constitution Proclamation No 1/1987

<sup>42</sup> Id

<sup>43</sup> Samuel Gebreselassie, Land, Land Policy and Smallholder Agriculture in Ethiopia: Options and Scenarios. Future Agricultures Consortium Meeting. The Institute of Development Studies. P. 4

<sup>44</sup> Article 40 (4) & (5) of FDRE Constitution

<sup>45</sup> Daniel W Ambaye, n (40) p 71

<sup>46</sup> MOIPAD, Federal Democratic Republic of Ethiopia Rural Development Policies, Strategies and Instruments (A/A Ministry of Information, Press and Audiovisual Department, 2001) pp 6-9

<sup>47</sup> See EEA/EEPRI, A Research Report on Land Tenure and Agricultural Development in Ethiopia (A/A Ethiopia Economic Association/ Ethiopia Economic Policy Research Institute, 2002)

<sup>48</sup> Deininger, K. and Binswanger, H., The Evolution of World Bank's Land Policy: Principles, Experience, and Future Challenges. Vol. 14. No. 2. Washington DC, World Bank

<sup>49</sup> Daniel Behailu, Transfer of Land Rights in Ethiopia Towards a Sustainable Policy Framework (Eleven International Publishing, 2015) p. 22

<sup>50</sup> Daniel W Ambaye, n (40) p 72

<sup>51</sup> Id

<sup>52</sup> Id

<sup>53</sup> Id

<sup>54</sup> Article 51 (5) of FDRE Constitution

<sup>55</sup> Article 52 (2) (d) of FDRE Constitution

<sup>56</sup> Article 17 of Federal Rural Land Administration and Use Proclamation No. 456/2005



Proclamation and Urban Lands Holding Lease Regulations in order to implement the Federal Land Administration and Use Proclamations.

### 5.1 The FDRE Constitution

The FDRE Constitution was enacted in 1995. The constituent assembly<sup>[57]</sup> when it was drafting the constitution called for a huge debate on the land issues. The debate focused on two extreme positions, one position advocating private ownership of land and the other advocating the ownership of the state<sup>[58]</sup>. The transitional government by then claimed the land issues would have to be solved by the newly forthcoming constitution. In August 1995, the constitution went into operation incorporating Article 40, which ruled over the matter, and apparently ending the dead lock. Article 40(3) of the FDRE Constitution states that:

The right to ownership of rural and urban land, as well as all natural resources, is exclusively vested in the state and the people of Ethiopia. Land is a common property of the Nation, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of transfer.

Accordingly, the debates and the deadlocks prevalent before the enactment of the constitution were wrapped up to the dismay of the private property adherents.

Regarding its means of acquisition, sub-Article 4 states that Ethiopia peasants have the right to obtain land without payment and the protection against eviction from their possession. Likewise, concerning the pastoralists of the lowland areas, sub-Article 5 declares that Ethiopia pastoralists have the right to free land for grazing and cultivation as well as the right not displaced from their possession. Although the peasant not entitled to private ownership rights to the land itself, he is guaranteed a full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital and this rights includes the right to alienate, to bequeath, and where the right of use expires to remove his property, transfer his title or claim compensation for it<sup>[59]</sup>. Thus, unlike the Derg, peasants have the full right to their produce and can sell it at market value. Moreover, the constitution guarantees peasants against arbitrary eviction by the state. The FDER Constitution clearly says the government may expropriate private property for public purpose subject to the payment in advance of compensation commensurate to the value of the property<sup>[60]</sup>. The basic flow and reason for controversy in the evaluation and compensation of assets is that the disagreement between Article 40(3) of the FDRE Constitution that recognizes joint ownership of land by people and the state and Article 40(8) of the same constitution which gives compensation only to the private property, fixtures on the land but not the land. The constitution seems to give a right to ownership of land on the one hand, and denies benefit on the other<sup>[61]</sup>.

Concerning urban land, the constitution said nothing about the acquisition and transfer of land urban dwellers. The question is land being the property of the Nations,

Nationalities, and Peoples of Ethiopia and government being its custodian; it is not clear whether the right is extended to all citizens everywhere in the country or to citizens via the group, i.e., Nations, Nationalities, and Peoples, thereby conditioning access to membership<sup>[62]</sup>.

The FDRE Constitution by establishing a federal system has also outlined which level of government has the right to exercise what power over land matters. Accordingly, the federal government enacts laws for the utilization and conservation of land and other natural resources<sup>[63]</sup>, whereas the regional government bears the duty to administer land and natural resources as per the law of the federal government<sup>[64]</sup>. The practical solution adopted on the ground is, however, the federal government enacted framework legislation and the framework legislation prescribes laws by which the administration duty is to be discharged with obligation to enact laws by each regional state to effectively administer land and natural resources in their own context<sup>[65]</sup>. No regional law must conflict with the federal framework legislation but within the given discretion they can come up with their own laws and detailed rules for the implementation of the federal framework legislation. Therefore, the constitution being the supreme law of the land established the guiding principles, and these principles are detailed into framework legislation by the federal government lawmakers. The framework legislation of the federal government is meant to be used by the regional states, which in turn bear the duty to detail the framework legislation and implement the same.

### 5.2 Rural Land Laws

#### 5.2.1 Access to Rural Land

The federal government enacted a rural land administration and use law (Proc. 87/1997) that replaced the 1975 (Proc. 31/1975) rural land law. Proclamation 87/1997 again itself repealed and replaced by the current RLAUP (Proc. 456/2005). This proclamation follows the constitutional principle that creates free access to rural land. It declares that peasant farmers and pastoralists engaged in agriculture for a living shall be given rural land free of charge<sup>[66]</sup>. A person, above the age of 18 years may claim land for agricultural activities, and women who want to engage in agriculture shall also have the right to get and use land<sup>[67]</sup>. Also Oromia rural land administration and use proclamation says that any resident of the region eighteen years and above, whose livelihood depends on agriculture and/or wants to live on, have the right to get rural land free of charge<sup>[68]</sup>.

The conditions attached to this right are, firstly, the person

<sup>62</sup> It is essential to note that there are recent cases where some ethnic groups are forced to leave certain areas because they do not belong to the group asserting an identifiable identity based on the constitution. One may pay attention to the Gura- Ferda incident in SNNPR and Benishangul Gumuz incident; in both cases, northerners are told to leave the area they are farming and living on. In fact, the case called for mixed reactions whereby some asserted based on the constitution that the eviction is wrong and illegal.

<sup>63</sup> Article 52 of the FDRE Constitution

<sup>64</sup> Article 52 of the FRE Constitution

<sup>65</sup> Daniel Behailu, n(49) p 33

<sup>66</sup> Article 5 (1) of Federal Rural Land Administration and Use Proclamation No. 456/2005

<sup>67</sup> Article 5 (2) & (3) of Federal Rural Land Administration and Use Proclamation No. 456/2005

<sup>68</sup> Article 5 (1) of Oromia Rural Land Administration and Use Proclamation No 130/2007

<sup>57</sup>The assembly was one of the organs established during the transitional period (1991-1994) to draft, adopt, and approve the constitution along with the drafting commission, the council of transitional government.

<sup>58</sup> Daniel Behailu, n(49) p 29

<sup>59</sup> Article 40(7) of FDRE Constitution

<sup>60</sup> Article 40(8) of FDRE Constitution

<sup>61</sup> Daniel W Ambaye, n (40) p 75

must want to engage in agricultural activities. Secondly, the person must reside in the area where the agricultural land is located. Although this principle is not clearly seen in the federal rural land administration and use law, regional rural land administration and use laws have clearly envisaged it<sup>[69]</sup>. Thus, residency and profession are two important conditions to get rural land in Ethiopia. The reason seems that since there is shortage of agricultural land in rural areas, because of population pressure, it is not advisable to give land to those who live elsewhere (absentee owners) and those who earn income from other professions<sup>[70]</sup>.

The criticisms raised against this rule are first, the principle of free access to the rural land has, in practice, not working for shortage of land in rural areas and because the law prohibit redistribution of land<sup>[71]</sup>. The experience of land redistribution in the last three decades during the Derg regime and EPRDF rule is one of the greatest sources of land tenure insecurity and anxiety among the rural population<sup>[72]</sup>. While the federal land proclamation is unclear on this issue, Oromia has taken a bold step to ban forced redistribution of rural land in its revised proclamation. To this end, Article 14(1) of proclamation No. 130/2007 rules that redistribution of peasant or pastoralist or semi pastoralist's land holding shall not be carried in the region except irrigation land. However, the guarantee provided in the federal constitution and federal and regional land laws, that any one of age 18 and above has a right to get rural land free seems to presuppose redistribution may undertake. Such right can only be guaranteed in sparsely populated area. It is not possible to exercise this right in areas that are fully settled and utilized without redistribution of land. The other, because of the residency requirement in the law, peasant farmers are locked in on their land instead of searching for additional income by staying in urban areas for longer periods. Also regional states may abuse residency requirement by misinterpreting it as nativity requirement and deny land to those who come from other regions. This is true, for example, in what happened in February 2012 when the authorities of SNNPS evicted about 20 thousand peasants from a place called Gura Ferda forcefully, who had migrated from the northern part of the country<sup>[73]</sup>. The peasants claimed that they lived from 2-20 years, and finally they were evicted because their case was labeled as illegal settlement. The same incident was repeated in March 2013, when the Beni Shangul Gumuz region evicted and expelled about 5000 people because they were Amhara ethnic origin coming from Amhara region<sup>[74]</sup>.

<sup>69</sup> See for example, Article 5 (1) of the Oromia rural land administration and use proclamation use the phrase that any resident of the region as condition to get agricultural land; the Amhara rural land administration and use proclamation uses similar words like any person residing in the region (Article 5 (2), 6 (1), 7 (1))

<sup>70</sup> Daniel W Ambaye, n (40) p 76

<sup>71</sup> Article 9 of Federal Rural Land Administration and Use Proclamation simply provides that up on the wish of the people land may be redistributed, Article 14 of the Oromia Rural Land Administration and Use Proclamation completely prohibits redistribution

<sup>72</sup> Solomon Bekure *et al*, Removing Limitation of Current Ethiopian Rural Land Policy and Land Administration, Paper Presented at the Workshop on Land, Policies and Legal empowerment of the poor, The World Bank, Washington D.C., (November 2-3, 2006), p 8

<sup>73</sup> Ibid n(62), Daniel W Ambaye, Ethiopia Yemanet (whose land is the Land (Ethiopia)), News Paper, Reporter Amharic, March 28, 2012

<sup>74</sup> Ibid n (72)

### 5.2.2 Nature and Duration of Land Rights

Concerning the nature of land rights provided to the farmers Oromia rural land administration and use law uphold the constitutional principle that denies private ownership to land. Rather this law provides farmers with right termed as possession right. Oromia rural land administration and use proclamation 130/2007 defines possession as right of any peasant or pastoralist or semi pastoralist shall have to use rural land for agricultural purpose and natural resources development, lease out and bequeath to members of his family and includes the right to acquire property produced on his land there on by his labor or capital and to sale, exchange and bequeath the same<sup>[75]</sup>. The general understanding today is that peasant farmers will have all rights of an owner except sale and mortgage. They can use the land for agricultural production, have full ownership to the produce collected there from, have right to rent fellow farmers, lease to investors, and inherit and donate to family members.

Peasants shall have such rights for life time and beyond, since they can donate and inherit to others. It has been declared that rural land use right of peasant farmers, semi pastoralists and pastoralists have no time limit<sup>[76]</sup>. In a way, this gives tenure security to the holder of the land as the right of using the land and the investments made there on will not be threatened by time limitation. It must be noted that the longer the duration of rights of using land is the better in terms of ensuring tenure security.

### 5.2.3 Means of Land Acquisition

Rural land can be accessed in one of the following ways: via government grant, inheritance and/or gift, and rent and/or lease. The federal and Oromia rural land administration and use proclamation have provisions to this effect. It is important to note that, as per the federal framework legislation Oromia rural land administration and use proclamation categorized and prioritized those class of people with the potential right to access rural land. First in the priority list comes peasants with no as provided in the federal guide land legislation.

#### a. Government Grant

The FDRE Constitution, federal and regional land administration and use laws have created a free access to rural land to whomsoever who wish to engage in agricultural activities. Any person, who is 18 years and above has the right to get rural land free of charge. Accordingly, there are often two cumulative conditions to be met before one has access to rural land for free: first, one must attain the age of majority and second, she or he must choose to make farming her/his sole livelihood. The Oromia rural land administration and use law stressed on choice of livelihood to have access to rural land<sup>[77]</sup>. The fact that one attains majority age at 18 years and wants to live on agricultural activity is the sole criteria for the government to provide rural land to the concerned individual or at least for the individual to claim land use rights. Thus, priority seems to have been given based on want. The Oromia rural land administration and use law give priority to choice element in

<sup>75</sup> Article 2 (7) of Oromia Rural Land Administration and Use Proclamation 130/2007

<sup>76</sup> Article 6 (1) of Oromia Rural Land Administration and Use Proclamation; See also Article 7 (1) of Federal RLAUP

<sup>77</sup> Article 5(1) of Oromia Rural Land Administration and Use Proclamation No 130/2007

order to accommodate the new generation who is coming of age in the rural community<sup>[78]</sup>. Moreover, women have been included in the eligible list to access rural land meant for farming free of charge<sup>[79]</sup>. The clear provision in the law with regard to women right as far as accessing land and land rights are concerned can encounter the age old patriarchal view of the community that a woman cannot stand alone to acquire property unless via her man or father. However, the culture in many regions and localities is still suppressive of women.

It is one thing to provide for the right to access land, but it also important to inquire as to how the government is able to accommodate the new generation in the face of the ever increasing rural population and scarcity of land suitable for agriculture. It is to be noted that the government owns all land in the nation. This fact serves the government immensely to make distributions and redistributions of land as it may deem it necessary. Hence, one obvious way give access to land to the rural community is to make distribution and/or redistributions, which certainly compromise tenure security of the prior holders of rural land.

Oromia rural land administration and use law on one hand allow access to rural land free of charge and on the other hand prohibits redistribution of land, and such prohibition has a direct bearing on the right of the new generation to access rural land. Undeniably, the spirit of the law is to fight land fragmentation, which is practical problem. Under Oromia rural land administration and use law the possible source of land for the government to distribute to the claimants are unoccupied pockets of agricultural lands and abandoned land<sup>[80]</sup>.

#### **b. Bequeath**

The second means of acquiring land is through inheritance or donation. Oromia rural land administration and use law says that any peasant, pastoralist, or semi pastoralist landholder, shall have the right to transfer his land use right to his family member who have inheritance right according to the law<sup>[81]</sup>. Also any peasant, 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 landless as a gift<sup>[82]</sup>. However, family member is construed differently, and it includes any members who share a living with deceased of the land via farming and has no independent other means of income<sup>[83]</sup>. This provision enables even a non-blood family member to have inheritance right if they share livelihood with the deceased by the operation of the law. Land inheritance is the most important means of gaining access to rural land compared to even government grant. Given the social tie and close cohesion of family members in Ethiopia, families would naturally prefer their descendents to inherit them. Unlike the family members who are recognized by the FDRE revised family law as those who are related by marriage, blood, and adoption, the Oromia rural land administration follows a slightly different path. Accordingly, family member mean children of the land

holder or dependents who do not have other income for their livelihood<sup>[84]</sup>.

The requirements are basically two: residency and management. It means, first, the beneficiary must permanently live with farmer under the same roof (residency element); and second, she must totally rely on the peasant farmer for his livelihood and has no other income of her own. She is under the control and administration of the farmer (management element). This means, the law does not specifically require marital or blood relations for a person to be considered as a family member. Hence, a laborer who has no alternative income of his own and lives with the farmer, without salary, under the same roof may be considered as family member and eligible for inheritance.

Gift or donation is also another mechanism of gaining access to rural land. It is common to witness parents in the rural Ethiopia to grant a piece of land out of their holding to their children coming of age as far as they can do. Thus, within the restriction of the law, which its enforcement is quite questionable and respecting the minimum size holding, parents or any one for that matter can give land for farming to a person who wants to make agriculture his mainstay.

#### **c. Lease**

Lease is also another important mechanism of accessing rural land under all the regional laws having direction from the federal framework legislation. Rural land can be leased both from government and peasants. The lease terms vary depending whether one is leasing the land from the government or peasants and on the manner of using the land, i.e., archaic or modern technology. Under Oromia rural land administration and use law peasant, pastoralist, and semi pastoralist has the right to rent out up to half of his holding<sup>[85]</sup>. Duration of the agreement shall not be more than three years for those who apply traditional farming, and fifteen years for mechanized farming<sup>[86]</sup>. Also under Oromia rural land administration and use law the government can rent out the land not held by peasants or pastoralists or semi pastoralists<sup>[87]</sup>. And the duration of the renting agreement shall be decided by the government<sup>[88]</sup>.

### **6. An overview of Oromia Rural Land Administration and Use Laws**

A number of laws relevant to the administration and rural land use have been adopted in the Oromia Regional State in light of the federal rural land laws since 2002. These laws have been amended with a view to accommodate changing circumstance.

The first rural land use and administration legislation enacted to formulate the regulatory legal framework for addressing issues pertaining to holding rights and institutional process for the administration of rural farm lands and pastoral lands throughout the region is the 2002 proclamation issued by the state council of Oromia. The principal objective of this law were to bring about proper management of land and land resources in an efficient and sustainable manner without compromising the development

<sup>78</sup> Id

<sup>79</sup> Id, Article 5 (2)

<sup>80</sup> Article 14 (2) & (3) of Oromia Rural Land Administration and Use Proclamation 130/2007

<sup>81</sup> Article 9 (1), id

<sup>82</sup> Article 9 (5), id

<sup>83</sup> Article 2 (16), id

<sup>84</sup> Ibid n (83)

<sup>85</sup> Article 10 (1), Id

<sup>86</sup> Article 10(2), Id

<sup>87</sup> Article 11 (1), Id

<sup>88</sup> Article 11 (4), Id

Endeavor of the future generations and to determine the scope of the rights, security and obligations of land users in accordance with the land policy of the nation <sup>[89]</sup>. As provided from the preamble of this law, improving tenure security through determining the content of the rights and obligations of landholders is one of the primary agendas of the region's land legislation <sup>[90]</sup>.

The guiding principles of this very legislation are outlined succinctly under Article 4 of the proclamation. First, land is the common property of the state and people, and therefore, it cannot be subject to sale or other means of exchange. Second, the law expressly provides that women shall have equal rights with men as far as rights to land and access to rural land is concerned.

Article 5 of the proclamation stipulates that any resident adult of the region who is aged 18 or above and who wishes to base his livelihood primarily on agriculture is entitled to get rural land free of payment. Because of scarcity of land in most parts of the country in general and growing number of landlessness in the region in particular, it is unfortunate to stipulate entitlement to land for all adults reaching the age of majority because such stipulation assumes that there is plenty of land to distribute to all new claimants <sup>[91]</sup>. Article 14 (1) rules that redistribution shall not be carried out on the holdings of either peasants or pastoralists in the region except on irrigation land. It is only unoccupied or vacant land and land with no heirs that is at the disposal of the state for future redistribution to the landless poor or land deficit peasants <sup>[92]</sup>. Based on this, it is safe to argue that the government does not have sufficient land under its control to the extent of being tempted to declare openly in the law that it will grant land for all adults who have attained age of maturity and want to make their livelihood by farming. The proclamation determines the minimum plot size as 0.5 hectares for cereal and 0.25 hectares for perennials without prejudice to the existing size of holding <sup>[93]</sup>. However, the law does not specify the maximum size of plot for individual holding and this has enabled sizeable number of households in some areas of the region to possess large tracts of land amidst severe shortage of cultivable land and growing number of landlessness throughout the region.

Article 6 (1) reaffirms that rights to holdings are for life and accordingly peasants and pastoralists have the right to use land under their possession during their life time and bequeath same to members of their family. And this is in line with objective of preamble of the land legislation of the region which is tenure security. The right to transfer one's possession to an heir at law is limited by later law which amended some of the provisions of this very legislation as inheritance of use right over one's holding is restricted to natural or adopted children of the landholder <sup>[94]</sup>. The use right of any holder cannot be terminated during the life of

that very holder unless and otherwise the land in question is required by the government for more important public issues after payment of prompt and adequate compensation for all investments and improvements on the land <sup>[95]</sup>. In line with principles enshrined in the federal and regional constitution, landholders will have the right to acquire property on the land under their possession and are also entitled to sale, exchange or bequeath property they have produced their capital or labor without any restriction <sup>[96]</sup>. Peasants and pastoralists are guaranteed to be provided with lifelong certificates of tenure <sup>[97]</sup>.

The landholders have the right to transfer one's holding for a limited period of time through market based rental transaction. Peasants and pastoralists entitled to lease part of their holding not exceeding half of their allotment to the others; the lease period will be up to 3 years where the lease applies traditional farming technology and this period may extend to 15 years in the event that the lessee use modern farming technology to cultivate the land acquired through contract of lease <sup>[98]</sup>.

Proclamation No. 70/2003 which come into existence to amend some of the provisions of proclamation No. 56/2002 has taken back the progressive measures of the former rural land legislation of Oromia with respect to security of holding rights of peasants as well as pastoralists. Firstly, transfer of use rights by holders through inheritance was restricted as the amendment by proclamation 70/2003 only permits transfer of holding rights through succession to one's children by narrowly defining the terms family member to constitute natural or adopted children of the holder <sup>[99]</sup>. Secondly, the new proclamation authorizes the government to take away the holdings of peasants or pastoralists and grant lease hold for investors if the land in question is found to be important for long term investment <sup>[100]</sup>. But proclamation 56/2002 clearly stipulates that the government can only grant through lease contract rural land that is neither occupied by peasants nor pastoralists and even the lease agreement the government makes in such instances with private investors should not adversely affect the interest of peasant holders or pastoralists <sup>[101]</sup>. Thus, expropriation of holdings of peasants or pastoralists is only envisaged in such case where the land is required for public use <sup>[102]</sup> whereas the new proclamation has empowered the government to expropriate land from holders to grant the land to private investors through lease agreement <sup>[103]</sup>. Therefore, the security of the holding rights of peasants or pastoralists is threatened by the new proclamation as expropriation is carried not only for public uses but also for renting out land to investors.

The new proclamation has denied a wife in a polygamous marriage the right to get holding certificate together with her husband and other wives of her husband in the event that she lives with another means of income and outside the locality where the holding situate <sup>[104]</sup>. The former Oromia rural land legislation permits the husband to get holding

<sup>89</sup> See the Preamble of Oromia Rural Land Use and Administration Proclamation 56/2002, Megeleta Oromia 9<sup>th</sup> year No 2.

<sup>90</sup> Proclamation 56/2002, the Preamble

<sup>91</sup> See Dessaalegn Rahmato, Searching for Tenure Security? The Land System and New Policy Initiative in Ethiopia, FSS Discussion Paper No. 12, Forum for Social Studies Addis Ababa, August 2004 pp. 6

<sup>92</sup> Article 14 (2) & 10 (3) of Proclamation No. 56/2002

<sup>93</sup> Article 8, Id

<sup>94</sup> Article 2 (1) of Proclamation 70/2003 to Amend Proclamation 56/2002 of the Oromia Rural Land Administration and Use Proclamation, Megeleta Oromia, 9<sup>th</sup> No. 12. This Article provides that the term family member is construed narrowly only to refer to naturally born or adopted children of the decedent and therefore land could not go through succession to other relatives of the land holder.

<sup>95</sup> Article 6 (4) & (5) of Proclamation 56/2002

<sup>96</sup> Article 6 (1) of Proclamation 56/2002

<sup>97</sup> Article 15 (1), Id

<sup>98</sup> Article 11 (1), Id

<sup>99</sup> Article 2 (1) of Proclamation 70/2003

<sup>100</sup> Article 2 (2), Id

<sup>101</sup> Article 12 (1) & (2) of Proclamation 56/2002

<sup>102</sup> Article 6 (4), Id

<sup>103</sup> Proclamation 70/2003

<sup>104</sup> Article 2 (6) of Proclamation No. 70/2003



certificate with only one of his wives and the remaining will be entitled to holding certificate separately. One of the demerits of new Proclamation 70/2003 is it restricts the right of women to exercise holding rights for it ties the continuity of the right to their residence in the locality where the land found. Comparing to former rural land legislation the new proclamation is regressive in terms of ensuring tenure security of holders.

Proclamation 103/2005 was made for protecting the tenure security of farming households in western Oromia where perennial crops are grown at large scale. The farmers in western Wellega, Ilubabor and Jimma were displaced by richest from urban through sale contract of their coffee plants. To stop the evictions of farmers in Western Oromia from their plots of land, the government came up with a sort of policy measure whereby peasant holders were restricted from selling property acquired on their landholding including coffee trees, papaya, orange, mango, avocado, etc <sup>[105]</sup>. In particular, it prohibits sale of perennial crops by holders where the product to be sold occupies more than half of the total holding of the farmer and where the sale agreements extends over three years. And this adversely affected the holding rights of farmers as they were prohibited to transfer property acquired via their labor or capital on their possession under the veil of protecting them against eviction. It also runs contrary to the constitutional provision which guarantees the right to private property as one of the fundamental constitutional rights of citizens. Therefore, it can be said that the amendments introduced by proclamation No. 103/2005 have neither promoted the holding rights of farmers or pastoralists nor promoted tenure security.

As a result of problems encountered in the process of implementing the preceding proclamations and for a need to handle disputes that may arise in relation to land tenure, the state of Oromia has enacted a new rural land use and administration law in 2007 <sup>[106]</sup>. This law reaffirms most of the principles and procedures followed by the preceding laws. Some of the new inclusions in the new law are: the right of investors to mortgage the property acquired on land (through investment process) and issuance of certificate of holding which could be prepared in the name of the rightful holder, be it joint ownership or otherwise. As per the new land use proclamation of 2007, there are basically three types of tenure arrangements, i.e. individual holding, communal holding and state holding <sup>[107]</sup>.

### 6.1 Limitations of Proclamation 130/2007

A significant body of documented research shows that rural poverty in many developing countries is strongly correlated with poor access to land, either in form of landlessness or because of insecure and contested land rights <sup>[108]</sup>. Access to land is a fundamental means for the rural poor to get food supplies and other basic services and is a primary source of

finance for the poor as it may serve as collateral to access credits or as a transactable asset that can be rented out and mortgaged. The right to access rural land free of charge incorporated in both the federal and regional constitution. The new proclamation 130/2007, attaches significant importance to secured land rights as one of its primary goals is to ensure better rights for rural land users including the right to access land and land resources <sup>[109]</sup>. This proclamation states that access to rural land may be effected through inheritance and donation from one's family possessing farmland or from the government <sup>[110]</sup>.

Inheritance and donation are the principal avenues for acquisition of rural land as access to rural land through market based transactions is limited due to prohibition of land transfer through sales <sup>[111]</sup>. The new proclamation provides that any holder of the rural land has the right to transfer his use rights over his holding to member of his family who have inheritance right according to the law <sup>[112]</sup>. However, the definitional article defies this position through defining the terms family member to mean children of the landholder or dependents who do not have other income for their livelihood <sup>[113]</sup>. Hence, other relatives of a deceased landholder in the collateral line are not entitled to get the land in question through inheritance unless they are dependents of the deceased land holder. It could be inferred that children of the landholder living elsewhere and having an alternative means of livelihood are entitled to inherit rural land from their parents save as to the case where priority of inheritance right is maintained for children or dependents who live by the income obtained from that land or who do not have any other means of income <sup>[114]</sup>.

Also transfer of use right through donation is restricted in such a way that it is only family members whose livelihood depends on the income earned from the land in question or with no other means of income, or landless children of the holder that are entitled to acquire rural land for use through donation <sup>[115]</sup>. Thus, children of the landholder having other means of income for their livelihood cannot acquire use rights over rural holdings through donation narrowing down opportunities for transfer of use rights via donation thereby limiting access to rural land.

The new proclamation like proclamation No. 56/2002 has recognized the right to acquire rural land for purposes of agriculture and natural resource development to any adult resident of the region who is 18 years or above and wants to make his living through farming <sup>[116]</sup>. The prevalence of severe scarcity of land in most areas of the rural parts of the region makes a daunting task for the government to avail land for cultivation for all adult claimants in the region. Accessing rural land through grant by the government is limited as the government does not have large tracts of arable rural land under its possession for distribution to new adult claimants. This is particularly true when seen in light of the fact that redistribution of rural land with the exception of irrigable land is prohibited as a matter of principle <sup>[117]</sup>.

<sup>105</sup> See Proclamation 103/2005, Proclamation to amend the Proclamation 56/2002, Megeleta Oromia 13<sup>th</sup> year No 8

<sup>106</sup> Proclamation No. 130/2007, Preamble

<sup>107</sup> As per Articles 5 and 15 (1) indicates that peasants, pastoralists or semi pastoralists are entitled to obtain private holding, whereas rural communities have the right to access to rural land in the form of communal holding for such purposes as grazing, religious activities, water points and other social services

<sup>108</sup> Cotula L., Toulmin C. & Quan J., Better Land Access for the Rural Poor, Lessons from Experience and Challenges ahead, IIED, FAO, 2006, P.7

<sup>109</sup> See preamble of Proclamation No 130/2007, Megeleta Oromia, 15<sup>th</sup> Year, No, 12

<sup>110</sup> Article 5 (5) of Proclamation 130/2007

<sup>111</sup> Article 6 (6), Id

<sup>112</sup> Article 9 (1) of Proclamation 130/2007

<sup>113</sup> Article 2 (16), Id

<sup>114</sup> Implicitly inference from Article 9 (2), Id

<sup>115</sup> Article 9 (5), Id

<sup>116</sup> Article 5 (1), Id

<sup>117</sup> Article 14 (1), Id

Thus, the enforceability of this right is, therefore, highly unlikely for the government has only very little vacant land and land for which no heir is found under its control. The experience of Oromia regional state shows that the regional government has been distributing some of the state farms for the landless peasants but which couldn't solve the problem of access to land basically.

There are basically three types of tenure arrangements i.e. individual holding, communal holding and state holding. Peasants, pastoralists or semi pastoralists are entitled to obtain private holding, whereas rural communities have the right to access rural land in the form of communal holding for such purposes as grazing, religious activities, water points and other social services <sup>[118]</sup>. Government institutions, nongovernmental organizations, private investors and other social institutions are also entitled to get access to rural land <sup>[119]</sup>. All rural lands that are unoccupied by any category of holders mentioned hereinabove falls in the category of state holding and the state allocates such land for landless peasants <sup>[120]</sup>, or transfers use rights for private investors through lease agreements without adversely affecting the interests of peasants and pastoralists to get access to rural land <sup>[121]</sup>.

The other point is protection of land rights of vulnerable groups including women. The new land legislation has made considerable progress in terms of protecting women's right to land by providing for equal rights of men and women to access rural land <sup>[122]</sup>, recognizing equal rights to obtain land titles and joint titling for couples <sup>[123]</sup>, presuming joint possession of family land and the right to share their holdings equally up on divorce <sup>[124]</sup>, outlawing land rental agreements without consent of both spouses <sup>[125]</sup>, and permitting women to use hired labor on their farm plots <sup>[126]</sup>. Although the law prohibits gender discrimination in relation to land, this has not brought about significant change in terms of ensuring women's right to land in practice as the aforementioned provisions of the law are rarely applied in many rural parts of the region due to the prevalence of entrenched prejudices and biased attitudes towards women. In many parts of remote rural areas where customary norms are widely applied and rules of access to rural land are defined by traditional authorities, women are practically discriminated. The prevailing customary system limits inheritance rights of women to land through allowing land control to rest on the male family members and consequently a married woman is not entitled to get land of her parents through inheritance. Therefore, as women's rights constrained by entrenched cultural practices, limited access to courts and lack of resources, an effective implementation of the provisions of the law protecting women's right to land requires taking series of measures to bridge the gap between the law and practice.

## 6.2 Land Use Rights

Land use rights refers to the right of any peasant farmer or semi pastoralist and pastoralist shall have to use rural land

for purpose of agricultural and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labor or capital and to sale, exchange and bequeath the same <sup>[127]</sup>. Significant legal reform and improvements are incorporated in the existing law in relation to defining the rights of landholders in a way that promotes tenure security. The major rights of land holders include the right to use one's holding without any time limit, the right to lease out, the right to transfer use right over one's parcel of land to one's family members through inheritance or donation, the right to acquire property produced there on and the right to sell, exchange and transfer such property and the right to claim compensation up on expropriation of the holding rights for public purposes <sup>[128]</sup>.

Nevertheless, the right to dispose property produced on one's holding does not include the sale of land <sup>[129]</sup>. As the land is exclusively owned by the state and peoples of Ethiopia, transfer of land by sale or any other means of exchange is prohibited <sup>[130]</sup>. By the same token, the new proclamation, in principle, prohibits sell of fixed assets such as coffee, mango, avocado, papaya, orange, etc <sup>[131]</sup>. however, the new proclamation provides that the fixed asset produced on one's holding may be sold exceptionally in the situation where the fixed asset to be sold should not exceed more than half of the total holding of the holder and the sale agreement of the product should not extend over a period of three years <sup>[132]</sup>. Such agreements must be registered and approved by the bureau in the same way as it is mandated to approve agreements for share cropping or hiring labor by vulnerable groups on their land holding <sup>[133]</sup>, overseeing and approving rental agreements <sup>[134]</sup> and approving and registering special agreements rights holders make with investors to develop their holdings <sup>[135]</sup>. The rationale behind this restriction is to minimize the insecurity felt by peasant holders in coffee growing rural areas of the region, particularly, the peasant holders in coffee and khat growing area of the region have been evicted from their holding as a result of sale of products of coffee and khat to unscrupulous urban wealthy individuals.

It is worth noting that use rights are guaranteed during the life time of the holder and it cannot be terminated unless the land is required for more important public purposes <sup>[136]</sup>. The state is required to pay compensation in advance to the peasants whose landholdings were expropriated and such compensation comprises the value of the property on the land and calculation of the benefits obtained there from as well as replacement of similar plot of land <sup>[137]</sup>. The proclamation also provides that in case where replacement of land is not possible, the holder displaced from his parcel of land will be entitled to payment of compensation for rehabilitation <sup>[138]</sup>.

<sup>118</sup> Article 5 (1) & (2) of Proclamation No 130/2007

<sup>119</sup> Article 5 (3), Id

<sup>120</sup> Article 14 (2), Id

<sup>121</sup> Article 11, Id

<sup>122</sup> Article 5 (2), Id

<sup>123</sup> Article 15 (8), Id

<sup>124</sup> Article 6 (13), Id

<sup>125</sup> Article 10 (6), Id

<sup>126</sup> Article 6 (14), Id

<sup>127</sup> Article 2 (4) of Federal RLAUP 456/2005

<sup>128</sup> Article 6 (1) of Proclamation 130/2007

<sup>129</sup> Article 40 (3) of FDRE Constitution

<sup>130</sup> Id

<sup>131</sup> Article 6 (2) of Proclamation 130/2007

<sup>132</sup> Article 6 (3), Id

<sup>133</sup> Article 6 (15) of Proclamation 130/2007

<sup>134</sup> Article 10 (3), Id

<sup>135</sup> Article 10 (8), Id

<sup>136</sup> Article 6 (10), Id

<sup>137</sup> Article 6 (11), Id

<sup>138</sup> Article 6 (12), Id

Pursuant to this law, any holder has the right to rent out up to half of his/her total holding for three years if modern farming technology is utilized <sup>[139]</sup>. Nevertheless, agreements to rent rural holdings won't be valid unless approved and registered by the bureau. Furthermore, the law requires that all family members including women, those who have interests in the land, must give their consent before any agreement to rent out rural land holding is concluded <sup>[140]</sup>. And that land tax must be paid in the name of the landholders in any land rented to others <sup>[141]</sup>. This proclamation seems to introduce the idea of obliging lessees to pay land tax in the name of the land holders with a view to securing the right of the land holders who rent out their land in the absence of properly defined and registered land rights throughout the region. The new proclamation provides that the government can only rent out to investors the land not held by peasants or pastoralists <sup>[142]</sup>. The agreement to grant land to investors through lease must protect the benefits of peasant holders and pastoralists in such a way that seems to give priorities in terms of accessing that every land held by farmers and pastoralists as against private investors <sup>[143]</sup>. In this manner, this law has addressed tenure insecurity that may be felt by rural land holders because of assignment via lease of large plots of land held small holders for commercial agriculture as well as development of industrial projects to private investors by the way of expropriation. Although the new law provides for lifelong use rights over the rural landholdings, this law has not brought about considerable improvements with respect to conditions of transfer of land through inheritance or donation than the previous relevant laws.

### 6.3 Transfer of Land Use Rights

As already mentioned above, land rights could be transferred permanently through inheritance and donation. Besides, there are other modalities through which land use rights may be transferred temporarily to others. We can call them commercial land transactions, to differentiate them from inheritance and donation. To be specific, the law recognizes rent and lease as the two possible ways to transfer land use rights temporarily. Sale and mortgage not yet allowed. To begin from inheritance, under the federal land proclamation, it is to be recalled that inheritance is only possible to family member of land user who shared a living with inheritor. The law disregards blood tie and rather emphasizes on the fact that one has been living with the deceased and have shared a living there to.

The Oromia land proclamation affirms inheritance right to family member and defines family member as children of the land holder or dependent who do not have other income for their livelihood <sup>[144]</sup>. The law confirms transfer of land use rights to family members who are deemed heir by succession law <sup>[145]</sup>. Hence, the civil code, which gives the right to the direct lineage (descendants and then descendants) and in the absence of the direct to the collateral lineage and so on, is applicable. Nonetheless, the use of the word children might conjure the idea that

descendants are the preferred ones. The Oromia land legislation is to be celebrated on the mechanism it is designed to give priority inheritance right among the eligible heirs. The law states, heirs whose livelihood is entirely dependent on the income from that land or have no other income shall be given inheritance priority <sup>[146]</sup>. The criterion is of special importance in the face of more than one eligible heir and the prohibition of subdividing rural land below the minimum holding size. The competing interest of the heirs can be solved using the criterion of who is more destitute or whose life entirely at stake if the land is taken away. Comparing to the federal land legislation, Oromia land legislation can be taken as a model as far as prioritizing eligible heir is concerned. Because the federal land legislation might transfer use right to heirs who have no blood relation to the deceased, children who are off the farm activity disinherited, and there is the possibility that one would die without an heir even if he has children. This rule of inheritance also contributes to the fact of land fragmentation, besides subjecting the elders not to be looked after by the potential heirs hoping to benefit from the land. So such narrow definition of family member under the federal land legislation needs to be revised, and blood tie needs to be given priority.

The other way of transfer is gift, gift of rural land use right is also possible but on the condition that the recipient chooses to live agriculture and that the minimum holding size is respected on both sides, i.e., the donor and recipient. Hence, in order for one to donate a use right, the only curbing rule is the requirement of minimum size holding. Under Oromia land legislation peasants, pastoralists or semi pastoralists 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 landless as a gift <sup>[147]</sup>. Here the law gives priority for family member or children having blood tie with donor and whose life dependent on agriculture.

Lease is the third modalities to transfer use rights of land, the Federal RLAUP provides a general provision that allows rent and lease the details of which shall be decided by the regional rural land laws. Under federal rural administration and use law peasants 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 the regions based on particular local conditions <sup>[148]</sup>. It means the law gives discretion of deciding on the duration of lease period and the amount of land to be leased out to regional governments. The Federal RLAUP uses only the term lease and excludes the word rent, whereas RLAUPs give different meanings to the two terms <sup>[149]</sup>.

Rent of rural land is permitted under the regional laws on varying conditions. Hence, in principle, a person with holding right is permitted to rent his or her land under the terms and conditions provided by law. Peasants or pastoralists can rent their holding and use right to their

<sup>139</sup> Article 10 (1) & (2), Id

<sup>140</sup> Article 10 (6), Id

<sup>141</sup> Article 10 (7), Id

<sup>142</sup> Article 11 (1) of Proclamation 130/2007

<sup>143</sup> Article 11 (2), Id

<sup>144</sup> Article 2 (16) Oromia Land Proclamation 130/2007

<sup>145</sup> Article 9 (1), Id

<sup>146</sup> Article 9 (3), Id

<sup>147</sup> Article 9 (5) of Proclamation 130/2007

<sup>148</sup> Article 8 (1) of Federal RLAUP 456/2005

<sup>149</sup> For example in the Oromia Rural Administration and Use Proclamation rent is understood as transfer of land to fellow farmers for shorter period of time, while lease is defined as transfer of land from framers to investors or from government to investor for long period of time.

either fellow farmers or pastoralists or investors in a manner that does not displace them <sup>[150]</sup>. Thus, one can easily discern here that there are two conditions for the rent right to be exercised. First, the farmer must be a true holder, which he/she demonstrates via certificate, and hence, a holding with no certificate cannot be rented. Second, the rent must not displace the lawful user of the land. Thus, a farmer who wants to rent out land must have some extra land to size of the minimum holding, and the land to be transferred via rent must also respect the minimum holding size requirement. Under the Oromia rural land administration and use proclamation, the minimum holding size is 0.5 hectare <sup>[151]</sup>, and hence, for a person to avail himself of the right to rent his/her use right and be able to transfer it, the size of the land must exceed the minimum holding; otherwise, it amounts to displacement. The lessee also must acquire land equal to the minimum size, which forces land users to be able to rent to have a holding of one hectare or more <sup>[152]</sup>. Land renting shall be valid before the law, if and only if it is registered and approved by Oromia Agricultural and Rural Development Bureau <sup>[153]</sup>. Duration of the lease agreement shall not be more than three years for those who apply traditional farming, and fifteen years for mechanized farming <sup>[154]</sup>.

It is to be noted that renting take place at both governmental level and private holders' level. The government can rent out the land not held by peasants or pastoralists or semi pastoralists, and such agreements shall protect the benefits of the peasants, pastoralists or semi pastoralists <sup>[155]</sup>. The duration of the renting agreement shall be decided by Oromia Regional government <sup>[156]</sup>. Investors who rent land either from the government or peasant farmers have the right to mortgage their lease right as security to banks <sup>[157]</sup>. When we look the practice, it is the land which is rented from the government that is given as collateral to banks; not the one rented from the peasant farmers. The reasons are the land rented from peasants is too small to pass it as mortgage or the peasant may not agree that his land be given as collateral to banks. On the other hand, the rent right of the poor farmer over his holding shall not exceed three years with a number of conditions attached to it and minus the right to present his use right as collateral. The financial assistance is quite unavailable for the farmers subjecting and affecting their entire life and unproductive means of production.

Under Oromia rural land legislation investor who has got the use right of rural land through lease or renting from the government shall use the right of his assets on the land as collateral <sup>[158]</sup> but not the use right of the land as clearly provided under Federal land legislation and other Regional land legislations.

Oromia rural land legislation has further imposed restriction with respect to selling of fixed assets like coffee, mango, avocado, papaya, orange, etc <sup>[159]</sup>. The law is apparently a

violation of the constitution, which declares the right to dispose of property produced on the land <sup>[160]</sup>. However, rural land with fixed asset on it cannot be transferred to other party for more than three years under the guise of selling the products there of. The land occupied by the product to be sold shall not exceed half of the total landholding of the renter, and the product shall be sold only for three years <sup>[161]</sup>. Accordingly, the land can stay under the hand of the transferee for three years only in a manner that does not displace the renter. Such restrictions negates what is under the FDRE Constitution which confirms right to dispose of private properties where it is produced by one's labor or intellect <sup>[162]</sup>.

#### 6.4 Land Administration, Institutions and Dispute Resolution Mechanism

The Oromia National Regional State is the largest regional state of the federal democratic republic of Ethiopia both in terms of area coverage and population number. Finfine (Addis Ababa) is the capital city of the regional government as well as the capital city of the nation. Oromia regional state has its own competent authority for land use and administration purpose, and such authorities' power and duties have been outlined in Oromia land legislations <sup>[163]</sup>. This competent body, the Oromia Bureau of Land and Environmental protection, is situated in Finfine (Addis Ababa). The power and function of the bureau have been outlined under the establishment proclamation that annulled previous laws on the matter <sup>[164]</sup>. The bureau is entrusted to formulate policies and strategies pertinent to the land and the environment, administer the land resource of the region, conduct studies, and prepare land use master plans, undertake cadastral surveying, and conduct studies on development corridors and growth centers <sup>[165]</sup>. The bureau also entrusted by the law to determine compensation up on expropriation of land for development works and works on land holders' rehabilitation after expropriation <sup>[166]</sup>. It also in collaboration with concerned organs resolve or cause to be resolved any conflicts or disputes arising on land and environmental protection <sup>[167]</sup>. Regulate and follow up that any development body shall conduct environmental impact assessment prior to project implementation; prepare environmental standards and make them available for use <sup>[168]</sup>. Collect, store, analyze and administer the land resource and environmental data and information and make them available for as required <sup>[169]</sup>.

Administratively, the Oromia National Regional State is divided into 14 zones and 192 woredas (districts) <sup>[170]</sup>. Each woreda has many kebelles (sub districts) under it, and the actual work of land administration takes place at a sub-district level. The administration is organized in such a way that the regional bureau is at the top hierarchy accountable to the office of the president of the region; under the

<sup>150</sup> Article 10 (1) of Proclamation No. 130/2007

<sup>151</sup> Article 7 (1) of Proclamation 130/2007

<sup>152</sup> An implied reading from Article 7 (1) & 10 (1) of Proclamation 130/2007

<sup>153</sup> Article 10 (3), Id

<sup>154</sup> Article 10 (2), Id

<sup>155</sup> Article 11 (1) & (2) of Proclamation 130/2007

<sup>156</sup> Article 11 (4), Id

<sup>157</sup> Article 8 (4) of Federal RLAUP 456/2005

<sup>158</sup> Article 15 (15) of Proclamation 130/2007

<sup>159</sup> Article 6 (2) of Proclamation 130/2007

<sup>160</sup> Daniel Behailu, n(49), p 59

<sup>161</sup> Article 6 (3) of Proclamation 130/2007

<sup>162</sup> Article 40 (1) of 1995, FDRE Constitution

<sup>163</sup> A proclamation to provide for the establishment of the Oromia Bureau of Rural Land and Environmental Protection No 147/2009

<sup>164</sup> Article 5, Id

<sup>165</sup> Id

<sup>166</sup> Article 5 (7), Id

<sup>167</sup> Article 5 (8), Id

<sup>168</sup> Article 5 (13), Id

<sup>169</sup> Article 5 (15), Id

<sup>170</sup> Daniel Behailu, n(49), p 93



regional bureau are the zonal office, which coordinate efforts at the local woreda (district) level offices. The main tasks of zonal office are to coordinate districts under their jurisdiction, provide training for the district staffs, consolidate data from districts, and report to the regional bureau.

The regional bureaus work is set up in order to achieve maximum coordination among the staffs of the three sections under the rural land and environment protection bureau. These sections are the rural land administration section entrusted with the land administration. The land use section is also right under the same roof entrusted with land use plan development business and follow up its implementation once the plan has been developed fully. The environmental protection section is also organized to enable smooth communication and enable harmony with other sections.

Following this the organizational structure of zonal office was changed to make it more efficient in coordinating other efforts. Hence, land administration, land use, and environmental protection authorities are brought together out of three independent authorities.

The same structure goes to the local administrative organs called woreda (district). Land administration and environmental protection office were established at woreda level too. In fact, the actual land administration, land use, and environmental protection work takes place at this local government level. The offices at the district level are arranged in the same way with the zonal administration as land administration, land use, and the environment office. The land administration office works to measure every plot of land in the woreda, which is essential for the development of the nation. Land is measured and registered; every mountain, hill, river, lake, and forest is being identified, registered, and kept in records to effect land use planning and environmental protection. Data is generated at the district level and transferred to higher authorities. Thus, the data shall be sent to the zonal administration, which compiles all the data coming from the districts under it and pass it over to the regional government bureau.

Different literature shows as there is acute shortage of trained human resource, lack of appropriate budget (capital), and access to technology is largely hampering the actual job couple with in efficiency in the administration and prevalent corruption. It is also noted that as one goes down from the highest hierarchy of office to the lowest, the quality of trained human force, availability of resources, and technology dwindle.

One of the most changes introduced by proclamation 130/2007 of the region relates to initial jurisdiction. In the original law of the region on rural land administration and use proclamation 56/2002, initial jurisdiction of hearing and deciding rural land related disputes was given to Kebele social courts. The current law took away initial jurisdiction from social courts and conferred it on arbitrating elders.

The other important future of proclamation 130/2007 is that it provides the procedure of forming the envisaged arbitral tribunal. The law treats the parties on equal footing and gives them the chance of electing (appointing) two arbitrators each <sup>[171]</sup>. Further, the law gives primacy to the parties to appoint together a chair arbitrator or otherwise

known as an umpire <sup>[172]</sup>. Alternatively, the law provides that the presiding arbitrator may be appointed by the parties chosen arbitrators <sup>[173]</sup>. The proclamation though not clear, also provides that in case where the parties fail to agree on a chair arbitrator shall be assigned by Kebele administrator <sup>[174]</sup>. Though it is not clear as to whether failure to agree on a chair arbitrator should be by both parties and parties chosen arbitrators; however, it is quite important in that it gives the power of appointing a presiding arbitrator to the administrator of the Kebele so that the tribunal may be fully constituted and start its work.

Once the elder composed this way, then they must report the result of their work to the Kebele administration within 15 days <sup>[175]</sup>. 15 days since when? There is no answer in the proclamation. It is the responsibility of Kebele administration to make the elders to observe this time line. What if the time limit could not be observed? There is no answer in the proclamation. The report findings of elders then must be registered by the Kebele administration <sup>[176]</sup>. The Kebele administration is also required to put its seal on the copy of elders' finding and hand over it to the parties <sup>[177]</sup>. A party who is not happy with result reported by the elders can initiate a proceeding over the dispute in a woreda court within 30 days of the registration of the result in the Kebele administration <sup>[178]</sup>. The party must attach the findings of the elders with their application to the court as the courts must not accept the application without the findings being attached there to <sup>[179]</sup>.

A party who is not happy with the decision of the woreda court can take an appeal from its decision to a high court. If the high court reverses the decision of woreda court, an appeal lies to the Supreme Court. The decision in the Supreme Court will be final.

The ambiguity as to Article 16 <sup>[180]</sup> is the result of arbitration that may rush to conclude that the role of elders is that of arbitrators. A bit more focused reading, however, reveal that their role is not intended to be that of arbitrators as we know decision rendered by arbitrators is as enforceable as court judgments are. But elders' findings in the proclamation have none of the qualities of the arbitral award. In this proclamation it is clearly provided that any party dissatisfied with the elders' finding can start a fresh proceeding in the woreda court <sup>[181]</sup>. Thus we can conclude that elders' are not intended to do arbitration as we know arbitration in both civil and civil procedures codes. Unlike the codes, the proclamation does not give the elders' finding the effect of *res Judicata* <sup>[182]</sup>.

Once we rule out the possibility the role of elders could be that of arbitrators, the next question is: is it that of mediator or conciliator? There is glaring discrepancies between the controlling Afan Oromo version/ the Amharic version and the English version. The provision of Article 16 of the Afan Oromo and the Amharic versions describes the elders as

<sup>172</sup> Article 16 (1) (c), Id

<sup>173</sup> Id

<sup>174</sup> Id

<sup>175</sup> Article 16 (1) (d) of proclamation 130/2007

<sup>176</sup> Article 16 (1) (e), Id

<sup>177</sup> Id

<sup>178</sup> Article 16 (1) (f) of proclamation 130/2007

<sup>179</sup> Id

<sup>180</sup> Article 16 of proclamation 130/2007

<sup>181</sup> Id n (178)

<sup>182</sup> As to *res Judicata* effect of awards, see Article 244 (2) (g) of Ethiopia civil procedure code

<sup>171</sup> Article 16 (1) (b) of proclamation 130/2007

mediating/conciliating elders whereas the English versions describes them as arbitrators' <sup>[183]</sup>. Though, any controversy that may arise as regards the discrepancies between the versions may be resolved by taking the Afan Oromo version as the controlling official version. There are conceptual differences between mediation/conciliation/compromise on the one hand and arbitration on the other. Mediation/conciliation/compromise processes are non-decisional process. That mean, neutral third party or parties do not render any decision. The disputing parties themselves, through the assistance and facilitation of the neutral third party, either reach a settlement or go apart without reaching settlement agreement.

## 6.5 Problems and Challenges of Rural Land Administration and Use Law

Different literature shows that there are multiple types of land transaction taking place in the region <sup>[184]</sup>, which the formal law vows to discourage or prohibits. The land market in Ethiopia, particularly in Oromia, although immensely curtailed by the formal legal regime, is available and at large in the informal sector or under the customary rules. The customary rules and the informal land markets have circumvented the official stand of the law especially where the land value is so high owing to its access to water or where the land is pre urban area or is a cash crop area. There are multiple transactions of land going on, in the region such as disguised sell, rent, long term lease, surety, etc. many of these land transactions stand opposed to the statute law of the nation particularly Oromia and conducted in contravention of the law. It is also important to note that these land transactions are often available in the plain areas of the region where water is accessible, cash crops areas and pre urban areas.

### 6.5.1 Informal Land Deal

Under the Ethiopian formal legal regime, sale of land in any form is illegal. Land is a public property. It is not be sold or exchanged in any form <sup>[185]</sup>. The landholders are extended inalienable use rights only, and the transfer rights are permitted in the form of inheritance or temporary rent out. However, in the informal sector (customary institution), land can be sold or exchanged for value. The sale of land is often taking place in its disguised form; it takes the form of inheritance or donation, long term rent, and etc.

East Shewa, particularly Meki town (Dugda Woreda) there are many land transactions one of such transaction is disguised sell of land <sup>[186]</sup>. The farmers who sold their land claim that they have transferred the land to their relatives as a gift or inheritance and bear witnesses to that effect to get the buyer legal titles to the holding. They often claim the recipient of the land to be a relative to make it look like genuine transaction of donation or inheritance.

Most of the time, the case of inheritance and donation but not sale contract is played up by the contracting parties to

convince local officials to get the buyer a holding certificate or the right to pay yearly tax in his name, which amounted to recognition of use rights on the land. And such sale of land is often accomplished with the help of corrupt officials who knew well about the deal and use the formal legal regime to get the buyer a legal title (tax right or certificate). Naturally, the use right once secured is available for an indefinite period under the formal legal regime of the nation.

Local officials and farmers at Meki town disclosed that sale of land in its disguised form is a common place, and participants knew people in the community who sold their land. More often than not, it was revealed that farmers resort to selling land during distressing situation. Such selling of land fetches relatively larger sums of money at a time than leasing land for a short or long period. Once the money from the sale of land is consumed, they resent the whole deal and apply to the officials for help, especially up on discovering that the deal is illegal. The writer has discovered and observed massive economic activities taking place, especially in areas where water is accessible by those economic actors who are not allowed by the law to have access to land. Often it is the case that individuals with capital from cities take the land in one form or the other and are engaged in the production of vegetables and fruits for the urban market. The proper landholders are not in position to cultivate the land for vegetable production, fruit production, and cash-crop production, owing to the relative capital intensive nature of the process. There are expenses involved for water pumping machines, pesticides, improved seeds, and daily laborers. Thus, the landholders are better off either selling the land or renting it for a long term, often under debt bondage.

Result of interview with landholders' shows that cultivation of land in modern way requires skill and capital. The modern vegetable and fruit cultivation needs skill and lots of capital not to mention the modern equipment, like water pumping motors, improved seeds, and chemicals. It is simply impossible for ordinary poor rural peasants to do it in that fashion, and hence, they sell the land to the outsiders or rent for a longer period in contravention of the law of the land.

From literature it was found that a certain farmer, who has been nominated for the national prize as a star farmer, at Meki town in Eastern Shewa, was not in possession of a single plot with proper land holding title. This farmer purchased lots of land and got the title for it in illegal way and has accumulated under unregistered lease a huge chunk of land which he merged. He has accessed land in a majority of the cases via lease, which has never been registered and beyond the specified period of time by the statute law as well.

### 6.5.2 Land Rent

The formal legal regime is hesitant in allowing free transfer of land rights under the lease system. It has permitted transfer of land rights on condition that the leasing of the land is not to displace the landholder, thereby conditioning residence on the land to the use right of land. The prohibition of the law is largely ignored in areas where the land value is high, owing to the accessibility of water or the fact that the land is near to cities (pre- urban area) or in cash crop areas.

<sup>183</sup> Article 16 (1) (b) of Proclamation 130/2007

<sup>184</sup> Oromia National Regional State (ONRS)

<sup>185</sup> See, in general, Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumph in the West and Failed Everywhere Else* (Black Swan, 2000).

<sup>186</sup> Interview took place with farmers who sold their land at Meki town in Oromia National Regional State, which is at the geographical center of the nation within the river Awash River belt; in this district, the land value is so high, owing to its proximity to the capital city and the fact that it is water accessible.

In many parts of the country where river can be utilized or cash crop areas, land leasing is very common. The law requires lots of preconditions for leasing to be undertaken, such as the requirement of the minimum farm-plot size, the requirement of consent of the family, and the fact that the leasing needs to be done in a manner that does not displace the lessor, among others.

An interview with expert and concerned people at Meki town (Dugda Woreda) disclosed that as far as leasing is concerned, there are huge problems because all farmers in the woreda do leasing to non-investors who are coming from big town and cities. Often leases to those who are not coming via the government investment office takes out of the realm of the law of the nation. Despite prohibition of the law to lease for more than three years<sup>[187]</sup>, some have leased the land even for 99 years and some for 20 or 15 years, and in general, almost 80% of the farmers (it is estimated by expert) do not have their full-size holding under their possession. There is no registration of the lease contract as per the requirement of the law; and hence, none has come to the government office to register the lease contract. The renters of the land come usually from big cities with capital and such other equipment and inputs. The poor farmers do not own such equipment and input, so they do rent their holding for a small amount of money; yet the cultivators get manifold in one season. The ills of such a deal are that landholders lease for small amount of money; nevertheless, the cultivators reap the large profit and put the farmer into long term debt. The rents give money in advance to the farmers as their demand arise and just register the debt and pile it so that the farmer stand indebted for a long time, thereby rendering him or her unable to reclaim the land. The renters are not willing to work according to the law because the customary way is easy to strike a deal and subject to manipulations. The customary rent contract is easy to abuse. On the other hand, the government bureaucracy, the legal limitation, and the requirements of the law are more onerous for all involved, not to mention the malpractices of the administration in question. They do not need all these hurdles. They are out there to do business and they like it when it is least regulated or unregulated and easy to strike deal. For instance, they get half hectare of land on average at the rate of 50 US\$ and when they cultivate the same land, it would bring them up to 3000 US\$ per season. Hence, one can imagine the difference; besides the renters go untaxed because the government does not know officially about this business. It is illegal in the eyes of the law. Nevertheless, the farmer has to pay tax from that small money he/she gets on his/her holding in the form of holding tax.

On the other hand, rain-fed land is of relatively low value unless it is a pre-urban area, and such trouble is less. In case of pre urban areas, illegal land sells are very common and lease up to 99 years. The land here is in demand for the purpose of illegal dwelling construction and small modern farms such as dairy and poultry farms. Such land deals exacerbate illegal squatting at the outskirts of big cities and towns, thereby fueling the existing land administration malpractice.

### 6.5.3 Inheritance and Donation

Land inheritance and donation are a very common phenomenon among the rural farmers in Oromia, and such transfers have legal backing with some restrictions. Land donation or gift is one of prime means of land access to the younger generation. Since Oromia Rural Land Law prohibited redistribution of land, one available option for the youngsters to access land is to receive a land gift or inheritance from their parents. It is customary in Oromia for parents to give land to newlywed children. Thus, it is one effective way of helping the young couple to form their own family and ensure their livelihood.

Many youngsters who have land holding certificates in their hands admitted that they have accessed the land either via inheritance or via gift from their parents. A certain youngster (Dugda Woreda) in an interview explained his situation in the following manner. He has small plot of land, which is less than half a hectare, which he secured via inheritance from his family after they have deceased. Since, the land is not sufficient to sustain him; he does rent land from his neighbors to earn a living. He still did not get married (24 years old)<sup>[188]</sup>, owing to land shortage. He wants some changes in the land governance system of the country. Another youngster explained his concern as follows: He holds only one quarter of a hectare, which he secured from his family via gift. He admitted that it could barely sustain him and could not form a family of his own (aged 22). He expressed his need that the government must engage in land redistribution in this locality because there are farmers that hold more than they can work on. But there are youths like him who barely hold land or have none. The youth are largely landless unless they got a piece of land from family via inheritance or gift. The community land, which would have otherwise been distributed to the youth as per the law, has been given to investors. The youth in this locality are under the abject of poverty and are not in position to earn a living. The young and the most productive are made idle owing to lack of access to the rural land. The youngsters often talk of the unfairness of the land holding system. It made elders the beneficiaries because they had access to the land via the opportunity created during the time of land redistribution. Land redistribution has been somehow discouraged now by the formal legal regime.

Thus the youngsters prefer that there will be a longer period of lease, like which is extended to investors, and they hope in that way if they work on the improvement of the land, they will have sufficient time to get the reward there to. They want to have free access to land and work on the land to improve their future. The local youngsters hated the practice of renting land to the outsiders coming from big cities and nearby towns. They said they possess the skills now to do farming in a modern fashion, but they need support from the government in terms of capital and technical knowledge. The government is affecting their interest, and especially the local government is corrupt. Evidently, it is impractical to suggest that there ought to be another land distribution or redistribution as the holding of

<sup>187</sup> Oromia National Regional State land proclamation allows three years of rent to non-investors within the constraints of the law

<sup>188</sup> In Rural Oromia, it is customary for youngsters to marry and found a family at an early stage, as early as 15 or 16 years of age.

the peasants are already less than one hectare on average. Nonetheless, encouraging transfer of land rights especially in the form of long-term lease might serve as practical solution.

## 7. Conclusion

Before the reign of Tewodros II and the final expansion phase of Menelik II, the southern part lived under its own communal ownership of land where the customary rules of each locality governed the land regimes. Hence, the land regimes range from the most democratic system of the Oromo, to the king's land of the Kembata, and to the pastoral clan ownership of the entire land. The Oromo's landholding system survived ages before the occupation and ultimately the ethnic groups' social structure was based on a democratic form of social and political organization which allowed access to land according to age group.

From the time of Menelik II, the southern part of the country particularly land of Oromia fall in the hand of the emperor, nobility and Ethiopia Orthodox Church which results for widespread of tenancy. That means the expansion of the north to the south with feudal system of land ownership brings to an end Oromo's most democratic land holding system which allowed access to land according to age group.

From the time of Derg regime feudalism come to an end declaring public ownership of rural land. The 1975 Proclamation to provide for Public Ownership of Rural Land allowed tenants to stay on and cultivated the land they had been given by the landlords under the tenancy contract. The revolution abolished feudalism but it did not create economic autonomy for Ethiopians or security for landholders, because the Derg government kept land by the name of large scale investments, repeated distribution and redistribution of land.

After the fall of Derg the new government (EPRDF) announced the continuation of the land policy of Derg. That means state and peoples declared as exclusive owner of land. The policy objective of declaring land as public or state property is social equity and tenure security. The new law (i.e., FDRE Constitution, Federal Rural Land Administration and Use Law, and Oromia Rural Land Administration and Use Law) provides right to obtain land without payment for Ethiopia peasants for grazing and cultivation purpose as well as a right to be protected against evictions from the possessions.

The problem of state ownership of land creates tenure insecurity and failed to ensure equality of citizens in accessing the land. In the study areas the young generation who wants to choose agriculture as means of their livelihood cannot access land freely. Land redistribution discouraged by the formal legal regime which could be one mechanism to access land freely (Oromia Rural Land Administration and Use Law). Besides, evidently, it is impractical to suggest that there ought to be another land distribution and redistribution as the holding of the peasants are already less one hectare on average. Unoccupied agricultural and community lands which would have otherwise distributed to the landless peasant farmers as per the law has been given to investors. Shorter period of lease provides little or no incentive to improve land productivity through investment in long term land development measures. Based on these

points addressed above possible to argue that state ownership of land creates tenure insecurity, instead the government used land as political weapon by giving and taking it away as the case may be. From the time of emperor up to the present what was changed only the land tenure policy but completely failed to guarantee tenure security and social equality of accessing land.

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