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State Policy and Law in Relation to Land Alienation in Ethiopia

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**A Thesis Submitted in Partial Fulfillment of the Requirements of the Degree
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Glossary

<i>acha</i>	peer
<i>akonatari</i>	transferor
<i>almiwoch</i>	developers
<i>amerachoch</i>	producers` cooperatives
<i>aqegne abat</i>	founding father
<i>awraja</i>	an administrative area one level below a province
<i>balabat</i>	co-opted indigenous chiefs
<i>birokrasi</i>	peasants who assumed political leadership during the Derg
<i>chika shum</i>	tax collector
<i>dannawa</i>	communal land
<i>dar ager</i>	a periphery
<i>Derg</i>	a committee/the military regime that ruled Ethiopia, 1974-1990
<i>enset</i>	false banana
<i>Ethiopia Tikdem</i>	Ethiopia First
<i>gabar</i>	tribute paying and personal service rendering peasant
<i>gasha</i>	a traditional land measurement where 1 <i>gasha</i> equals to 40 hectares
<i>ginbar kedem</i>	peasants who are at the forefront in improving their farms
<i>gosa</i>	tribe
<i>gult</i>	landlord based tenure
<i>hedasse</i>	renaissance
<i>hibretesebawinet</i>	Ethiopian socialism
<i>kebele</i>	sub-district
<i>kelate</i>	a letter issued by a top official with the effect of depriving people of their property and liberty without judicial intervention
<i>khat</i>	a stimulant plant whose leaves and stems are chewed while fresh
<i>kontract</i>	an officially sanctioned informal land deal
<i>koota</i>	sharecropping
<i>lem</i>	fertile land under cultivation
<i>lem tef</i>	less fertile land and partly cultivated
<i>lemat madenakef</i>	anti-development activity
<i>limatawi bale habt</i>	developmental investor
<i>limatawi mengist</i>	developmental state
<i>malba</i>	first stage in the transformation of peasant associations into agricultural producers` cooperatives
<i>maqnat</i>	improvement
<i>maresha yalnekaw meret</i>	land untouched by a plough
<i>mehal ager</i>	main land or centre as opposed to periphery
<i>mekuanent</i>	men of merit
<i>memeria</i>	a legal directive
<i>mesafent</i>	men of blood
<i>mete</i>	newcomers
<i>nebar</i>	indigenes
<i>qalad</i>	a system of land measurement
<i>rist</i>	customary individual tenure
<i>rist-gult</i>	<i>gult</i> land elevated to the status of <i>rist</i> by the state
<i>saqala</i>	a tenant at will
<i>siso-gult</i>	one third of <i>gult</i>

<i>songo</i>	a tribal council among the Sidama
<i>teef meret</i>	land not under cultivation and synonymous with empty land
<i>tekonatari</i>	transferee
<i>utuwa</i>	individual land
<i>weland</i>	the highest stage in the development of agricultural producers' cooperatives involving collective ownership of all land of several <i>welba</i> and their other means of production to be brought under its control
<i>welba</i>	a second stage in the development of producers cooperatives involving collective ownership of all land except one-tenth of a hectare left for individual use
<i>woreda</i>	an administrative district
<i>yegara</i>	something that belongs to two or more persons jointly

Acronyms and Abbreviations

ADLI	Agriculture Development Led Industrialization
APCs	Agricultural Producers` Cooperatives
BIT	Bilateral Investment Treaty
CIC	Constitutional Inquiry Council
CUD	Coalition for Unity and Democracy
DFID	Department for International Development
EPRDF	Ethiopian Peoples` Revolutionary Democratic Front
EU	European Union
FAO	Food and Agriculture Organization
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focus Group Discussion
GDP	Gross Domestic Product
GTP	Growth and Transformation Plan
HOF	House of Federation
HPR	House of Peoples` Representatives
IFC	International Financial Corporation
IFC/FIAS	International Finance Corporation/Facility for Investment Advisory Services
IMF	International Monetary Fund
MDGs	Millennium Development Goals
MOARD	Ministry of Agriculture and Rural Development
MOFED	Ministry of Finance and Economic Development
PASDEP	Plan for Accelerated and Sustained Development to End Poverty
PRAI	Principles of Responsible Agriculture Investment
RDPS	Rural Development Policies and Strategies
SDPRP	Sustainable Development and Poverty Reduction Program
SNNPRS	Southern Regional State
SZ	Sidama Zone
The Code	The 1960 Civil Code of Ethiopia
The Ministry	Ministry of Land Reform and Administration
UK	United Kingdom
USA	United States of America
USAID	United States Agency for International Development
WB	World Bank

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Declaration

I declare that this thesis is my original work. I have published an article based on one chapter and a portion of another chapter of the thesis prior to submission to The University of Warwick. However, I have not submitted for publication or published any part of the thesis before the commencement of my period of research for the degree of Doctor of Philosophy in Law at The University of Warwick. Nor have I submitted the thesis for an award of a degree at this or any another university.

Abstract

The thesis examines the nature and mechanisms of land alienation in the context of Ethiopia's history of land relations and the role of national and global actors. In consideration of these themes, the study has adopted a contextual analysis of law and policy. Data from fieldwork has informed the core themes. It has also involved a combination of doctrinal legal research and documentary policy research augmented by quantitative data.

The research considers issues of land alienation in the situation where the main relevant perspectives argue for the abolition of the people's ownership of land approach embodied in the country's 1995 Constitution and its replacement by private ownership of land (privatization perspective) or for its modification to allow alienation of land use rights (revisionist perspective) or for its change into village ownership of land with a possibility of market transfer of land use rights (associative ownership perspective). In addition to their promotion of one or another form of land alienation, the above three perspectives focus on consideration of ways to break the bureaucratic power of the State over land. This study contends that a focus on these issues has prevented the perspectives from fully identifying and thus explaining features of the ongoing land alienation in Ethiopia including the position of international institutions.

This thesis therefore claims that there is an underlying shift towards marketable property in land in favor of actors who are assumed to be 'better land improvers.' This is happening in a dual context of significant land poverty and economic growth. Land alienation is being manifested in rural land expropriation laws, administrative and judicial endorsement of *kontract*, absence of recognition of communal lands and transfer by the State of the communal rural lands to large-scale farmers through the deployment of discourses such as 'empty land' and the 'tragedy of the commons.' This gravitation clashes with the people's ownership of land approach that provides for agricultural land for peasants and pastoralists, security of their landholdings and a ban on land alienation. The tilt has resulted in another tension between federal and regional governments where the Centre claims that efficiency demands that it handle land transfers to developers whereas the regions assert their constitutional power over land. Similarly, global institutions are involved in a contradiction because they prescribe land rights to the poor as a strategy to reduce poverty in Ethiopia and at the same time they encourage large-scale land grants in accordance with 'principles of responsible agricultural investment.' The thesis proposes an affirmation of the constitutional principles concerning land with a proper form of constitutionality.

Introduction

A. The Importance of Land in Ethiopia

The thesis considers the nature and mechanisms of land alienation in the context of Ethiopia's history and contemporary law and policies of land tenure reform. Land serves as a basis for socio-economic foundation for the overwhelming majority of people in Ethiopia. It has far-reaching implications for the wider national economy and politics.

According to official statistics, an estimated 73.6 million ha (i.e., close to 66 % of the total land mass of Ethiopia - 1.1 million kilometers) is suitable for agricultural production.¹ Based on this, Ethiopia is being promoted as a country with abundant arable land, excess labor force and tantalizing agricultural investment incentives.² Out of 73.6 million ha presented as cultivable, 17.5 million ha is being cultivated and approximately 96 % which is held by smallholders while the rest is held by commercial farms.³

This official figure on the amount of the cultivable land and the relative share of smallholder cultivators should however be taken with a pinch of salt since there appears to be incompleteness and inaccuracies. As Table 1 shows, the available cultivable land including steep land is about 50 million ha; this is significantly less than the above figure. A recent estimate indicates a similar figure.⁴ Moreover, the cultivated area and the percentage attached to smallholder farms as reported by the Government do not accurately take into account land pledged and transferred to agribusinesses and state enterprises, which is well above 3 million hectares; nor do the official

¹ The Ethiopian Investment Commission, <<http://www.investethiopia.gov.et/why-ethiopia/ethiopia-at-a-glance>> (accessed July 10, 2013).

² *Id.*, <<http://www.investethiopia.gov.et/investment-process/incentives-taxation-and-other-procedures>>.

³ A Report on Private Peasant Holdings: the 2011/2012 Agricultural Sample Survey of the Ethiopian Central Statistical Authority, vol. 4, (March 2012); see also Ethiopia Building on Progress: A Plan for Accelerated and Sustained Development to End Poverty (PASDEP), FDRE Ministry of Finance and Economic Development, Addis Ababa (2007) p. 25.

⁴ According to this source:

Land area: surface area (sq. km)	2008	1, 104, 300
Arable land (% of land area)	2005	13.1
Agricultural land (% of land area)	2005	33.9
Permanent cropland (% of land area)	2005	0.8
Irrigated land (% of cropland)	2003	2.8
Forest land (% of land area)	2005	13.0
Nationally protected areas (% of total land area)	2006	18.6

Source: World Bank, 2009

figures factor in large amount of farmlands being absorbed by the fast growing Ethiopia`s cities and towns.⁵ The total cultivated land reported by the State does not take into account conversion by smallholders of pasture and forest areas into farmlands either, not to say the least about the exclusion of lands held by pastoralists as well as those lands designated for mining activities.⁶ This reminds one of Siegfried Pausewang`s advice to take caution in using landholding statistics, “once they are printed, become the truth, and since it is no longer possible to repeat the exercise, it is hard to convince administrators that the only statistics they have got are useless.”⁷

Table 1: Ethiopia: Agricultural Land Use Classes⁸

Land Use Class	Area (Million Ha)	Percent of Total
Arable Land	34	27
Other Arable Land: vertisols	7	6
Other Arable: Steep Land	6	5
Marginal Land	16	13
Non-Arable Land	61	49

The average national per capita arable land (for a national average of 5 persons per household) is just 0.5 ha. The size of the national population with landholding below 1.0 ha has increased from 50 % in 1975 to 83 % in 2001 due to periodic intra-household and government land redistributions, land degradation, and limited availability off-farm opportunities while the size of the population with landholding over 2 hectares has risen due, *inter alia*, to land deals in favor of rural elites.⁹

⁵ In relation to the size of land transferred to corporate farmers, see Chapter 8 and see K. Deininger and D. Byerlee (2011), “Rising Global Interests in Farmland. Can It Yield Sustainable and Equitable Benefits?” (World Bank, Washington, DC.); Cecilie Firiis and Anette Reenberg (2010), “Land Grab in Africa: Emerging Land System Drivers in a Tele-connected World,” (GLP International Project Office) p. 15. Dereje Teklemariam *et al* (2014), “Progresses and Impacts of Large-Scale Land Transfers in Benishangul-Gumuz Region: Evidences from Two Districts” in Paschal B. Mihyo (ed.), *International Land Deals in Eastern and Southern Africa* (Addis Ababa: OSSREA) p. 31ff. As regards the plan of the Federal Government to absorb farmlands located within 100 kilo meters radius of the capital city, Addis Ababa, see Negaso Gidada, “A Tragic Consequence of the 10th Addis Ababa Integrated Development Master Plan: Warning for the Future,” May 7, 2014 (unpublished, on file with the author).

⁶ This is clear from the Central Statistical Authority`s tradition of focusing exclusively on private land holdings which has been reflected in its recent survey on Private Peasant Holdings: the 2011/2012 Agricultural Sample Survey in note 3; lands surveyed are: land covered by temporary and permanent crops and fallow lands and private grazing lands.

⁷ Siegfried Pausewang (1990), ““Meret Le Arrashu” Land Tenure and Access to Land: A Socio-historical Overview,” in *Ethiopia: Options for Rural Development* (London: Z Books Ltd), p. 45.

⁸ Ethiopia: National Report, Environmental and Development, Submitted to the UN Conference on Environment and Development, Rio de Janerio, June 1-12, 1992, p. 58-59. For similar figures, see Fassil Kiros (1993), *The Subsistence Crisis in Africa: The Case of Ethiopia*, (Addis Ababa: OSSREA) p. 213.

⁹ Paschal B. Mihyo (2014), “The Pros and Cons of International Land Deals in Eastern and Southern Africa” in Paschal B. Mihyo (ed.), note 5 p. vff. ff

The landless constitute at least 10 % of the rural population.¹⁰ The landless and land poor (those with below 0.5 hectare per household) rely on access to communal lands that are not recognized by state law. The communal lands are uncovered by agricultural land official statistics. In fact, communal lands are shrinking because of expansion of large and medium-scale agricultural production as demonstrated by transfer of millions of hectares of land to corporate farmers.

The size of a smallholder`s arable land varies from region to region as presented in the table below, which shows the average size of peasant landholding of nine regions.¹¹

Table 2: Average Size of Regional Peasant landholding per Household¹²

Region	Average (ha)
Tigray	0.94
Afar	0.4
Amhara	1.27
Oromia	0.72
Somali	0.93
Southern Regional State	0.7
Gambella	0.46
Harari	0.97
Beni-Shangul Gumz	1.17

If one looks at the structure of the peasant landholdings of the Southern Regional State as an instance, as Table 3 indicates, farm households with less than 1.0 ha are slightly over 82 % and those with above 2.0 ha are just 4.7 %.

Table 3: Peasant Landholding Size in Southern Regional State¹³

Size (hectares)	Percent
Under 0.1	9.2
0.1-0.5	46
0.51-1.0	26.6
1.1-2.0	13.5
Above 2.0	4.7

¹⁰ Dessalegn Rahmato (2009), ‘‘Peasant and Agrarian Reforms: The Unfinished Quest for Secure Land Rights in Ethiopia’’ in Janine Ubink *et al* (eds.), *Legalising Land Rights in Africa, Asia and Latin America: An introduction in Legalizing Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America* (Leiden University Press)

¹¹ As per Article 47 of the Constitution, these regions are member states of the Ethiopian federation.

¹² Author`s adaptation form the Report on Private Peasant Holdings: Agricultural Sample Survey note 3.

¹³ Author`s adaptation from Ethiopia`s 2001 Central Statistics Authority Agricultural Survey Report (Addis Ababa: Ethiopia).

Ethiopia's approximately 97 million population is the second largest in Africa.¹⁴ The country's annual rate of rural population growth is 2.9 %.¹⁵ The population of the country is projected to reach 129 million in the year 2030 out of which 30 million will be urban.¹⁶ Rural people constitute 83 % of the total population.¹⁷

The Country was taken as “the closest thing to hell on earth” in 1984 due its extreme food insecurity status.¹⁸ Every year, food for close to 5 million people is augmented by the donor funded safety net scheme while another 4 to 5 million people face chronic food insecurity relying entirely on foreign food aid, regardless of weather conditions.¹⁹

Rain-fed agriculture drives Ethiopia's economy and is a source of income for the overwhelming majority of the people; it contributes about 43 % of the GDP, generating about 90 % of foreign currency earnings and supplying approximately 70 % of raw materials to manufacturing.²⁰ Agriculture has shown growth in terms of overall production but not much in terms of productivity per hectare.²¹ The country possesses an irrigation potential of not more than 5 million ha.²² It is essentially a non-mineral economy.²³ The Nation's flagship export commodities are: coffee, oilseeds, flowers and *khat*.²⁴ Industry has shown growth recently due to

¹⁴ <<https://www.cia.gov/library/publications/the-world-factbook/geos/et.html>> (accessed December 18, 2014).

¹⁵ Report of Ethiopia's 2007 Population and Housing Censuses, Population Census Commission of Ethiopia (hereafter the 2007 Censuses) (Addis Ababa, 2008) p. 10.

¹⁶ *Id.*; see also Fasil Demissie (2008), “Situating Neo-liberalism and Urban Crisis in Addis Ababa, Ethiopia” *African Identities*, 6:4, p. 524.

¹⁷ *Id.*, the 2007 Censuses note 15, shows that the present percentage of urban population of Ethiopia is the lowest even by sub-Saharan Africa standard, though growing at the rate of 4.3 % per annum.

¹⁸ Michael Buerk, “1984: Extent of Ethiopia famine revealed (Video)”. *BBC News*. 22 October 2009. (Accessed July 10, 2013).

¹⁹ For discussions on the nature and reasons for famine in the Country, see Peter Gill (2010), *Famine and Foreigners: Ethiopia Since Live Aid* (OUP Oxford); Fasil Kiros (2005), *Enough with Famines in Ethiopia: A Clarion Call*, (Ethiopia, Addis Ababa, Commercial Printing Press) p. 1, in which the food security state of Ethiopia has been described as a spectre of catastrophe “that threatens the very means of survival of man on this land of ours ... The real challenge appears to be a challenge of survival.” To the Wall Street Journal, Ethiopia's case is “one of Africa's cruellest ironies: the land that feeds the Nile is unable to feed itself”. For this, see Roger Thurow, “Ravaged by Famine, Ethiopia Finally Gets Help from the Nile” Nov. 26, 2003 <online.wsj.com/news/articles/SB108979937643978400> (accessed May 8, 2014); this observation is despite the fact that the FAO has honoured Ethiopia for making ‘great strides in combating undernourishment.’ See <<http://www.fao.org/news/story/en/item/270380/icode/>> (accessed December 18, 2014).

²⁰ See PASDEP note 3.

²¹ Government of Ethiopia (2010) “Ethiopia: Growth and Transformation Plan (2010/11-2014/15),” vol. i, (Addis Ababa: the Ministry of Finance and Economic Development)

²² *Ibid*

²³ *Ibid*.

²⁴ Ministry of Finance and Economic Development, “Development and Poverty in Ethiopia (1995/6-2011)” (hereafter Development and Poverty) (Addis Ababa: MOFED, 2013).

attraction of foreign direct investment.²⁵ Yet industry still stands at about 13 % the GDP while the remaining 44 % goes to the service sector.²⁶

Ethiopia's rather bleak socio-economic condition appears to be tempered by a decade long stellar national economic growth.²⁷ Ethiopia's economic expansion has hit the headlines of major global media outlets. It has gotten validation from international institutions and has contributed to significant investment in infrastructure: roads and power plants, and social services such as health and education.²⁸ Ethiopia has been hailed as the 'African lion' with the fastest creation of millionaires on the continent.²⁹ Fast growth has arguably pulled several million people out of poverty, reducing those living in absolute poverty from 45.5 % in 1995 to 26 percent in 2013.³⁰ But this figure is the result of measurements based on minimum daily income and thus the percentage could increase dramatically if one includes incidents of poverty such as malnourishment, disease, illiteracy, lack of potable water and proper sanitation services.³¹

Ethiopia's desire to sustain high economic growth rate has generated demand for land in order to diversify and increase the volume of the Country's export currently dominated by few agricultural commodities through expansion of corporate farming, mining, manufacturing and tourism including ecotourism. The significant source of land for these demands has inevitably

²⁵ The United Nations Conference on Trade and Development World Investment Report (2014), <http://unctad.org/en/PublicationsLibrary/wir2014_overview_en.pdf> p. 11 (accessed December 18, 2014). According to this report, Ethiopia is Africa's third largest recipient of FDI which increased from 279 million dollars in 2013 to 953 million dollars in 2014.

²⁶ *Ibid.*

²⁷ For analyses of the views of growth believers and doubters in Ethiopia, see Hone Mandefro Belaye (2013), "Politics by Numbers: Poverty Reduction Discourse, Contestations and Regime Legitimacy in Ethiopia" (MA Thesis, International Institute for Social Studies) <thesis.eur.nl/.../HBelaye_1_moodeldata_temp_trunitintool_399279051>(accessed November 10, 2014).

Even if various actors contest the size of Ethiopia's economic growth, major data bases recognize between 8 and 10.5 for the last decade. See in particular, the IMF Country Report (2014) <<http://www.imf.org/external/pubs/ft/scr/2014/cr14303.pdf>>, (accessed November 20, 2014) puts Ethiopia's average economic growth between 2006 and 2013 as 10.6.

²⁸ Development and Poverty note 24.

²⁹ New World Wealth Report 2013, <<http://www.nw-wealth.com/>> (accessed October 2014).

³⁰ Development and Poverty note 24.

³¹ Oxford University Global Multidimensional Poverty Index, 2014, <www.ophi.org.uk> (accessed December 4, 2014). For early signs of widening wealth gap, see also Alemayehu Geda (2008), "The Political Economy of Growth in Ethiopia" in *The Political Economy of Growth in Africa*, vol. ii, (Benno Ndulu *et al*, eds.) (Cambridge University Press) p. 1ff.

become the landholdings of small holders and pastoralists, both private and communal, put in their hands by the 1975 land reform that partly remedied historical injustices.

B. The Research Question

It is in these dual contexts of significant land poverty in a period of economic growth that the question of land alienation becomes of critical importance. Therefore, the thesis addresses the following issues:

- The nature and extent of rural land alienation in today's Ethiopia; the driving factors, and mechanisms deployed in alienating land and actors involved;
- The manner in which current academic and policy discourses on land and land reform recognize or ignore the issues relating to land alienation; and
- Whether land alienation is compatible with the main tenets of Ethiopia's land law and policy which emphasizes non-marketable land possession; in particular, whether or not a policy shift to one of marketable property in land is underway.

These questions are attempted by considering historical, theoretical, normative, and policy frameworks for land reform in Ethiopia.

Some observers, however, seem to have identified signs of gravitation towards land alienation. One such case is the observation that “Land ...is still state owned but the lease system has led to the *de facto* sale and purchase of (urban) lands, and recently to the leasing out of huge tracts of rural land to foreign investors.”³² Besides, phrases such ‘a slow progress’ and ‘refusing to let go’ are used in relation to land transfers.³³ Other commentators have alluded to land alienation when they have described the situation as a country that “has only partially shed its Marxist heritage yet is attracting industrial companies.”³⁴ It has also been remarked that “Ironically, the policy framework for a virile market is either in place or underway.”³⁵ Still others recognize developments in the direction of transferability of land rights but incorrectly

³² Ren'e Lefort (2012), “Free Market Economy, ‘developmental state’ and Party State Hegemony in Ethiopia: the case of the ‘model farmers’”, *Journal of Modern African Studies*, 50:4, pp. 583-584; and Tobias Hagmann and Jon Abbink (2011): “Twenty Years of Revolutionary Democratic Ethiopia, 1991 to 2011,” *Journal of Eastern African Studies*, 5: 4.

³³ See Tamrat G. Giorgis, “Where Mission Man Goes Missionary”, an interview with Thomas Staal, former Director of the USAID Ethiopia, *Addis Fortune News Paper*, July 1, 2012 (accessed June 20, 2013).

³⁴ The Economist, “Manufacturing in Africa: An Awakening Giant”, February 8, 2014, <<http://www.economist.com/news/middle-east-and-africa/21595949>> (last accessed March 13, 2014).

³⁵ K.C. Serbeh-Yiadom *et al* (2008), “Land Administration: Law, Policy Practice” in Dijk, M.P. van and Fransen, J. (eds.), *Managing Ethiopian Cities in an Era of Rapid Urbanisation*, (Delft, Eburon) p. 25.

subscribe to the division of the country into *mehal ager* (highland) and *dar ager* (lowland) arguing that the State still takes peasant security doctrine seriously in *mehal ager* while aggressively encouraging commercial agriculture through land dispossessions in *dar ager*.³⁶

The underlying analysis of these writings is nevertheless unclear because it is doubtful whether the commentators are referring to a general “shift towards a reliance on market indicators in the formulation of economic and development policies” or a particular change of direction in Ethiopia’s land law and policy.³⁷ Some acknowledge an increase or a decrease in the land endowments of rural households but they attribute to it mere voluntary land transactions.³⁸ And those who observe the existence of a ‘virile market’ for land have neither analyzed the winds of change in land policy nor considered its driving factors, devices and nature. The thesis, therefore, claims that the land literature has failed to pay due attention to the existence of disparity between official pronouncement in relation to the story of ‘people’s ownership of land’ and what is tending to happen to land on the ground. In other words, this study argues that the ‘people’s ownership of land’ policy is a concept embodied in the Constitution but at the level of implementation such policy does not mean what it says.

The thesis examines these issues in connection with rural land but not urban land.³⁹ Nor is the focus of the study to treat the implications of rural land alienation such as for food security and politics even though the former is merely touched and the latter implied.⁴⁰ Moreover, this means it is beyond the scope of the thesis to examine how networks of political elites and public

³⁶ Fouad Makki (2014), “Development by Dispossession: Terra Nullius and the Socio-Ecology of New Enclosures in Ethiopia” *Rural Sociology*, 79:1; Tom Lavers (2012), “‘Land grab’ as Development Strategy? The Political Economy of Agricultural Investment in Ethiopia”, *Journal of Peasant Studies*, 39:1; and Felix Horne (2011), “Understanding Land Investment Deals in Africa, Country Report: Ethiopia,” the Oakland Institute, p. 49. The idea of land commercialization confined to lowland areas is inaccurate, as shown in Chapters 7 and 8, and such lowland-highland dichotomy seems to have been taken uncritically from the State rhetoric is unfounded.

³⁷ Fouad Makki note 36, p. 8.

³⁸ Omiti M. John *et al* (2000), “Some Policy Implications of Rural Factor Markets following Agrarian De-Collectivization in Ethiopia”, *Human Ecology*, 28:4, p. 594ff.

³⁹ Scholars rightly say that urban land issues in Africa are neglected: Patrick McAuslan (2013), *Land Law Reform in Eastern Africa: Traditional or Transformative: A Critical Review of 50 Years of Land Law Reform in Eastern Africa: 1961-2011* (London: Routledge) and Ambreena Manji (2014), a book review of this book by McAuslan which she has published in the *Journal of Law and Society*, vol. 41, No. 2. A similar observation has been made in the Ethiopian case and thus suggesting a research potential by Molla Mengistu (2009), “The Ethiopian Urban Landholding System: An Assessment of the Governing Legal Regime” in *Land Law and Policy in Ethiopia since 1991: Changes and Continuities*, (Muradu Abdo, ed.) (Addis Ababa University, Faculty of Law).

⁴⁰ For the political economy implications of large-scale land acquisitions in Ethiopia, see Dessalegn Rahmato (2011), “Land to Investors: Large-Scale Land Transfers in Ethiopia” (Forum for Social Studies, Addis Ababa).

officials benefit from land transfers, large or small, using their official links; so is the related issue of corruption in land administration; what is considered here is depiction of the role of the State, *qua* state, as the principal actor which is driving the process, not just as a mere facilitator.⁴¹

C. A Brief History

A historical scrutiny suggests that land alienation is a recurring phenomenon in Ethiopia irrespective of the nature of the regime in power. Prior to 1975, diverse forms of land tenure; namely, *rist* (customary individual tenure), communal tenure and *gult* (landlord based tenure) co-existed in rural Ethiopia. *Gult* was dominant in the Southern parts of the country due to the country's imperial design in the second half of the 19th century when Emperor Menelik II (1889-1913) extended his tentacles to incorporate vast land and more than sixty ethnic groups into his empire.⁴² Upon occupation of these areas,⁴³ the emperor parceled out farmlands already held by the indigenous people to those who participated in his military campaigns, political elites, *balabat* (co-opted indigenous chiefs) and the Ethiopian Orthodox Church in the form mainly of *gult* while communally accessed lands were deemed vacant and put under the category of 'state land.'⁴⁴

The pre-1975 State land tenure systems were characterized by exploitative rural tenancy, tenure insecurity and evictions of peasants and pastoralists as a result of initiation of commercial agriculture by the State and private investors especially in late 1960s and early 1970s. The State proceeded with an explicit assumption that lands within the territorial limit of Ethiopia belonged to it.⁴⁵ Sovereignty and land ownership merged. Legally, nothing could constrain the State from evicting smallholders.⁴⁶ In the feudal era, tenants were immobilized in rural Ethiopia, toiling on farmlands and only to surrender the fruits of their labor to absentee landlords, the Church and the

⁴¹ See Ambreena Manji (2012), "The Grabbed State: Lawyers, Politics and Public Land in Kenya", *The Journal of Modern African Studies*, 50:3, for the view that it is critical to consider if and how states in Africa are grabbed by network of national and international elites regarding land grabs. For advice against oversimplification of the concept of land grab, see Laura German *et al* (2013), "Contemporary Processes of Large-Scale Land Acquisition in Sub-Saharan Africa: Legal Deficiency or Elite Capture of the Rule of Law?," *World Development*, vol. 48 and Li Tania (2011), "Centering labor in the Land Grab Debate," *Journal of Peasant Studies*, vol. 38. There is merit in these claims; it requires an in-depth empirical investigation.

⁴² Merera Gudina (2003), *Ethiopia: Competing Ethnic Nationalities and the Quest for Democracy, 1960-2000*, (the Netherlands: Shaker Publishing) pp. 93-116.

⁴³ *Ibid.*, for differing interpretations of these terms and Kjetil Tronovoll (2009), *War & the Politics of Identity in Ethiopia*, (UK, Long House Publishing Service) pp.24-26.

⁴⁴ Donald Crummey note 52.

⁴⁵ Bahru Zewde (2002), *The History of Modern Ethiopia 1855-1991* (Ohio University Press) pp. 206-7.

⁴⁶ *Id.*

State.⁴⁷ This forcible relinquishment of the fruits of their labor was apart from hours of compulsory personal services to landlords, arbitrary land taxes and compulsory public works.⁴⁸

In 1974, a military regime called the Derg (1974-1990) (in Amharic, a committee) dethroned Emperor Haile Sellassie I (1930-1974).⁴⁹ Land was undisputedly one of the central questions of the revolution and was brought to the center stage and popularized by the Marxist oriented radical student movement under ‘land to the tiller’ banner.⁵⁰ The Derg regime provided former tenants with non-salable land use rights without payment and extinguished all feudal obligations under the 1975 Rural Lands Proclamation, a redistributive land legislation that initially brought about land de-concentration.⁵¹ Swept away was the entrenched landlord based land tenure as well as private ownership of land embodied in a civil code that was promulgated in 1960 in favor of administrative land allocation within the framework of people’s ownership of land.

Initially, the rural masses accepted the legitimacy of the redistributive land reform.⁵² Later on, however, people and political opponents started criticizing the manner in which this seemingly radical land reform was implemented. Such critiques relate to elements of the Derg policy that include investment in State farms at the expense of smallholder farming, compulsory measures of collectivization, resettlement and villagization, grain quota deliveries at prices determined by the Government and frequent land redistributions.⁵³

A change in government occurred in Ethiopia in 1991 when insurgents ousted the Derg. The new Government was established by the insurgents who forged a coalition party named the

⁴⁷ *Id.*, p. 274.

⁴⁸ *Id.* The feudal and incipient capitalist classes constructed houses on their urban lands with incomes they siphoned from their rural tenants. See Molla Mengistu note 39, p. 200; in pre-revolutionary Ethiopia, urban land was concentrated in the hands of few elites and institutions. For example, in Addis Ababa alone, five categories of persons amassed 41,535,218 meter squares of land which meant 20 percent of the total land mass of the city; see the Government of Ethiopia (1978), “Urban Land and Extra Houses from Yesterday to Today,” (Addis Ababa), p. 8-9.

⁴⁹ Bahru Zewde (2010) (ed.), *Documenting the Ethiopian Student Movement: An Exercise in Oral History, Ethiopia*, Addis Ababa, Forum for Social Studies).

⁵⁰ Student movements of the day borrowed the slogan from Marxist doctrine, and articulated and popularized it. See Randi Ronning Balsvik (2005), *Haile Sellassie’s Students: The Intellectual and Social Backgrounds to Revolution, 1952-1974* (Addis Ababa University Press, Addis Ababa) pp. 150-1.

⁵¹ See the preamble of the Public Ownership of Rural Lands Proclamation (hereafter the Rural Lands Proclamation) No. 31, 1975. A similar nationalization measure was taken in regard to urban land under as per the Public Ownership of Urban Lands and Extra-houses Proclamation No. 47, 1975.

⁵² Donald Crummey (2000), *Land and Society in Christian Kingdom of Ethiopia, From the Thirteen to the Twelfth Century*, (Addis Ababa University Press, Addis Ababa), pp. 247-9.

⁵³ Dessalegn Rahmato note 10.

Ethiopian Peoples` Revolutionary Democratic Front (EPRDF). The EPRDF government had to tackle fundamental policy issues meant for Ethiopia`s recovery. Even if land was one of such issues, the Government refrained from announcing their land policy until 1995 saying that the land question would be decided by a referendum which never took place.⁵⁴

However, there were two contradictory indications in, on the one hand, the EPRDF`s Marxist tradition⁵⁵ and, on the other hand, in their approach to economic liberalization. First, initially, during their seventeen years of rural insurgency, the EPRDF had been a staunch critique of aspects of the Derg`s land tenure reform, namely, land tenure insecurity of small farmers and pastoralists, compulsory government appropriation of the fruits of their labor and failure to link land tenure reform to the question of local self-determination without however attacking the Derg`s approach to people`s ownership of land.⁵⁶ This appreciation of the land question suggested that the Government could retain some of the basic tenets of their predecessor`s land policy - a form of people`s ownership of land. Second, however, the Government implied that land would be reformed along market principles when they announced the liberalization of the economy in 1991.⁵⁷ The Government`s 1994 urban land lease legislation, their investment law and regulations on agricultural land lease issued in 1992 further strengthened the latter inference.⁵⁸

The Government has nevertheless revealed their land policy in the Constitution of the Federal Democratic Republic of Ethiopia (the Constitution) that entered into force in 1995.⁵⁹ This government land policy is termed in this thesis as the “people`s ownership of land”

⁵⁴ Molla Mengistu (2008), “Rural Land Tenure System in Ethiopia: Legal Rights and Its Implementation in Amhara National Regional State” (in Amharic), *Eth. J.L.*, 22:2.

⁵⁵ During their military struggle to topple down the Derg, member organizations of the EPRDF especially the TPLF publicly postured themselves to be better socialist than the Derg.

⁵⁶ Molla Mengistu note 54.

⁵⁷ *The Economic Policy of the Transitional Government of Ethiopia* (Addis Ababa: Ethiopia, 1991).

⁵⁸ The Encouragement, Expansion and Coordination of Investment Proclamation, 1992 and the Urban Land Lease Holding Proclamation, 1993, were proclaimed before the government took any formal adoption of land policy and even prior to the promulgation of the Constitution. But this urban land lease law did not commit itself to full privatization of use rights over urban land as such law promoted the doctrine of capturing unearned urban land value by the state and it allowed a mixed system, namely land permit system and lease system, the former to be outside the market system while the latter to be within the framework of market system. For the debates about the land question, see the Minutes of the Economic Committee of the Transitional Period Council of Representatives (1994) (No. 250-460/13, unpublished, on file with the author). See also the Urban Lands Lease Holding Proclamation, 2011, which has moved towards commercialization of urban land.

⁵⁹ Article 40 (3) of The Constitution of the Federal Democratic Republic of Ethiopia, 1995, which was ratified in August 1994 and came into force in August 1995.

perspective and whose fundamentals as enshrined in the Constitution are as follows. It vests exclusive ownership of land in the State and the People.⁶⁰ The Constitution commits the “Government to hold land on behalf of the People ... and to deploy it for their common benefits and development.”⁶¹ It further bestows upon the Federal Government and regional states the authority, respectively, to pass laws for the utilization of land and administer land.⁶² In letter and spirit, the Constitution implies diverse forms of land rights and land administration institutions. This is readable from the overall emphasis of the Constitution on the need to recognize “forms of life”, Article 39 that bestows autonomy to people to use their own laws and institutions so long as they are compatible with the Constitution and Article 91 (1) that stipulates that “Government shall have the duty to support ... the growth and enrichment of cultures and traditions...”

The Constitution furthermore bestows land use rights to all Ethiopian peasants and pastoralists without payment and entitles them to immunity against eviction.⁶³ The personal scope of these constitutional rights is broadened by legislation to include “any citizen of the country ... who wants to engage in agriculture for a living” and without other adequate means of livelihood.⁶⁴ The Constitution guarantees the rural masses full ownership of the fruits of their labor; pledges them “the right to receive fair prices for their products, that would lead to improvement of their conditions of life;” and stipulates that “Land ... shall not be subject to sale or to other means of exchange.”⁶⁵ The same constitution also mandates the government to take land for public purpose as well as to provide land use rights to investors with payment without prejudice to the land rights of peasants and pastoralists.⁶⁶ These Constitutional land principles were not preceded by a national land policy nor has it been initiated one since the ratification of the Constitution in 1994.⁶⁷

⁶⁰ *Id.*

⁶¹ *Id.*, Article 89 (5).

⁶² *Id.*, Article 51 (5) and Article 52 (2(d)).

⁶³ Article 40 (4 & 5).

⁶⁴ See Article 5 of the Federal Rural Land Administration and Use Proclamation No. 456, 2005 and Article 4 of the Rural Lands Proclamation note 51.

⁶⁵ Article 41 (8) and Article 40 (3).

⁶⁶ Articles 40 (6)

⁶⁷ This is unlike some African countries which commissioned studies into land matters followed by an adoption of a national land policy later embedded in their constitution and detailed out in land statutes. But the fact that land policy has been adopted in this manner does not necessarily mean land questions would be resolved in favor of the poor as demonstrated in the recent Kenyan experience where debates and activism about land law reform led

Following these constitutional stipulations and their subsequent legislative amplifications, it has been declared that the “land question is dead!” on the ground that there are no serious land issues in the existing land regime and that the policy is equitable as it is underpinned by the ethos of land for all herders and peasants who constitute the bulk of the population.⁶⁸ Yet, as will be highlighted shortly, the claim for the death of the land question in the contemporary Ethiopia detracts one from investigating the modes and features of the question of land alienation driven by the State with its implication for land re-concentration tendency.

In summary, in the course of the past several decades, Ethiopia has witnessed supposedly fundamental shifts in land law and policy correlated with regime changes: feudo-capitalist economy under the Emperor Haile Selassie I, a command economy under the Derg and then a shift to economic liberalization under the incumbent government. Each of these three regimes gave birth to a constitution and especially the later two professed to answer the land question. The imperial period revealed a dual feature: feudal elements opted for alienation of land and its fruits from the rural poor while capitalist forces worked towards land alienation under the banner of agricultural modernization. The Derg was involved in appropriation of land and its fruits from the rural masses claiming to implement socialist agricultural modernization. As the thesis shows, there are significant present continuities in regard to insecurity arising from state-led land dispossessions.

D. The Contemporary Context

The thesis contends that there exists a trend for land alienation underpinned by economic growth and that the present Ethiopian state is driving land alienation with the view to transferring land from what are considered to be less efficient land users (small scale-farmers and herders) to more efficient ones (model farmers and large-scale farmers) and allowing model farmers and large-scale farmers who are deemed the ‘fittest to survive’ to deploy land use rights for the purpose of raising capital – something which is not permitted to the small scale-farmers and herders from whom land is being taken.

to the adoption of a National Land Policy in 2009, then its embodiment in the 2010 Revised Constitution and finally three land acts in 2012; but the land acts have not brought about redistributive land reform due to a short constitutional deadline and presentation of the acts at their drafting phase as complex and technical undermining proper popular and parliamentary as well as civil society participations. For this, see Ambreena Manji note 81.

⁶⁸ The Revised Rural Development Policies, Strategies and Methods of the Government of the Federal Democratic Republic of Ethiopia, Ministry of Information, Addis Ababa Ethiopia (2009) pp.69-74 and interview with Prime Minister Meles Zenawi “On Current Affairs” (in Amharic), *Addis Zemen Newspaper*, No. 505 December 2012.

The State deploys mechanisms such as expropriation of private farm holdings, State enclosure of communal lands and the practice of *kontract* (semi-informal land alienation with ratification by State institutions) to privilege the ‘improvers’ to the detriment of other groups. What this means is that contrary to people’s ownership of land anchored on the slogan ‘agricultural land for all’ and as opposed to official claim for strict adherence to this approach, there exists a trend towards land alienation centered around the State. The trend is reflected, apart from land expropriation law and *kontract*, state appropriation of the rural commons based on notions of empty land and the tragedy of the commons and improvement that all leads to the transfer of several million hectares of arable land to actors that are deemed developers. Land alienation inclination in favor of ‘improvers’ has started to occur since 2000s when the current State began moving towards performance-based legitimacy and away from their 1990s experimentation with process-based legitimacy that was accompanied, among others, with the egalitarian principle of free land for all rural producers.⁶⁹

‘Model farmers’ who are called ‘master farmers’ elsewhere in Africa are one such group seen as the ‘fittest to survive.’⁷⁰ They are small and medium-scale commercial farmers who are partly from the urban based rich section of the rural population with a political background in a previous regime who as a result were sidelined in the initial years of the incumbent government but have been absorbed within the power structure especially after the 2005 national and regional parliamentary election crisis.⁷¹

Large scale-farmers get land chiefly from the State through lease and they view the landless as a source of labor while land poor farmers are to be linked with modern farms through rental and out grower schemes. Land poor farmers who are located at the lower rung of rural production (just above the landless) appear to be on the losing end. Land poor farmers refer to capacity depleting past agricultural and land policies for their state of impoverishment as well as

⁶⁹ See Chapter 4, Section B (i, a).

⁷⁰ Jon Abbink (2006), “Discomfiture of Democracy? The 2005 Election Crisis in Ethiopia and Its Aftermath”, *African Affairs*, 105/419; and John Ishiyama (2007), “Examining the 2005 Ethiopian Parliamentary Election Results: Under Alternative Electoral Rules”, Paper to be presented at the 4th International Conference on Ethiopian Development Studies (4th ICEDS) The Challenges Of Peace And Development In Ethiopia & The Horn Of Africa, August 3-5, 2007, Western Michigan University, Kalamazoo, Michigan, USA.

⁷¹ Sam Moyo and Walter Chambati (2013), “Roots of the Fast Track Land Reform” in *Land and Agrarian Reform in Zimbabwe: Beyond White Settler Capitalism* (Sam Moyo and Walter Chambati, eds.) (Dakar CODESRIA), p. 29ff, where the emergence of ‘middle farmers’ black farmers; and see also Ian Scoones *et al* (2012), “Livelihoods after Land Reform in Zimbabwe: Understanding Processes of Rural Differentiation” *Journal of Agrarian Change*, 12:4.

their involvement in distress land sales including the lopsided nature of current agricultural policy in favor of model and large-scale farmers.

Model farmers and large-scale farmers are in favor of agricultural land accumulation by pointing to the benefits of commercial agriculture by pretty much rehashing the rhetoric of the State: job creation, foreign currency generation, infrastructure and national image re-building regarding food security. The land poor and the landless aspire for land redistribution.

Yet, an attempt, via the ongoing land alienation, to accommodate the narrow interests of model and corporate farmers simply contributes to the entrenchment of the land question in Ethiopia. The process of agricultural land alienation that is informed by the notion of economic efficiency privileges improvers. It runs counter with the idea of equity behind agricultural land for all principle as embodied in the existing land policy of the country. Besides, centre-periphery tension underlies this land alienation process as the regions assert some decision making powers in regard to land on the basis of the Constitution whereas the Federal Government tends to concentrate economic decision making processes including land transfers citing delegation, lack of capacity and efficiency. This process set in motion by the State has a dispossessing and disempowering effect on the rural masses.

International institutions have strived to play a role in relation to land in the country. The period from 1991 onward has been the heyday of the World Bank's (WB) market-led land reforms which have been pursued within the broader framework of its structural adjustment and poverty reduction programs especially in transition economies.⁷² In the Ethiopian case, the WB has been promoting land privatization through public-private sector dialogues and land administration projects that include land law revisions and land certification schemes.⁷³ In addition, the United States Agency for International Development (USAID) and other donors have launched land law reform programs that aim at facilitation of land markets. The common position of the WB and the USAID is that the land question in Ethiopia can be resolved by either lifting restrictions on transferability of user rights within the existing people's ownership of land approach or introducing full private ownership of land.

While directing land policy in contemporary Ethiopia to some kind of privatization is the aspiration of the WB and the USAID as reflected in some of their project activities, to this thesis,

⁷² See Chapter 9

⁷³ *Ibid.*

their success so far has been limited to securing the opportunity to ‘stay engaged’ with the Government and relaxing legal restrictions on transferability of land use rights. This limited outcome is due to the pursuit by these institutions and the Government of mixed and conflicting motivations. This finding is contrary both to the writings of those who claim that land policy and the implementation therefore in today’s Ethiopia is entirely an endogenous process and those who depict that international intervention in the country’s land law and policy is deterministic.

In regard to external intervention, the thesis further contends that the international institutions rather oversimplify the Nation’s land question to mean the privatization question. Meaning international institutions particularly the WB and the USAID have espoused some forms of land privatization either in the form of full private ownership or transferability of land use rights within the context of the existing ‘people’s ownership of land.’ They also have contrasting development visions: their simultaneous support both for secure agricultural land for the wider rural population to reduce poverty and for large-scale land transfers which entail small holder dispossession.

The ‘people’s ownership of’ approach, which advocates for ‘agricultural land for citizens without sufficient means of maintenance’, has generated critical responses from intellectuals. The scholars have advanced perspectives (to be introduced just below) which generally reject the land for all principle in favor of property rights to landholders for reasons of economic efficiency and economic development.

E. Academic and Policy Perspectives

There emerges the question of whether core scholarly perspectives are cognizant of state-led land transfers in Ethiopia. Consideration of such question may profitably be preceded by a brief discussion of the points of convergence between issues of land in Ethiopia and elsewhere in Africa.

There are a number of important similarities between the land issue in postcolonial African states and Ethiopia, indicating the relevance of land issues in the former in shedding light on the nature of land issues in Ethiopia. These parallels are contrary to Ethiopia’s claim of exceptionalism that emanates from absence of a colonial past and help to link up the otherwise insular nature of Ethiopian land law study with the land question literature of other sub-Saharan African nations.

First, the land question is complex because land relations are embedded in the context and history of a particular country with multiple and conflicting constituencies. Sara Berry says,

Land conflicts [in] contemporary ... Africa ... have been shaped by past events ... they often involved multifaceted debates over power, ...struggles over land have also varied in intensity and outcome, depending on the particular social, economic, and political contexts in which they occurred.⁷⁴

Berry continues to emphasize “the importance of situating land struggles in specific historical contexts, taking account of the way multiple interests and categories of people come into play, and impinge on one another.”⁷⁵

Second, commonalities also arise from normative and policy frameworks of postcolonial states and the international economic context. In postcolonial Africa, land reform was understood to eradicate poverty, ensure food security, achieve economic growth by putting land to efficient use and rectify historical injustices. In the international arena, a ‘new wave’ of land reform emerged in the 1990s under a ‘human-centered’ approach which presumed to address the land question by enabling market-oriented use of land to stimulate growth. Land control by some societal forces at the expense of others through state domination is connected to global capital. Third, there is the agrarian question (which is tied to ‘close significant yield gaps’ in small holder production) which raises the fundamental problem of how to increase agricultural productivity in the situation of current food deficit and exponential population growth as if a dramatic increase in national food production alone would solve the food security problem.⁷⁶

Fourth, point of convergence includes land alienations by the state for urban expansion, mineral exploitation, corporate farming, eco-tourism and forestry.⁷⁷ These issues link up with rural-to-urban migration, land dispossessions from rural, peri-urban and urban landholders, gender disparity in access to and control over land, and state support to small rural producers versus large-scale farmers.⁷⁸ These issues and the question of land rights of *nebar* (natives) and *mete* (outsiders) also falls within the purview of Ethiopia’s land question.

⁷⁴ Sara Berry (2002), “Debating the Land Question in Africa,” *Comparative Studies in Society and History*, 44:04, p. 640.

⁷⁵ *Id.*, p. 640.

⁷⁶ The ‘yield gap’ argument is advanced in K. Deininger and D. Byerlee note 5 p. xiv and for the persistence of starvation described as ‘boom time’ famines, see Amartya Sen (2001), *Development as Freedom* (Oxford: Oxford University Press). For the critical examination of the yield gap discourse in relation to land grabs, see David Nally (2014), “Governing Precarious Lives: Land Grabs, Geopolitics, and ‘Food Security’”, *The Geographical Journal* <doi: 10.1111/geoj.12063>.

⁷⁷ Sam Moyo (2008), “African Land Questions, Agrarian Transitions and the State: Contradictions of Neo-liberal Reforms”, Working Paper Series < www.codesria.org/IMG/pdf/Sam_Moyo.pdf> (accessed December 19, 2014).

⁷⁸ *Ibid.*

Finally, there exists lack of clarity and consensus “in the nature of the African land question ... which has undermined the purpose and direction of land reform on the continent.”⁷⁹ Land reform literature is ironically replete with the solution (land reform) without a clear diagnosis of the problem - articulation of the definition and scope of the land question.⁸⁰

Notwithstanding these shared characteristics, there are significant subtleties emanating from history and context in articulating the land question of a given country. In relation to Ethiopia, there has been a striking historical continuity in a penchant for state dominated land taking in the name of providing feudal privileges and of encouraging semi-capitalist agriculture, of instituting socialist agriculture and of boosting capitalist productivity under the ideology of the developmental state, respectively, during the Imperial, the Derg and the EPRDF regimes. An important particularity which arises out of this historical context is that state driven land alienation tendency in the Ethiopian case is in a opposition to reverse redistributive land reform, i.e., a tendency to redistributive land from the land poor to the land rich spearheaded by the State being justified on the grounds of productivity and economic growth while in some other African countries a key struggle aims at redistributing land concentrated in the hands of the wealthy to the land poor. As Manji puts it, in some other African countries, the land question pertains to achieve “*deep* redistributive land reform—the aim of which is to change the nature and foundations of land ownership by redistributing land from the wealthy to the poor and landless” and it also relates to “*shallow* redistributive land reform—which is concerned solely with land administration and aims to wrest control over land from a centralized and corrupt state, a challenge to bureaucratic power rather than the structure of landholding.”⁸¹ The land tenure scholarship concerning Ethiopia has rather focused on Manji’s ‘shallow redistributive reform’ without giving proper attention to a recent emerging significant land alienation trend.

Three main analytical frames; namely, the privatization, the revisionist and the associative ownership perspectives may be identified in order to find out whether land alienation as a trend is captured by the existing scholarship on the land question in Ethiopia.⁸² As shown in

⁷⁹ Chikosa Silungwe (2010), “The Land Question in Malawi, Law, Responsibilization and the State” (PhD Thesis, Warwick University) wrap.warwick.ac.uk/53165/, p. 2 (accessed July 27, 2013).

⁸⁰ *Ibid.*

⁸¹ Ambreena Manji (2014), “The Politics of Land Reform in Kenya 2012,” *African Studies Review*, 57:1, p. 124.

⁸² The evolutionary path favors land reform that follows what it calls the ‘demands of the people’ as opposed to land reform imposed from above. The basic tenet of the evolutionary path is that as population grows, cities expand, land becomes scarcer, which means increase in the economic value of land and that in turn results in the gradual

Chapter 1, these land reform perspectives are not positioned to diagnose Ethiopia's ongoing gravitation towards land alienation as their common dual preoccupation has been to attack the bureaucratic power of the state in regard to land and see to it that land rights enter the market place without the intermediary of the State.

The privatization approach prescribes for full private ownership of land as a precondition for smallholder farmers to enjoy tenure security, which, in its view, would enhance agricultural

emergence, as a matter of practice, of private tenure rules; these tenure rules become patent in the form of increase in informal land transactions with a corresponding increase in the number and types of land disputes. Sandra Joireman (1996), "Contracting for Land: Lessons from Litigation in a Communal Tenure Area of Ethiopia," *CJAS*, 30:3, pp. 437-8; see also Tesfaye Teklu (2003), "Rural Lands and Evolving Tenure Arrangement in Ethiopia: Issues, Evidence and Policies" (Forum for Social Studies, Addis Ababa) p. 23; Gebru *et al* underlie the significance of land reform path that allows "... the evolution of land tenure systems that are locally acceptable..." Gebru Mersha and Mwangi wa Githinji (2005), "Untying the Gordian Knot: The Question of Land Reform in Ethiopia" (ISS/UNDP Land, Poverty and Public Action Policy Paper No. 9, Institute of Social Studies), p. 25.) Tesfaye Teklu says, the ultimate destination of the evolving tenure practices is individualization of land because in the Ethiopian context:

there is evidence that indicates farmers are expressing preference towards individualized market based tenure system for agricultural land such as land rental. And government intervention in this self-evolving tenure is necessary but such intervention must be ... informed to meet the changing demands for land rights that are consistent with the desirable societal goals of equity, efficiency.

For this, see Tesfaye Teklu (2004), "Land Scarcity, Tenure Change and Public Policy in the African Case of Ethiopia: Evidence on Efficacy and Unmet Demands for Land Rights" <<http://chilot.wordpress.com/2011/04/14/journal-articles-and-materials-on-ethiopian-land-law-and-land-tenure-system/>>(accessed May 29, 2011), p.1.

The evolutionary view subscribes to a stereotypical one directional progress: an inevitable transition from communal to full private ownership regime. It is also unable to inform the extent to which and the reason why this approach allows government intervention. For a critical analysis of the evolutionary path, see Jean Philippe Platteau (1996), "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment", *Development and Change*, 27:29.

The neo-patrimonial analysis is based on neo-patrimonial capture by political elites. It argues for the consideration of the political economy behind the land question criticizing the other approaches seeking to address the land question in Ethiopia as too focused on the technical and narrow question of land tenure security. As to this model, inclusion of politics in the discussion about the land question in the country as is the case in Africa as a whole shows that different regimes use land for the purpose of solely helping them stay in power and further claiming that equity and economic efficiency pursuits behind land reform if ever taken into account are secondary to this primary purpose of political survival. The neo-patrimonial thinking is an extension of the neo-patrimonial charge leveled against most regimes in Africa and resurfaced in the Ethiopian context in especially after the fateful 2005 regional and parliamentary elections which for many observers reversed the democratization process set in motion in early 1990s.

For neo-liberal discourses, see M. Bratton and Nicholas van de Walle (1990), "Neo-patrimonial Regimes and Political Transitions in Africa", *World Politics* vol. 46; Jon Abbink (2009) "The Ethiopian Second Republic and the Fragile 'Social Contract'", *Africa Spectrum*, 44:2; Steven Davis (2008); Dima Noggo (2009), "Contested Legitimacy: Coercion and the State in Ethiopia", (PhD Dissertation, University of Tennessee), <http://trace.tennessee.edu/utk_graddiss/98> (accessed January 20, 2013) and Steven Davis (2008), "The Political Economy of Land Tenure in Ethiopia" (PhD Thesis, University of St. Andrews), <research-repository.st-andrews.ac.uk/.../580/3/StevenJDaviesPhDThesis.pdf>. (accessed April 10, 2013).

productivity and stimulate local industries.⁸³ The perspective gets its inspiration from liberal theories that argue for a triad: the right to exclusive possession, use and disposition of a thing on productivity ground.⁸⁴ It argues that the presence in rural Ethiopia of too little inequality in land endowments (i.e., lack of peasant differentiation in landholding) explains the country's agricultural predicaments.⁸⁵

The revisionist perspective, on the other hand, starts out with the premise that private ownership of land may not necessarily be a panacea for the ills of the Country's land relations and it envisages the existing people's ownership of land that puts greater emphasis on land tenure security than private land ownership *per se*.⁸⁶ It is opined that "tenure security is primary, but the search for security can take many forms."⁸⁷ For instance, land tenure security may emanate from the prudent implementation of the 'people's ownership of land' perspective as embodied in the Constitution if its implementation allows use rights with detailed, clear and comprehensive land laws and there exists unrestricted land use rights transferability and an effective means of checking undue administrative discretion in land administration.⁸⁸ The revisionist position is analogous to the bundle of rights approach which argues that property

⁸³ Dessalegn Rahmato (2006), "From Heterogeneity to Homogeneity: Agrarian Class Structure in Ethiopia since the 1950s in Land and the Challenge of Sustainable Development in Ethiopia" (Dessalegn Rahmato *et al*, ed.), (Forum for Social Studies, Addis Ababa) pp.13-6.

⁸⁴ Margaret Jane Radin (1988), "The Liberal Conception of Property: Cross Currents in The Jurisprudence of Takings", *Colum. L. Rev.*, vol. 88; Berhanu Abegaz for one says "land privatization ... is necessary for... thicker markets ..." Berhanu Abegaz (2004), "Escaping Ethiopia's Poverty Trap: The Case for a Second Agrarian Reform," *J. of Modern African Studies*, 42:1, p. 313. Dessalegn Rahmato adheres to the same view when he asserts that individual ownership of land provides "greater motivation and, above all, more security" than usufruct. Dessalegn Rahmato (1993), "Land, Peasants, and the Drive for Collectivization in Ethiopia," in *Land in African Agrarian Systems* (ed. Bassett *et al*) (The USA, Madison, The University of Wisconsin Press) p. 294. See also Dessalegn Rahmato (2009), *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s'-2000s'* (Ethiopia: Addis Ababa University Press9). Some of its adherents have formed political parties making the need for individualization of land a component of their manifesto.

⁸⁵ Stephen Devereux *et al* (2005), "Too Much Inequality or Too Little? Inequality and Stagnation in Ethiopian Agriculture", *IDS*, vol. 36, p. 121.

⁸⁶ Tekie Alemu (1999), "Farmers' Willingness to Pay for Tenure Security", in Proceedings of the 9th Annual Conference of the Ethiopian Economy, (Alemu Mekonnen and Dejene Aredo (eds)), Addis Ababa; Wibke Crewett and Benedikt Korf (2008), "Ethiopia: Reforming Land Tenure", *Review of African Political Economy*, vol. 35; Getnet Alemu (2009) "The Challenges of Land Tenure Reform to Structural Transformation of the Economy: Lessons from Country Experiences", in Proceedings of the 16th International Conference of Ethiopian Studies (Svein Ege *et al* eds.), vol. 3, (Trondheim, Norway) pp. 763-764.

⁸⁷ Dessalegn Rahmato (1999), "Revisiting the Land Issue: Options for Chance," *Economic Focus*, 2:4, p. 10.

⁸⁸ See Chapter 1, Section A (ii).

rights should not necessarily come in unitary form as they may rightly be dismembered to be parceled out simultaneously to many persons in regard to the same thing.⁸⁹

The associative ownership view claims that land ownership shall be vested in a village and that each member of a village community and outsiders including the Government shall be given use rights including regulated tradability on the basis of the decision of each village representatives.⁹⁰ The critical tasks in this view are to articulate the notion of community and of a community member, demarcate village land as opposed to government land and consider the extent to which customary practices and institutions can be relied upon to cater for various inside and outside interests.

The above three perspectives are not mere academic pursuits. They have been advanced by different actors who would like to influence the course and direction of land policy variously invoking efficiency, equity, regional autonomy and poverty elimination. The privatization path was advanced forcefully by economists and international institutions particularly the WB in 1990s during the making of the present Constitution of Ethiopia whose deliberation stage was dominated rather by private versus state ownership of land debate.⁹¹ As of the 2000s, however, as suggested above, international institutions have toned down their prescription for full privatization of land and argued more for the revisionist path partly due to their realization that what matters is provision of secure user rights even short of full ownership and partly due to the incumbents' 'ideological stance' towards people's ownership of land.⁹² The associative ownership discourse is a scholarly endeavor aired chiefly by Allan Hoben and Siegfried Pausewang who, after researching the past and present land relations in Ethiopia, got frustrated by the failure of successive land policies to guarantee security to the rural masses and by the 'amputated debate' that rather centers on state versus private ownership of land in Ethiopia.⁹³

⁸⁹ For the discussion on disaggregation of land rights, see Chapter 4, Section A (ii, e).

⁹⁰ Allan Hoben, (2000), "Ethiopian Rural Land Tenure Policy Revisited." Paper Presented at the Symposium for Reviewing Ethiopia's Economic Performance 1991-1999. Organised by Inter Africa Group. Addis Ababa. April 26-29.

⁹¹ See Chapter 9 and the Minutes of the Constitutional Assembly of the FDRE Constitution (1994) (Unpublished, on file with the author), revealing the debate centred on this issue to the neglect of other dimensions of land and property.

⁹² See Chapter 9.

⁹³ Siegfried Pausewang (2000), "The Need for a Third Alternative: The Amputated Debate on Land Tenure in Ethiopia" <www.irsa-world.org/prior/XI/papers/4-8pdf> (accessed August 1, 2014).

To their credit, the three perspectives have diagnosed crucial aspects of the land question in Ethiopia such as gender gap, migration, agrarian question and state-peasant relations. They have also properly criticized and challenged bureaucratic power over land. But the three perspectives have weaknesses. The privatization path places a high accent on economic efficiency. It appears to suffer from ‘one-size-fits all’ paradigm – opting for uniform land tenure reform for Ethiopia, a country with diverse customs and agro-ecology. On the top of the similarity it shares with the privatization view, the revisionist approach conceives the land question in rather technical term that presumes political neutrality of land law. As correctly foreseen by Issa Shivji, the associative ownership perspective’s reliance on customary tenures makes it hard to avoid land concentration in the hands of rural elites who may be no less exploitative than outsiders.⁹⁴

However, the more serious criticisms are those common to the three perspectives. Firstly, the perspectives are not able to identify an important emerging trend for land alienation, and detect the motivations and the normative and institutional framework, of the existing State in Ethiopia in relation to land alienation, its mechanisms and contradictions attendant thereto. This, in other words, relates to their inability to identify how the State at present endangers the land tenure security of the rural poor. Secondly, the preoccupation of the perspectives with getting the Government off the back of rural people consequently appears to preclude them from analyzing interests of multiple forces behind the land question beyond state-peasant circle. And the three land reform perspectives send the impression that state and smallholder farmers are the sole actors that count in issues of agricultural land in Ethiopia. Clearly, there is a need to go beyond state-peasant circle to bring in other actors such as international donor agencies who seek to influence the direction of land law and policy in the country.

Thirdly, there is also lack of focus on the manner in which the peasants working on the land in the country resist top down approaches to land tenure reforms. Fourthly, they rest on an underlying narrow conception of land rights - that which regards land rights simply as a tradable asset. Lastly, the perspectives in question merely capitalize on rural people’s small and

⁹⁴ Government of Tanzania, *Report of the Commission of Inquiry into Land Matters*, vol. 1 (Dar es Salaam: Ministry of Lands, Housing and Urban Development, 1994) whose underlying message is the primacy of village ownership of land and the person who has chaired this Commission, Issa Shivji, has enunciated this approach later in Issa Shivji (2009), *Where is Uhuru? Reflections on the Struggle for Democracy in Africa* (Godwin Murunga, ed.), Fahamu Books.

fragmented private landholdings and thereby discounting their access to communal lands. This means the discourses exclusively rely upon official statistics on the size of the landholdings of small farmers that merely consider individual landholdings to the exclusion of peasants' historical and customary access to communal lands.⁹⁵

F. Methodology and Method

This study investigates land law and policy of Ethiopia within the research tradition of contextual analysis of law and policy. Situational analysis of law and policy is envisaged here in view of the complexity of land issues and of the involvement in land tenure of multiple actors; namely, the state, peasants, commercial farmers and international institutions. The methodology adopted here has a doctrinal aspect to the extent it analyzes land laws. It has also a comparative element as it attempts to draw lessons from the country's past experiment with land tenure reforms and other countries' experiences.⁹⁶

A qualitative methodology supplemented by quantitative data as well as use of diverse secondary and primary data collection methods was found imperative to enrich the research and to achieve the objective of triangulation.⁹⁷ The data gathering process was carried out in compliance with the tenets of the ethical rules of The University of Warwick.⁹⁸

Federal and regional land laws including constitutional and legislative preparatory documents, government documents, research reports of international institutions, court decisions, scholarship on land reform, news reports and documentary films were consulted. The fieldwork was conducted mainly in September 2012 in the Southern Regional State and in December and July 2013 in Addis Ababa through focus group discussions, key informant interviews and collection of documents from different institutions (See Annex II for more on the fieldwork).⁹⁹ Interview and focus group themes included the core dimensions of the thesis; namely, the history

⁹⁵ Siegfried Pausewang note 7. Such inaccuracies might partly be attributable to 'land hiding' by peasants (for fear of increase in land tax and land redistribution) as revealed by Focus Group Discussion 12 with Sidama intellectuals, December 22, 2012.

⁹⁶ The experience of some other sub-Saharan African jurisdictions is discussed in a diffused manner in various chapters and but some chapters devote specific section to such experience while in other chapters comparative materials are used while treating a theme.

⁹⁷ Loraine Blaxter *et al* (2002), *How to Research* (2nd Ed.) (New Delhi: Viva Books Private Limited) p. 84.

⁹⁸ These include free and informed consent of participants, full and frank disclosure by the researcher and voluntary agreement on the part of research participants.

⁹⁹ Interviews were also conducted in August, October and November 2012; and April and June 2013 in Addis Ababa.

of land relations, expropriation, *kontract* (officially sanctioned informal land deals), communal lands, large-scale agricultural land transfers and people's response to such transfers and role of international institutions. A total of 46 individual interviews and 13 focus group discussions were conducted with community elders, different categories of peasants, judges, and government officials, land law experts working for national and international institutions and practicing lawyers using interview guides to allow room for emergence of new themes (See Annex I for interview and focus group discussion guides).¹⁰⁰ In locating information-rich informants and the research site, a purposive sampling technique was adopted.¹⁰¹ However, the thesis is not wholly fieldwork-based; but it is empirically informed in relation to the core themes.

The secondary and primary sources have been analyzed with the twin aims of gaining a deeper appreciation of land reform literature and of situating land reform in Ethiopia in international context. Given the temporal and spatial limitations of the fieldwork relative to the vastness of the country, the thesis tries to show land law and practices indicative of a tendency in Ethiopia towards land alienation. The findings would hopefully enhance understanding of the land question in the country by stimulating further research especially in relation to the implications of the gravitation towards agricultural land alienation.

G. Content Overview

The thesis has nine chapters apart from the Introduction and the Conclusion. These chapters fall under four parts: examination of analytical perspectives on land (Chapter 1), historical contextualization of land tenure reforms in Ethiopia (Chapters 2 and 3), the existence of, reasons for, devices and features of land alienation (Chapters 4 to 8) and role of international institutions in Ethiopia's land tenure reform (Chapter 9).

¹⁰⁰ One of the challenges the researcher faced during focus group discussions was that hierarchical thinking emanating from the Sidama culture tended to lead older informants to dominate the views of the younger ones, the latter tending to subscribe to the views of the former. This was attempted to be remedied by doing the focus group discussions separately for the two age groups. This reminds one George Meszaroes's argument about the pervasive nature of power relations in fieldwork: "power relations ... pervade the field and thereby define key aspects of the researcher's relationship to it, and vice versa." See George Meszaroes (2007), "Researching the Landless Movement in Brazil." In *Research Methods for Law*, Mike, McConville and Wing Hong Chui (eds.) (Edinburgh University Press), p. 133.

¹⁰¹ See Keith Punch (1998), *Introduction to Social Research: Quantitative and Qualitative Approaches* (London, SAGE Publications) p.193 and Jenny Cameron (2003), "Focusing on the Focus Group", in Iain (ed.), *Qualitative Research Methods in Human Geography* (Oxford, Oxford University Press) p.83.

Chapter 1 extends the discussion in the Introduction about the land question by further elaborating the nature of the land question in today's Ethiopia on the basis of critical analyses of main discourses on land reform in the country. The thread that runs through the Chapter is the need to transcend current land reform scholarship which is rather fixated on the State's bureaucratic land control and land privatization. Chapters 4 to 8 identify and discuss an emerging post-2000 trend for state-led mechanisms of land alienation centered on economic growth as concretized in regulated land use rights transfers (Chapter 4), lax rural land expropriation regime (Chapter 5), *kontract* (Chapter 6), lack of legal recognition of communal rural lands and their consideration as sites for raising capital (Chapter 7) and large-scale land grants (Chapter 8).

Chapters 2 and 3 show that the current gravitation towards land alienation is rooted in the nation's past. During the greater part of the Imperial period, as considered in Chapter 2, there had been land concentration in the hands of landlords and members of the royal family but poor rural producers were given possession over land they had worked on conditions of continued forcible fruit and personal labor extractions. Yet, actual and significant land dispossessions came to occur in the dying hours of the regime in favor of domestic and foreign investors including the state when a semi-capitalist component was grafted on the dominant feudal foundation.

Chapter 3 indicates that the patent signs of smallholder and pastoralist dispossession were averted upon the eruption of the revolution in 1974 when the Derg introduced redistributive land reform (abolishing feudal extractive measures) under 'land to the tiller' motto. The gains of such redistributive measures, however, were put into reverse gear when shortly after the land reform the Derg's programme of socialist agriculture re-introduced extractive measures coupled with land dispossessions in favor of cooperatives and state farms.

Chapter 4 considers two contrasting tendencies; namely, that which inclines to equity expressed in the land for all ethos, on the one hand, and the one which is embodied in land law which suggests a process of state-controlled land commercialization, on the other. It explains the conception of land rights behind the land for all ethos which arises out of the Constitution, i.e., land as a socially embedded as opposed to mere commercial object. Chapter 5 examines a loose expropriation regime that is put in place in a way that assists transfer of land from small farmers and herders to developers. Chapter 6 reveals informal land deals encapsulated in the practice of *kontract* which begins as a voluntary private transaction but gets the facilitation and blessing of government bureaucracy in the process of transferring land use rights to improvers in a manner

contrary to the underlying tenets of land law and policy of the State. These chapters especially Chapter 4 highlights the lack of proper form of constitutionality, be it judicial or otherwise, to restrain the actions of the State concerning land.

While Chapters 4 to 6 show the state`s endeavor to induce capital accumulation through the transfer of privately held land to improvers, the next two chapters (Chapters 7 and 8) examine the weak legal basis of as well as transfer of communal rural lands that historically and customarily belong to peasants and pastoralists to capital via the deployment of the ‘tragedy of the commons,’ ‘empty land’ and ‘underutilized land’ discourses both in lowland and highland Ethiopia.

Chapters 4 to 8 in common characterize the land alienation tendency as state-driven, growth-centered, property rights-based, centralized land transfers and contested. The last chapter provides an account of the resolution of the land question of the country by global institutions chiefly the WB and the USAID. These two institutions prescribe one or another form of land privatization as antidote for Ethiopia.

The overall conclusions of the thesis are as follows. There is a patent sign of Ethiopia`s shift from a non-marketable land possession reflected in the ‘people`s ownership of land’ to a marketable property in land underway with government control of the process. This tendency to dis-embed land under the controlling hand of the state has produced tension between the avowed official rhetoric of equity-centered land law and policy, and land commercialization to promote economic growth by transferring land to ‘efficient land users’ with its accompanying creation of competing constituencies. The tilt has resulted in another tension over land matters between federal and regional governments where the center claims that efficiency demands that it handle land transfers to developers whereas the peripheries assert their constitutional right to self-government. Likewise, the global institutions have run into a contradiction because they prescribe for land right to the poor as a strategy to reduce poverty in Ethiopia and at the same time they encourage large-scale land grants under the fashionable idea of ‘responsible agricultural investment.’

H. Reiteration

As this Introduction suggests, the resolution of the land question in Ethiopia is an intricate project which demands an examination of history and of interests of competing players. This

thesis aims at contributing to the debate through critical analyses of normative and theoretical frameworks that connote conflicting conceptions: the Constitutional principle of the people's ownership of land that advocates for secure agricultural land for all, on the one hand, and perspectives on land which opt for property rights in land to rural small producers, on the other. In particular, the thesis is a critique of the property rights in land discourses of scholars and international institutions as reflected in the privatization, the revisionist and associative ownership perspectives. It also investigates the emergence of a state controlled process of land alienation and its compatibility with the tenets of the people's ownership of land approach as embodied in the Constitution and whether the relevant property rights in land discourses have detected such tendency and thus have analyzed its nature and implications. It proposes the restoration of the Constitutional principles.

* * *

1

Perspectives on Land

As the Introduction highlights, three major perspectives which act as alternatives to people's land ownership approach seek to resolve the land question in Ethiopia.¹ These are: the privatization, the revisionist and the associative ownership paths. The purpose of this chapter is to examine these analytical frames when applied to the Ethiopian situation to see if they enhance or undermine an aspect of Ethiopia's land question –land alienation- that is the subject matter of the thesis.

The privatization discourse centers on economic rationality of land tenure rules arguing that individuals shall be provided with complete authority over their land in the sense of trinity of property rights - *usus*, *fructus* and *abusus* - subsumed in the hands of a single individual land owner as this facilitates transfer of land from less able users to more able ones through the instrumentality of the market and thereby bringing about economic growth with its trickledown

¹ Two other relatively less important perspectives are the evolutionary and the neo-patrimonial approaches. The evolutionary view contends that property rights in land evolve inevitably and naturally from common ownership into full private ownership if left to its own devices but with the facilitative intervention of the state in the interests of investment by outsiders and that of vulnerable members of the community. For this, see Gebru Mersha and Mwangi wa Githinji (2005), "Untying the Gordian Knot: The Question of Land Reform in Ethiopia", ISS/UNDP Land, Poverty and Public Action Policy Paper No. 9, (Addis Ababa, Institute of Social Studies) p. 25; Sandra Joireman (1996), "Contracting for Land: Lessons from Litigation in a Communal Tenure Area of Ethiopia", *CJAS*, 30:3 pp. 437-8; Tesfaye Teklu (2003), "Rural Lands and Evolving Tenure Arrangement in Ethiopia: Issues, Evidence and Policies", (Forum for Social Studies, Addis Ababa) p. 23. For the general optimistic theory of the evolution of property rights, see Ester Boserup (1965), *The Conditions of Agricultural Growth* (New Brunswick, New Jersey, Transaction Publishers); Harold Demsetz (1967), "Towards a Theory of Property Rights", *American Economic Review*, vol. 57 and for a qualified view of the evolutionary theory of property rights, see Douglas North (1990), Thra'inn Eggertsson (2003), "Open Access Versus Common Property", in *Property Rights: Cooperation, Conflict, and Law*, (Terry L. Anderson & Fred S. McChesney eds.); and Jean Philippe Platteau (1996), "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment", *Development and Change*, 27:29.

The neo-patrimonial approach emanates from neo-patrimonial theory; it sees land being deployed by the successive Ethiopian states to sustain patrimonial rule, which means the ultimate consideration for land tenure assignment is maintenance of power but not equity or economic rationality. See M. Bratton and Nicholas van de Walle (1990), "Neo-patrimonial Regimes and Political Transitions in Africa", *World Politics* vol. 46; Jon Abbink (2009) "The Ethiopian Second Republic and the Fragile 'Social Contract'", *Africa Spectrum*, 44:2, especially the conclusion part; Steven Davis (2008), "The Political Economy of Land Tenure in Ethiopia" (PhD Thesis, University of St. Andrews), <[research-repository.st-andrews.ac.uk/.../580/3/Steven Davies PhD Thesis.pdf](http://research-repository.st-andrews.ac.uk/.../580/3/Steven%20Davies%20PhD%20Thesis.pdf)>; and Dima Noggo (2009), "Contested Legitimacy: Coercion and the State in Ethiopia", (PhD Dissertation, University of Tennessee), <http://trace.tennessee.edu/utk_graddiss/98>.

effect to the poor. Influential economists and international institutions offer a nuanced form of the privatization perspective.²

The revisionist view seeks to retain the current people's ownership of land provided land use rights are allowed to be transferred freely and detail and clear legal rules that curb undue discretionary power of state authorities over land administration are issued and implemented. According to the revisionist thinking, the problems of the existing land tenure system of Ethiopia relate to a defective legal regime, i.e., ambiguity, vagueness and incompleteness of land tenure rules and overlapping jurisdictions over land administration authorities. To this perspective, the problem of the land question of Ethiopia is also linked to a lack of proper enforcement of existing land tenure rules or their lack of accessibility for the common people. The absence of these qualities in the land law regime makes it discretionary, creates room for diverse tenure practices and ultimately leads to the defeat of the objective of land law.³ This approach dates back to the 1975 land reform and continues to command support from lawyers and of late international institutions as a second best option next to the privatization approach.

The associative ownership perspective is a scholarly endeavor that argues for land use rights to be given to each member of respective communities while ownership is retained in the hands of each concerned community; the state authorities being permitted to intervene only in the interests of efficiency and social justice. This implies reshaping of the power of the central state vis-à-vis local communities over land as authority over land is sought to be decentralized and firmly placed in the hands of multiple communities. The three land tenure perspectives in common attack people's ownership of land that is founded upon agricultural land for all ethos (to be elaborated in Chapter 4) that they think has withdrawn land from the market place.

² For the economists' view, see the explanations given in regard to this and the revisionist views below. For the position of international institutions, see Chapter 9; and for the stance taken by pan-Ethiopian opposition political parties in favour of full private ownership of land involving land alienation, see Berhanu Nega (2006), *The Dawn of Freedom* (in Amharic) (M.M Publishers, Campala, Uganda). For land policies of both pan-Ethiopian and ethno-nationalist opposition political parties, see Walta Information Centre (2000), "Political Parties in Ethiopia: Contents of their Programs" (in Amharic), Addis Ababa, Ethiopia.

³ Heinrich Scholler and Paul Brietzke (1976), *Ethiopia: Revolution, Law and Politics* (Munich, Weltforum Verlag); and Abebe Mulatu (2009), "Compatibility between Rural Land Tenure and Administration Policies and Implementing Laws in Ethiopia" *In Land Law and Policy in Ethiopia since 1991: Continuities and Changes*, (Muradu Abdo, ed.) *Ethiopian Business Law Series*, vol. 3 (Addis Ababa: Addis Ababa University, Faculty of Law).

This chapter gives greater attention to the privatization perspectives due to its dominance in critiquing the existing land policy and law of Ethiopia and the political and intellectual clout of its adherents. The most important underlying finding of the chapter is that the three analytic perspectives subscribe to one or another form of land privatization and thus land alienation and that they unwarrantedly assume that the existing land law and policy of Ethiopia is still faithful to the land for all principle. In other words, the state-driven land dispossession tendency set in motion through various land statutes and administrative practices go undetected and unarticulated by any of these perspectives. The chapter claims that the supporters of the privatization path want to impose a single land tenure system over the country to the disregard of factors on the ground that have the effect of diversifying land tenure systems. It also concludes that the search for a single approach by the privatization path appears to be dictated by the idea of modernization, this time around, such modernization of land tenure in terms of farm consolidation, transfer of land to more productive users and facilitation of rural out migration is claimed to be better achieved via the instrumentality of the market than the coercive power of the state.

Even if the revisionist and privatization pathways, as mentioned in the Introduction, appear to be ignorant of the WB and the USAID`s position on and the extent of influence over Ethiopian land law and policy, there are striking affinities between the two as shown in Chapter 9. As a joint reading of that chapter and the current chapter indicates, like these two perspectives (including the associative ownership approach), the international institutions demand transferability of land rights and in principle support large-scale land transfers. However, as argued in Chapter 9, land law and policy of Ethiopia is not necessarily taking a course sought for it by these institutions and their position on large-scale farming is not a consistent affair either.

The chapter examines the revisionist view in the first section followed in the next section by explanation and critique of the privatization perspective. The last section considers the associative ownership path. Reiteration follows.

A. The revisionist perspective

Two facets of the revisionist view that are pertinent for the current chapter are: proposal for lifting restrictions on transferability (imposed on land use rights of landholders by the people`s ownership paradigm) and argument for more land law.

i. Lifting restrictions on land use rights

The revisionist approach is a contingent case for people's ownership path, which is explained in Chapter 4, and it opts for removal of the various legal restrictions imposed on the transferability of a peasant's land use rights. Tekie Alemu, for example, thinks that there is land tenure insecurity in Ethiopia as expressed through peasant perception emanating from the possibility of land reallocation and failure to spell out the conditions under which compensation would be paid and peasants are well aware of the vulnerabilities of their land rights.⁴ He says there are compelling reasons,

...for having a secured institutional setup for farmers in Ethiopia. The government is faced with only one imperative policy option: a movement away from the existing insecure tenure towards a more stable and secured one. It should be clear however that the sole solution to this problem is not necessarily a full-fledged privatization of land... On the contrary the available option towards a secured system is a continuum of property rights structures. One feasible option, given the situation of the farmers in the country is, for instance, to stop any systematic redistribution of land that is sponsored by the government, be it at the federal or regional one, and make sure that each household would have complete say, in the allocation of land among its siblings.⁵

Getnet Alemu similarly suggests,

One possible area for this is to think of change in the current tenure, from unlimited time use right to time limited use right with transfer, exchange, and sale rights. This has a number of advantages. Farm households will be certainly sure that they really own the land for that specific period, removes in-house redistribution, consolidate fragmented farm plots, increase size of holdings, encourage mobility of farm households and non-farm activities, mitigating the existing pressure on land, and allow money banks to value the land for that specific period and provide credit to farm households by taking the land as collateral as they do it for those who take agricultural land on the basis of lease for specific period.⁶

The solution is a dynamic land reform which gives "long-term use right with transfer and sale rights" followed by robust institutional and non-institutional complementary support system.⁷

This view tends to emphasize more on security and breadth of land rights and less on full private ownership *per se*. As considered in Chapter 9, this revisionist approach has received grudging support from major international institutions that are supportive of the neoliberal notion of property rights.

To this view robust land rights short of full ownership will do if such rights are characterized by breadth, transferability, longevity and security even within the framework of

⁴ Tekie Alemu (1999), "Farmers' Willingness to Pay for Tenure Security", in Proceedings of the 9th Annual Conference of the Ethiopian Economy, (Alemu Mekonnen and Dejene Aredo (eds)), Addis Ababa.

⁵ *Id.*, p. 103; and Wibke Crewett and Benedikt Korf (2008), "Ethiopia: Reforming Land Tenure", *Review of African Political Economy*, vol. 35.

⁶ Getnet Alemu (2009) "The Challenges of Land Tenure Reform to Structural Transformation of the Economy: Lessons from Country Experiences", in Proceedings of the 16th International Conference of Ethiopian Studies (Svein Ege *et al* eds.), vol. 3, (Trondheim, Norway) pp. 763-764.

⁷ *Id.*, p. 776.

people`s ownership of land without resorting to full privatization to make land rights as secure as they can get.⁸

In terms of breadth of right, this view aspires to see peasants offered a bundle of land rights which approximates ownership. That is, land rights are a close-ended list of rights over land but without including ownership. This way of presenting land rights makes the perspective analogous to scholarship which conceives property rights as a ‘bundle of sticks’ that may be aggregated and disaggregated as the occasion demands.⁹ As regards to transferability, the revisionist view would like to see peasants permitted to lease out their land to any willing lessee in its entirety on the basis of long-term lease, transfer their use rights to any one of their liking via donation and inheritance, collateralize such use rights and lift conditioning of land use rights upon continuous use with residency requirement.¹⁰ That is, the numerous legal and administrative restrictions imposed on peasants` right to transfer their land rights shall be lifted. As regards to longevity, it would like to see the determination of a fixed longer term use rights, which in this view is missing from the extant land tenure law of the country.¹¹

In relation to tenure security, this perspective likes to shield the peasants against state encroachments on their land rights in the sense of disciplining the power of land expropriation, a ban on land redistribution, and the issuance of an effective land registration and certification system.¹² Hence, by strengthening the use rights of small holders in regard to breadth, transferability and longevity, the perspective under review seeks to render people`s ownership of land symbolic.

⁸ These dimensions are articulated as land tenure security elements in the African context by Frank Place *et al* (1994), “Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology” in J. W. Bruce and Shem E. Mingot-Adholla (1994), *Searching for Land Tenure Security in Africa*, (Kendall/Hunt Publishing Company).

⁹ Wesley Newcomb Hohfeld (1913), “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning”, *Yale Law Review*, 23:16; James E. Penner (1996), “The “Bundle of Rights” Picture of Property”, *UCLA Law Review* vol. 43; Larissa Katz (2008), “Exclusion and Exclusivity in Property Law”, *University of Toronto Law Journal* 58:3 and Thomas W. Merrill and Henry E. Smith (2001), “What Happened to Property in Law and Economics?” *Yale Law Journal*, 111: 2. But the purpose of this chapter is not to evaluate the bundle of rights conception of property.

¹⁰ Gudeta Seifu (2009), “Rural Land Tenure Security in the Oromia National Regional State”, *In Land Law and Policy in Ethiopia since 1991: Continuities and Changes*, (Muradu Abdo, ed.), *Ethiopian Business Law Series*, vol. 3 (Addis Ababa: Addis Ababa University, Faculty of Law).

¹¹ *Ibid.*

¹² *Ibid.*

ii. More land law

To the revisionists, maintaining people's ownership of land devoid of its restrictive elements is a second best option; the first best option being full private ownership of land; and their ultimate aim whether in the first or second best option is to curtail the power of the state over land. This is to be done through detailed laws.

The more land law aspect of the revisionist view wants to restrain land administrators, courts and local communities who might tempt to invoke customary land tenure principles and practices through specific, clear and comprehensive state land laws as opposed to customary tenure rules to make rural land bureaucrats accountable as well as to ensure the realization of development goals behind land law. For example, Heinrich Scholler and Paul Brietzke explain the problem of land tenure in Ethiopia in terms of lack of specific and comprehensive state tenure rules that would constrain local government authorities who are dealing with rural land administration. Writing in relation to the 1975 Rural Land Proclamation discussed in Chapter 3, Scholler and Brietzke predicted that less law and lack of institutional supervision would impede the fulfillment of the aims of the land law reform:

...as the holder of the ultimate title to all land, Government can specify that the observance of certain patterns of use, cultivation..., conservation, harvesting and marketing are preconditions to continued possession of the land... In the absence of effective regulations, however, the nationalization of land is irrelevant from the stand point of development; the adoption of innovations is not made a quid pro quo of tenure security. Peasant associations might as well redistribute or merely recognize the 'freeholds' which would be greatly preferred by peasants since without appropriate Government regulation and supervision, security of tenure is totally dependent on the quality of local politics in the peasant associations.¹³

Abebe Mulatu, on his part, thinks the 1975 Rural Land Proclamation did not achieve its intended purpose because "of the absence of regulations and guidelines to effectively and consistently implement the policy objectives of the proclamation, and the absence of institutions accountable to administer rural lands on local level..."¹⁴ Abebe further states:

The Proclamation delegated the Ministry of Land Reform and Administration to issue regulations and directives to give effect to the purposes and provisions of the Proclamation. But no regulations or guidelines were issued to implement the Proclamation. As a result, peasant associations which were in charge of administering rural lands were applying their discretion to determine when and how to distribute rural lands and who shall get what land in their areas. This discretionary power was being abused as time went on and insecurity of tenure was more exasperated.¹⁵

Scholler and Brietzke's concern was to see clear, comprehensive and detailed land law in the context where land was removed from the sphere of private law and put in the domain of

¹³ Heinrich Scholler and Paul Brietzke, note 3, p.81.

¹⁴ Abebe Mulatu, note 3, p. 14.

¹⁵ *Ibid.*

public law by the 1974 Ethiopian revolution to ensure the contribution of land to the country's development. Concurring with these two legal scholars' observation about the sketchy nature of the 1975 Rural Lands Proclamation, Abebe extends it to the current land law of the country: even if there are more detailed land tenure rules today than in the past, the current rural land laws are replete with significant gaps and overlapping administrative jurisdictions on rural land matters.¹⁶ Interviewees and focus group discussion participants share Abebe's observation about the need for detail land law.¹⁷

Argument about detailed land law is also pertinent elsewhere in Africa. In regard to Tanzania, Patrick McAuslan argues that land law should achieve two objectives: advance legal certainty to facilitate a market economy and "replace administrative discretion with specific legal rights."¹⁸ In order to attain these objectives, land law has to be "detailed, specific, and clear."¹⁹ McAuslan has taken land law as an aspect of administrative law because it raises the question of state accountability. He observes that "officials armed with powers and subject to few or no restraints, cannot be relied upon to behave reasonably."²⁰ Further, he says "once the land law recognizes and protects private rights, and facilitates dealings with those private rights in the market place the law has to be much more specific, detailed and clear."²¹ There is a need to have detailed land tenure rules even if the administrative authorities in charge would not as a matter of fact abuse their discretion because "...the men-at-home read the regulation, see the width of the discretions, and fear and expect the worst..."²² McAuslan thinks one cannot make prudent land law reform out of mere 'common sense.'²³

The above observation about the scanty nature of the then land law of Ethiopia is correct. As considered in Chapter 3, by its own indication, the 1975 Rural Land Proclamation lacked detailed rules and thus indicated the need for directives to facilitate implementation of its terse

¹⁶ *Ibid.*

¹⁷ Interview 41 with a practicing lawyer, September 25, 2012 and Focus Group Discussion 13 with land law specialists, July 13, 2013

¹⁸ Patrick McAuslan as cited in Ambreena Manji (2006), *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets* (hereafter the Politics of Land Reform) (London: Zed Books) p. 90.

¹⁹ *Id.*, p. 89. See also P. McAuslan (2003), *Binging the Law Back in: Essays in Land, Law and Development* (Aldershot: Ashgate).

²⁰ *Id.*, p. 93.

²¹ *Ibid.* See also Patrick McAuslan (1987), "Land Policy: A Framework for Analysis and Action", *Journal of African Law*, vol. 31.

²² L. C. B. Gower as cited in Ambreena Manji, note 18, p. 94.

²³ *Id.*

principles and the same need was mentioned in the Derg's 1974 Economic Policy. But such directives and guidelines did not come out. Such issues relating to criteria of land allocation and reallocation were not addressed. There were few provisions dealing with the entire range of substantive and institutional issues regarding rural land. It is also correct that there were and are overlapping jurisdictions over land administration matters and this might breed confusion and uncertainty.²⁴ This condition of land law is said to have unduly contributed to the discretionary powers of State local functionaries, such as peasant associations and land dispute settlement tribunals; scanty land tenures rules meant greater say for peasant associations in charge of land distribution, of redistribution, dispute settlement as well as village land demarcation.²⁵

Nevertheless, one might argue to the contrary that the general nature of the provisions of the 1975 Rural Lands Proclamation permitted local administrations to contextualize decisions over land and develop their own land tenure practices or to apply their own customary rules. So, fewer rules might actually mean greater opportunity for the local people to take part in the business of land administration. For example, in the context of Tanzania, Issa Shivji contended that land bills drafted for that country in 1990s by an international consultant were,

unworkable because they set out in intricate detail the powers and responsibilities of bureaucrats in the land administration machinery and sought to exert detailed control over their actions, which trampled on traditional community methods of controlling the exercise of discretion by public officials.²⁶

To Shivji, less detailed land rules and thin state land administration machinery would enable traditional rules and institutions to have a say in the management of this critical livelihood asset, land,²⁷ because the condition of less land law opens a door for peasants to resort to customary tenure practices. John Bruce raises a similar argument.²⁸

Further, the more law component of the revisionist view assumes that if detailed land administration laws had been issued, they would have been communicated and this in turn would have led to compliance and thus implementation by the authorities. But one might not take these assumptions for granted for the rules might not be communicated properly due to several barriers including that of language and even if the rules were to be communicated effectively government

²⁴ Abebe Mulatu, note 3.

²⁵ *Ibid.*

²⁶ As cited in Ambreena Manji, note 18, p. 90-91.

²⁷ *Id.*, p. 92; see also Issa G. Shivji and W. Kapinga (1997), "Implications for the Draft Bill for Land Act" *Change* vol. 5.

²⁸ John Bruce *et al* (2006), *Land Law Reform: Achieving Development Policy Objectives*, Washington DC., The World Bank.

authorities might not adhere to them. Again, the view presumes the existence of a political regime that shows faith in the rule of law. But in the Ethiopian case especially in period of the Derg it was widely observed that people in power deliberately disparaged law, tagging the law as an instrument of oppression and of accumulation of unbounded private gains instead resorting to governance in accordance with *ad hoc* party directives.²⁹

Still further, the lawyers` argument for detailed rules is presented as apolitical. In Ambreena Manji`s view the essence of the more/less law divide is “not intra-legal technical battles but are deeply imbricated in political and economic choices.”³⁰ Manji continues to say,

...the work of lawyers on the new laws aimed at liberalizing land relations has been centrally concerned with issues...such as the most effective means by which to control the exercise of discretion and encourage foreign investment. Far from being an exercise in the technicalities of how best to draft new laws` the more law paradigm pertain to land tenure ‘choices’ that are deeply political.³¹

This more law approach sees law as major element in land reform to achieve certainty, efficiency, equity and the related reasons of curbing the discretionary power of land administrators.³²

In sum, the intention of the followers of the more land law is to minimize administrative and judicial discretion, ensure consistency of the rules with the underlying land policy, and thus see to it that the intended development policy is not contradicted and defeated by implementation of sketchy land tenure rules. The revisionist view neither questions the nature of the legal system nor interrogates the land relations in place; it seeks to govern land relations through detailed rules and institutions without interrogating either of the two. Emphasis on detailed land tenure rules can have implication of removing land relations from the rural producers and put them in the hands of lawyers and administrators.

B. The privatization perspective

The privatization view rests on the assumption that land ownership supported by titling and registration positively correlates with productivity and that land is a commodity.

²⁹ The Derg often resorted to rule by *memeria* and *kelate*, the former means a directive whereas the latter refers a letter issued by a top official with the effect of depriving people of their property and liberty without any court intervention.

³⁰ Ambreena Manji, note 18, pp. 90 & 95. See also where Manji has argued that the 2012 land acts of Kenya have failed, both process and content wise, to reflect the redistributive ethos embodied in the 2009 Land Policy and the 2010 Revised Constitution of that country in Ambreena Manji (2014), “The Politics of Land Reform in Kenya 2012”, *African Studies Review*, 57:1.

³¹ Ambreena Manji, note 18, pp. 95-96.

³² *Id.*, p. 89.

i. Basic tenets

The privatization perspective envisages a land tenure system which accords full private ownership. What is wanted here is a full set of rights which includes the right to usufruct and alienation. In this system of complete set of land right, the role of the government is that of a night watchman confined in particular to introducing a system of land cadastre and individual tilting. The state must also be there to enforce property rights through the enactment of law and establishment of appropriate institutions. This notion of land rights in view among the followers of the privatization approach is Blackstonian, where a person possesses dominion over a given subject matter, in this case land.³³

This approach links up itself with the theory of property that regards property as an exclusive right embodied in a unitary idea of ownership, i.e., an open-ended exclusive possession, use and disposition over a thing.³⁴ As part and parcel of the broader liberal notion of property, the privatization thinking shares its key features: focuses on right alone, considers limitation on right as unnatural, views property as a marketable commodity and subscribes to a natural right to unlimited acquisitions.³⁵

This is the dominant view in the land discourse of the country with its notion of unhindered transferability of land rights and assignment of a considerably reduced role to government authorities. This one-size-fits-all approach adhered to by mainstream economists who advocate for cadastre, registration and certification of each and every plot of tract of land in the countryside; what is to be registered is private ownership right.

The basic unifying assumption is the assertion that peasants' landholding in the country is chronically insecure, leading to agricultural underdevelopment, and that this chronic land tenure insecurity would be remedied if land is privatized. The privatization perspective appears to adhere to absolutist conception of land ownership for one fundamental reason, namely enhancement of genuine land tenure security. Put differently, the basic land question in Ethiopia

³³ William Blackstone (1915), *Commentaries on the Laws of England*, (W. C. Jones., Ed.) (Baton Rouge: Clai-tor's Publishing).

³⁴ James E. Penner, note 9; Thomas Merrill & Henry Smith (2007), "The Morality of Property", *Wm. & Mary L. Rev.*, vol. 45. James E. Penner (1997), *The Idea of Property in Law* (New York: Oxford University Press) Thomas Merrill (1998), "Property and the Right to Exclude", *Neb. L. Rev.*, vol. 77; Jeremy Waldron, *The Right to Private Property* (Oxford Clarendon Press, 1988).

³⁵ Bridget Cotter (2010), "Property as a Human Need: a Moral Basis for Private Property Ownership in the Work of Hannah Arendt and Simone Weil", http://www.researchgate.net/publication/242715378_Property_as_a_Human_Need_a_moral_basis_for_private_property_ownership_in_the_work_of_Hannah_Arendt_and_Simone_Weil (accessed December 20, 2014)

today, as it used to be in the past, is lack of tenure security and this can be addressed if and only if land is individualized. For example, a follower of the privatization perspective in the sense of an ultimate vesting of all the rights of use, abuse and disposal in the hands of a landholder, Berhanu Abegaz, advances his argument by attacking the post-revolutionary Ethiopia's path to land tenure reform. He says,

The imperative of short-term survival leads ...[Ethiopian peasants] to resort to myopic agricultural practices of intensification (mainly via reduced fallow and increased acreage by encroaching on pastures or woodlands), adopting ox-plough technology in transhumant areas, and altering the mix of grains mainly in favor of lower value cereals such as maize.³⁶

Further, he says “the well-meaning but misguided mantra of the post-imperial ruling elites to provide peasants guarantees of entitlements to subsistence *plots of land* must now give way to an equally strong commitment to assuring subsistence *income* to all, albeit a variety of sources.”³⁷(Emphasis supplied) This means re-privatization of land in Ethiopia as,

Private ownership provides the strongest incentives for agricultural investment and the greatest flexibility for generating optimal farm sizes. Ownership also confers more clout on long-suffering rural residents to obtain public services. That is, secure and complete rights to land provide the first line of defense against the impunity of political elites whose capture of power has yet to face an effective domestic restraint from an enfeebled civil society.³⁸

He continues to argue that “The pre-reform insecurity arising from multiple and perpetual claims over kinship land or eviction from rented land has been replaced by the insecurity from non-ownership, and the threats of periodic redistribution by the authorities for political or demographic reasons.”³⁹ He argues that there is a compelling reason to shift from “entitlements to subsistence plots of land” to “assuring subsistence income to all” not connected to allocation of land to all.⁴⁰ Other scholars echo a similar point of view.⁴¹

³⁶ Berhanu Abegaz (2004), “Escaping Ethiopia’s Poverty Trap: The Case for a Second Agrarian Reform”, *Journal of Modern African Studies*, 42:1, p. 314.

³⁷ *Id.*, pp. 315-316.

³⁸ *Id.*, p. 315.

³⁹ *Id.*, p. 322.

⁴⁰ Berhanu Abegaz (2005), “Persistent Stasis in a Tributary Mode of Production: the Peasant Economy of Ethiopia”, *Journal of Agrarian Change*, 5:3; Berhanu seems to contradict himself when he argues in the same article that the main feature of land tenure under the Derg period should be featured as ‘socialist tributary system’ which means first the peasantry had “...uncontested possession of the land and (i.e., they enjoyed customary, or legal right of use and transfer to land)” and second, the right to land was “conditional on payment of tribute” to the state cum landlord. See, Berhanu Abegaz, note 36, pp. 316-317.

⁴¹ Dustin Miller and Eyob Tekalign (2008), “Land to the Tiller Redux: Unlocking Ethiopia’s Land Potential”, *Drake J. Agric.*, vol. 13 pp. 353-354; John Markakis (1989), “Nationalities and the State in Ethiopia”, *Third World Quarterly*, 11:4. Omiti John M. *et al.* (2000), “Some Policy Implications of Rural Factor Markets following Agrarian De-Collectivization in Ethiopia”, *Human Ecology*, 28:4) and J. W. Bruce and Shem E. Mingot-Adholla (1994), *Searching for Land Tenure Security in Africa* (Kendall/Hunt Publishing Company) p. 24.

The intellectual roots of the privatization view in Ethiopia dates back to the early twenty century, reappearing in 1990s with the backing of some national and international forces. These early intellectuals who went under the name ‘the progressives’ were arguing for modernization of the Ethiopian state by chiefly setting up a salaried standing national army as opposed to predatory armies of nobilities and modernization of the state bureaucracy by instituting salaried public servants. Gebrehiwot Bykedagn, a German educated advocate of modernization, argued for the need for *serat* (legal order) received from western legal traditions in his book meant to advise the state. Gebrehiwot writes: “Whoever opens his door to European mind prospers; whoever closes his door will be destroyed. If our Ethiopia accepts European mind, no one would dare attack her; if not, she will disintegrate and be enslaved.”⁴² Gebrehiwot’s idea of ‘European mind’ is to be accomplished through the instrumentality of *serat*. He says, “A people without intelligence have no *serat*, and hence no secure power. The source of all power is *serat*, not the size of army. A small town that is governed by law is to be preferred to a large nation that has no *serat*.”⁴³ For Gebrehiwot, *serat* means the use of western law,

our existing law of the king is incompatible with the demands of modern public life. Therefore, the state shall convene knowledgeable people to come up with law of the king that is compatible with European *serat*. When this is done, there is a need for an advisor versed in European *serat*. A state without a written *serat* is short-lived.⁴⁴

Mesfin elaborates on the notion of *serat* when he says:

People live under the tyranny of custom... The individual is so inseparable from the tribe or the clan, that he hardly has an independent existence... It is a hurdle that Western societies overcame by their own efforts, and all their great achievements have their foundation in this victory, the liberation of the individual.⁴⁵

Afewerk Gebreyesus, an Italian educated scholar, said that Ethiopia would have been on the road to modernization firmly if she had been colonized just for a few years.⁴⁶ As Fasil Kiros argued, these early intellectuals assimilated modernization to westernization; Ethiopia has since then become ‘dangerously addicted’ to western ways of doing things.⁴⁷

⁴² Gebrehiwot Bykedagn (1927), *Emperor Menelik and Ethiopia* (in Amharic) (Addis Ababa: United Printers) pp. 22 & 24.

⁴³ As quoted and translated by Bahru Zewde (2008), ‘Intellectual and the State in Twentieth Century Ethiopia’ (hereafter Intellectual and the State) in *Society, State and History: Selected Essays* (Addis Ababa: Addis Ababa University Press) p. 242 and Bahru Zewde (2002), *Pioneers of Change in Ethiopia* (hereafter Pioneers) (Addis Ababa: Addis Ababa University Press) p. 118.

⁴⁴ *Negadras Gebrehiwot Baykedagn* (2010), *The Works of Negadras Gebrehiwot Baykedagn* (in Amharic), (Addis Ababa, Addis Ababa University Press) p. 25.

⁴⁵ *Mesfin Wolde-Mariam* (1999), *The Horn of Africa Conflict and Poverty*, (Addis Ababa: Commercial Printing Press) pp. 13 & 18.

⁴⁶ As quoted in Bahru Zewde, Pioneers note 43, p. 55.

⁴⁷ Fasil Kiros (1993), *The Subsistence Crisis in Africa: The Case of Ethiopia*, (OSSREA, Addis Ababa) pp. 53-54; and Bahru Zewde, Pioneers note 43.

The early intellectuals' proposals for modernization of Ethiopia had a land tenure reform element. They argued for land measurement and introduction of fixed annual agricultural tax. Their concern was raising agricultural productivity by easing the burdens over peasants. Gebrehiwot described the condition of the peasants as:

the woes of the tiller of the land are manifold. Not only is he subjected to arbitrary impositions of taxation, but the peace and sanctity of his household are disrupted by soldiers quartered in his house and demanding all sorts of services from him and his wife.⁴⁸

Gebrehiwot also argued that concentration of agricultural land in the hands of the few was responsible for the impoverishment of the people and weakness of the State, and putting land in the hands of as many people as possible would bring about national prosperity and enhance the power of the government.⁴⁹ He thought this would be achieved by distributing land to the people not through redistribution of existing holdings but via allocation of land from unoccupied land.⁵⁰

Teklehawariyat Tekele Mariam, Russian and French educated supporter of the Emperor Haile Sellassie I, asserted that land is created for all creatures (even including ants), not just for human beings, as a means of their livelihood.⁵¹ He nevertheless undercuts this apparent egalitarian tone when he says that the time is not ripe for Ethiopia to introduce egalitarian redistribution of land.⁵² Gebrehiwot and Teklehawariyat favored private land alienations and wanted to end the exploitative feudal relations that skimmed off the fruits of peasants without seeking to reorder the then existing feudal property relations. On land transferability, Gebrehiwot says,

A ban on sale and exchange of land would be detrimental to the peasant since his land is his only asset. If he cannot sell or exchange this asset as he pleases, he will lose sense of ownership over it completely. If he is sued for a debt, he will not have a way out of it. If he is overburdened with tax, he would migrate by abandoning his land since he cannot transfer it to another person who is able to till it; if the state gives the land so abandoned to another person after it becomes a waste land due to lack of husbandry, that person would not be happy to develop it since he would think it is of little or no use to expend money and energy over land that he is unable to sell or exchange.⁵³

As Chapter 2 indicates, the reform ideas of Gebrehiwot and Teklehawariyat in relation to land transferability got their way into modern legal instruments of the imperial regime - the 1931 Constitution, the 1955 Revised Constitution and 1960 Civil Code.

⁴⁸ As quoted and translated in Bahru Zewde, *Intellectual and the State* note 43, p 243.

⁴⁹ Gebrehiwot Bykedagn (1924), *State and People's Administration* (in Amharic), (Addis Ababa: Ethiopia) p. 88.

⁵⁰ *Ibid.*

⁵¹ Tekele Hawariat Tekele Mariam (2009), *Autobiography*, (Addis Ababa: Addis Ababa University Press) pp. 96-7.

⁵² *Ibid.*

⁵³ Gebrehiwot Bykedagn, note 49, p. 88 (My translation).

ii. Justifications

The privatization perspective is founded upon security and sentiment to justify itself. Its dominant nature in the Ethiopian scene warrants examination of these foundations. The first justification is private ownership of land as a guarantor of tenure security is simple and intuitive, though difficult to prove. It is that tenure security leads to efficient resource allocation; returns from improved land tenure security are substantial as the experiences of post-1979 China and Thailand demonstrate.⁵⁴ To the privatization path, it is only in the context of private ownership of land that smallholder farmers in the country would enjoy tenure security.⁵⁵ The privatization perspective paints the worst picture arising out of perennial land tenure insecurity with damaging consequences. That is, land tenure insecurity has resulted in less investment, greater land degradation and confinement of people to rural areas. Ethiopia finds itself in a situation in which the agricultural sector is in a gridlock because of poor land tenure system. This gridlock should end with the program of privatization.⁵⁶ Haile Kebret says that the people's ownership of land with a redistributive element:

⁵⁴ Tekie Alemu, note 4, pp. 87 & 88.

⁵⁵ Dessalegn Rahmato (2006), "From Heterogeneity to Homogeneity: Agrarian Class Structure in Ethiopia since the 1950s" in *Land and the Challenge of Sustainable Development in Ethiopia* (Dessalegn Rahmato *et al.*, ed.), 9Forum for Social Studies, Addis Ababa) pp.13-6. Dessalegn Rahmato asserts that individual ownership of land provides "greater motivation and, above all, more security" than usufruct. Dessalegn Rahmato (1993), "Land, Peasants, and the Drive for Collectivization in Ethiopia" (hereafter Land, Peasants), in *Land in African Agrarian Systems* (Thomas J. Bassett and Donald E. Cummey eds.) (The USA, Madison, The University of Wisconsin Press) p. 294.) Many basic changes have been witnessed in the tenure systems of various regimes in Ethiopia but "...the fundamental problem of the land user, namely tenure insecurity still remains the same." Dessalegn Rahmato (2003), Land Tenure in Ethiopia: From the Imperial Period to the Present, A Brief Description" (hereafter Land Tenure), in *Topics in Contemporary Topics in Contemporary Political Development in Ethiopia* Tafesse Olika *et al.* (eds.) Department of Political Science, Addis Ababa University) p. 84. He argues that "Lack of tenure security ...is the most serious problem in all rural areas" and as tenants of the state all peasants suffer from lack of tenure security. *Id.*, pp. 87 & 88. He also says "...the degree of tenure insecurity is higher now than during the imperial period." *Id.*, p. 88. Dessalegn argues "In contrast [to existing people's ownership of land], freehold is the best means of ensuring absolute tenure security. Security of holding and pride of possession will restore confidence which has been shattered by...state ownership and socialist agrarian policies under the Derg." *Ibid.*

⁵⁶ According to this view, the quest for tenure security started in pre-revolutionary times. It seemed to have been solved by the land tenure reform under the Rural Lands Proclamation of 1975. But the era of tenure security ended soon when the state started to interfere with the land possession of peasants. The quest for tenure security is still at large due to the continuation of the behavior of the state authorities towards farmers' land. In this narrative, the main, if not the only, source of land tenure insecurity is the state; the state has become the cause of land tenure insecurity because of the existing land tenure arrangement that enables it to be the master of all land in the country. This program of land privatization would enhance tenure security which would in turn boost agricultural productivity, through confidence building; collateralization and market transfer all encouraging landholders to invest more in their lands which in turn is the bedrock for structural and social transformation of the Ethiopian economy.

...might be a useful instrument to redistribute income in the short run, but it constrains economic growth. Therefore...the best way to achieve income distribution is by fostering economic growth in the long run. This conclusion is predicated on two assumptions: First, large-scale farming is more productive than owner-farmers. Second, economic growth ultimately reduces poverty and redistributes income.⁵⁷

That is, it is believed that the program of land ownership accelerates national economic growth with its ultimate trickledown effect while people`s ownership path works against it. The privatization path thinks that the status quo, i.e., people`s ownership of land, is responsible for diminution of land holdings, inefficient allocation of resources, hindering the movement of people out of agriculture, taking rural people as a political hostage and chronic tenure insecurity in the country.⁵⁸

The second reason justifying the privatization perspective is sentiment as a restraint against land alienation. The privatization perspective claims that allowing Ethiopian peasants to alienate their land would not automatically lead to massive self-eviction simply because peasants more than anyone else appreciate the value of their land; land for Ethiopian peasants perhaps like a peasant elsewhere in a similar situation is not just a disposable economic asset; land for them is a resource needed for their survival; it is a site with sentimental attachment; it is their birth place; it is a place where their ancestors` spirit resides. To say that peasants` will alienate an asset with such wide ranging and deep economic, cultural and spiritual value is to belittle their judgment. And to claim that peasants shall be restrained from their temptations to sell out their land is patronizing. The country`s own experience shows that peasants would not sell their land even during worst famines; they simply move away from their farming village and return to it later when normality returns.⁵⁹

⁵⁷ Haile Kebret (1999), "Land Reform, Revisiting the Public versus Private Ownership Controversy", in Proceedings of the 9th Annual Conference of the Ethiopian Economy, (Alemu Mekonnen and Dejene Aredo, eds.), Addis Ababa, p. 55.

⁵⁸ Yigremew Adal (2004), "Some Queries about the Debate on Land Tenure in Ethiopia", Institute of Development Research, Addis Ababa University, p. 5; and Getnet Alemu, note 6.

⁵⁹ Dessalegn writes:

Is there a danger of peasants selling their land and the consequent emergence of agrarian capitalism in the rural areas? I believe there is none. The tradition of peasants in this country is to hold on to their plots for life unless they are victims of extraordinary misfortune. To the peasant land is a source of life, of pride and identity. In those rare cases where land selling may occur... new legislation could make it either difficult for the peasant to sell or for outsiders to buy the land in question. Dessalegn Rahmato (1992), "The Land Question and Reform Policy: Issues for Debate," *Dialogue*, 1:1, p. 53.

He further states:

The argument of the state is that if the peasant is given absolute rights over the land he will immediately sell, or will be quickly deprived of it by unscrupulous urban-based capitalists, and the result will be large-scale landlessness... This argument is not only foolish but assumes the peasant to be either irresponsible or child-like

The argument of the privatization perspective thus is since it is somehow known that peasants would not alienate their lands, it is unnecessary to maintain a tenure system which outlaws land alienations. One would wonder the point of the privatization perspective if the grip of tradition is such that peasants would not exercise their right to land alienation even if land was fully privatized. Further, the privatization perspective argues that it is not rational to deprive the right of some peasants who may choose to alienate their land by overcoming the grip of tradition that removes land from the market.⁶⁰ Some peasant land alienation is a desirable thing for both the peasant and for the larger economy because land in this case would move on to a more efficient user.

who will quickly throw away the most valuable asset in his possession. The peasant values the land very highly and is strongly attached to it; he or she will not give it away under any circumstances unless there is a compelling reason to do so. Moreover, selling the land is not a mortal sin. Dessalegn Rahmato (1999), "Revisiting the Land Issue: Options for Chance" (hereafter Revisiting) *Economic Focus*, 2:4, p. 10.

Besides, Mesfin Woldemariam argued that the assertion that peasants will sell their land if ownership is granted considers the peasants as child and is historically unfounded.⁵⁹ Mesfin Woldemariam (1999), "Land and Development in Ethiopia" (in Amharic), *Economic Focus*, 12:4, p. 13, Ethiopian Economic Association). He stressed that this had never happened even when peasants were troubled and if they do sell for starting a better business there is nothing wrong with that as no country has prospered through peasant production. Mesfin also argued that,

It is possible to enact law to protect the peasant during such sales transactions. It is possible to arrange a mechanism to create jobs in the small towns for those peasants who sell their land. Development is to guide the poor peasants to other activities but not to trap the peasantry in tenancy and unviable agricultural activity.⁵⁹ (*Ibid*)

It is a shame in rural Ethiopia to sell out seeds farmers store for the season to set in. It is of even greater shame to alienate farm land, which is both a subsistence asset and ancestral ground. Lidetu Ayaleu (2011), *Medlot, The Role of the Third Alternative in Ethiopian Politics* (in Amharic) (Addis Ababa, Ethiopia). Supports of the argument under consideration cite research report that they say suggests that the majority of peasants in Ethiopia would not be willing to sell out their lands even if land was fully privatized. *Ibid*. See also Ethiopian Economic Policy Research Institute (2002), "Land Tenure and Agricultural Development in Ethiopia", Ethiopian Economic Association, Addis Ababa, Ethiopia. The report was incomplete as it was a mere survey and did not cover the pastoral areas; and it was ambiguous as land sale was presented to those included in the survey in the form of two options: either to sell or not to sell without clarifying the range of options in between the two and even without making clear what it to be sold or not be sold).

⁶⁰ On the other hand, if the state in the course of the implementation of individualized tenure is faced with peasant exodus to cities, then it can put in place restrictive measures such as enacting rules which prohibit peasants from selling their land beyond and above a certain portion, selectively empowering communities to regulate land alienation to outsiders by their respective members and putting a cap on the size of land acquisition and by introducing land tax to prevent accumulation of land for speculative reasons. Berhanu says,

land privatization...is necessary for... thicker markets... peasants should be permitted to transfer their lands to match possession of farmland and the capacity to use it productively. The government would generate revenues from land transfers and subsequent investments in land and such revenues would enable the government to implement program for the unemployed peasants who are now in cities.

Berhanu Abegaz, note 36, p. 313.

In sum, rejection of the people's ownership perspective in favor of full land privatization is the best, if not, the only path that can pull Ethiopia out of this undesirable land tenure system in operation.

iii. Criticisms

The privatization argument rests on either unsupported or thinly supported assertions. For example, it assumes that insecurity of land rights could be removed via a tenure reform that gives private ownership over land which in turn boosts agricultural productivity.⁶¹

Yet empirical evidence shows that land privatization supported by titling does not automatically lead to tenure security. To the contrary, as happened in Kenya, the program of land privatization through the tool of land registration can lead to insecure tenure for the poor through exposure to elite capture.⁶² Land privatization does not necessarily lead to more investment in land. And land privatization alone does not always increase transfer of land to more efficient users nor does it create more demand for bank credits or decreases land disputes. The assumed effects of land titling are contingent on a number of extra-tenure factors.⁶³ Thus, the available evidence, both in Africa and elsewhere, shows that there is no inherent connection between land privatization and productivity.⁶⁴ As the land tenure history of Ethiopia documented in Chapters 2 and 3 shows there could be tenure insecurity in the context of private ownership of land while people could enjoy tenure security even in the context of people's ownership of land.⁶⁵

⁶¹ The privatization path might have been inspired by the new institutional economics as articulated by Douglas North which provides that the West has advanced economically primarily because of the institution of private property; and, to contrary, non-western societies have failed to show progress owing to their weak institutional foundation such as insecure property system. See Douglass North (1981), *Structure and Change in Economic History* (New York: Norton); and Hernando De Soto (2000), *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books).

⁶² Janine Ubink *et al* (eds) (2009), *Legalising Land Rights in Africa, Asia and Latin America: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America* (Leiden University Press).

⁶³ Michael Trebilcock & Paul-Erik Veel (2008-2009), "Property Rights and Development: The Contingent Case for Formalization", *U. Pa. J. Int'l L.*, vol. 30; for the critique of Hernando De Soto's prescription, see Celestine Nyamu Musembi (2007), "De Soto and Land Relations in Rural Africa: Breathing Life into Dead Theories about Property Rights", *Third World Quarterly*, 28:8 and Jan Michiel Otto (2009), "Rule of Law Promotion, Land Tenure and Poverty Alleviation: Questioning the Assumptions of Hernando De Soto", *Hague Journal on the Rule of Law*, 1:1.

⁶⁴ Celestine Nyamu Musembi note 63.

⁶⁵ In pre-1975 land tenure system, for example, there was wide-spread tenure insecurity in both private land ownership and communal ownership areas. And in this period, legally speaking even the landlords were insecure vis-à-vis the Emperor for the latter could confiscate their lands at his pleasure. In this regard, it is said "...the imperial state had what was called the right of 'eminent domain' which meant that a private owner could be

More broadly, unlike the claim of the perspective, land privatization does not automatically help an agrarian society transform socially and structurally through the instrumentality of agricultural development. At best the path may contribute to economic growth of a country by furthering the security of property of the few through the expropriation of the property of marginalized groups, which happens through “the reallocation of [property] into the hands of more politically powerful constituencies with access to the knowledge and capital necessary for efficient investment.”⁶⁶ In other words, “severe property insecurity for some groups often exists alongside very secure property rights for others. Heterogeneity in property rights enjoyment means that property rights can simultaneously be strong and secure for some groups and weak and insecure for other groups.”⁶⁷

The privatization path followers believe that the Ethiopian state has assumed a hegemonic power over land and that hegemony is inimical to liberty and democracy.⁶⁸ The

dispossessed at any time by the order of the Emperor. Thus, private owners had less security here than in the capitalist countries.” Dessalegn Rahmato, Land Tenure note 55, p. 86.

Moreover, as examined in Chapter 3, during the Derg period, initially, the peasants were secure in their land possessions and the fruits thereof; only later policy changes made their land possession insecure. Thus, it is unsound to say that private ownership of land invariably delivers tenure security as it is also incorrect to argue that the opposite is true with regard to a system of public ownership of land; that is, land privatization does not equal land tenure security; as use rights within the context of public ownership of land per se does not lead to insecure land tenure.

Yigremew Adal asserts, seen in light of past and current experiences both in the country and elsewhere in Africa, it is untenable to hold that unrestricted ownership over land would in itself give meaningful security to peasants. And likewise it is not valid to argue that state ownership of rural land per se would secure peasants access to and control over land. What is critical in both cases is the way a land tenure arrangement is put in place and implemented. Yigremew says “...the argument that either formal legal policy of individualized land rights or state paternalism will guarantee peasants’ access to and use of land is not strong...” Yigremew Adal, note 58, p. 11.

⁶⁶ Terra Lawson-Remer (2012), “Property Insecurity”, *Brook. J. Int’l L.*, vol. 38, p. 147.

⁶⁷ *Id.*, 149.

⁶⁸ One may join with the adherents of the privatization perspective to argue that government induced rural land redistribution is likely to continue in the country. As examined in Chapter 4, the basis of this prediction being the state’s constitutional, legislative and policy commitment to the idea of land for all Ethiopians, the political nature of land redistribution in the sense of its use to reward political supporters, the existence of factors that trigger land redistribution such as resettlement, villagization, high rate of rural population growth coupled with absence of non-farm employment opportunities and thus swelling number of landless, and increase in land expropriation for public and private projects. Hence, the argument is that these factors give convenient excuses for state functionaries to resort to land reallocation whenever they deem it fit and in particular when land redistribution takes place, it can hamper land productivity.

To their credit, the promoters of land privatization are correct in that the state in Ethiopia has claimed a hegemonic place because of its command over land. In imperial times, the command was justified by the myth that the king owned the country’s land. If there was private ownership of land at the time, it was just a derivative one; such ownership emanated from the king and as such the king could take it away from his subjects any time and as he pleased. During the Derg regime, land ownership by the state was justified in the name of the oppressed peasants by giving them user rights. And now, the state’s authority over land is retained in the name of common ownership

power of the state shall be tamed and the best way to tame state power is the program of land privatization for the sake of maximizing liberty and democracy. Thus, individualization of land rights is tied to the enhancement of the autonomy of rural institutions such as peasant organizations in relation to the state.⁶⁹ The privatization path argues private ownership of land would expand the liberty of the rural landholders, which, among others, means the correlation between land ownership and the prevalence of democracy in rural Ethiopia. When peasants are made the master of their land in the sense of full ownership, they would be daring enough to vote unaccountable governments out of office. On the other hand, in the context of people's ownership of land, peasants would not express their true will through the electoral process for fear of losing their lands because the state uses land to build patronage. To them, the state as a landlord "has turned out to be far more demanding and oppressive than the landed classes before the Revolution."⁷⁰

The privatization path claims the revolutionary slogan of land to the tiller was meant to make the oppressed tenants, the landless, and farm workers owners of land. It was meant to wipe out landlord tenant relationship in its all forms. The land-to-the-tiller motto did not stand for the replacement of one lord by another, the state, a far more oppressive one. The tenet of the motto was rather private ownership of land as a human right, which is an entitlement removed from any force of whatever nature, the state or a community or a feudal lord. But, the argument goes, the current people's ownership of land model has eliminated landlords in rural areas merely to put the monopoly of land lordship in the hands of state functionaries. The aim should be to finish off the business of land reform started in 1970s in a manner that emancipates peasants from overlordship. Yet the 'land to the tiller' banner is open to interpretation even if there is a consensus that the slogan at least meant abolition of the exploitative tenancy of the time: instead of construing it to make peasants owner of their land some take it to mean giving them non-alienable secure user rights under the scheme of state ownership.

One can keep the power of the Ethiopian state within its constitutional bounds without necessarily rushing into the program of land privatization. First, admittedly people's ownership

by ethnic groups; the ethnic groups jointly own land; the government takes over trusteeship function over such crucial asset. All this is a variation of the same theme, namely the state's wish to be the ultimate decider over land.

⁶⁹ Dessalegn Rahmato (2009), *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s`-2000s`* (Ethiopia: Addis Ababa, Addis Ababa University Press).

⁷⁰ Dessalegn Rahmato, note 55, p. 89.

of land gives immense power to government authorities, in effect making them *de facto* land owners, in the absence of effective legal restraints. But this should not necessarily lead one to conclude that one has to wipe out the people's ownership scheme in favor of private ownership mode.

Privatization of land may not necessarily and automatically diminish the power of the state over land. Even in the context of full private ownership of land the Ethiopian "...government can use its police power, which is, inherent government authority to regulate matters of safety, health, welfare, environment, morality and other matters pertaining to the protection of the public interest."⁷¹ And in private ownership tenure system, the government can use its eminent domain which is "inherent power of the state to take private property for a public purpose provided that any legal requirements for compensation are complied with."⁷² Peter Singer says,

One may ask whether transparency and the requirement that local landholders consent to a sale is enough to protect people living in poverty. Supporters of free markets will argue that if local landowners wish to sell their land that is their choice to make. But, given the pressures of poverty and the lure of cash, what does it take for people to be able to make a genuinely free and informed choice about selling something as significant as a right to land? After all, we do not allow poor people to sell their kidneys to the highest bidder.⁷³

Furthermore, the privatization perspective suffers from the single best path syndrome; this one-size-fits all thinking assumes that it has discovered the best land tenure system for Ethiopia. This path believes that the best tenure system is that which accords complete land ownership to peasants. It wants to de-center the state, assigning it mere regulatory power. It advocates the idea that the origin of land tenure rules is the state; tenure rules as coming exclusively from State institutions. It claims to have found the best tenure system for the Country and for this reason it is ready to preclude us from experimenting with other forms of land tenures in a manner contrary to the virtue behind "The best is the enemy of the good." It is ready to disregard the situation of the country that is manifestly diverse in terms of agro-ecology and of land tenure practices.

⁷¹ Calestous Juma and J. B. Ojwang (eds.) (1996), *In Land We Trust: Environment, Private Property and Constitutional Change*, (Initiative Publishers, London: Zed Books) pp. 419-424.

⁷² *Ibid.*

⁷³ Peter Singer (2013), "Ethics and Agriculture?", <www.project.syndicate.org/commentary/agriculture-investment-or-third-world-land-grab> (accessed July 31, 2014); and see also Rolf Steppacher (2008), "Property, Mineral Resources and 'Sustainable Development'", (hereafter Property) in Steiger O, (ed.), *Property Economics – Property Rights, Creditor's Money and the Foundations of the Economy* (Marburg: Metropolis)

This land reform thinking is heroically simplifying.⁷⁴ It does not seem to occur to it the possibility of co-existence of multitude of overlapping and competing land tenure rules, originated both from state and non-state institutions. It presumes that the diverse tenure rules operating on the ground would vanish into the thin air with the promulgation and enforcement of state land laws.

In the land tenure debate of the country, “Why a fight over a single tenure arrangement?...is it not important to have a combination of different tenure arrangements wherever necessary than the given single choice?”⁷⁵ It is said that,

...there is no basic reason to limit the tenure arrangements to one single choice. Given the diverse socio-economic and cultural conditions of the country, it will be more important to exploit the advantages and to have experience in the pros and cons of a combination of private, communal, and state tenure systems for different purposes and different tracts of land.⁷⁶

Finally, what is worrisome is that this one factor perspective behind the privatization view is based on an assumed rather than ascertained knowledge of the preference of people most immediately affected by a possible change in land tenure reform since this approach assumes that it knows for certain the type of land tenure peasants want most. This presumed ‘knowledge’ about the preferences of the public is gained without documenting the manner in which peasants

⁷⁴ On the diversity of pre-revolutionary Ethiopian land tenure rules and practices, Margery Perham said: “...the situation was at least as intricate as in early medieval England but lacked any Dooms Day Book to give a clear point of departure and none of the excessive ravel-lings of generations of scholars to help the inquiries...” Margery Perham, as cited in Molla Mengistu (2009), “The Ethiopian Urban Landholding System: An Assessment of the Governing Legal Regime” in *Land Law and Policy in Ethiopia since 1991: Changes and Continuities*, (Muradu Abdo, ed.) Addis Ababa University, Faculty of Law) p. 148. Perham’s apt observation about the diversity of land tenure forms operating on the ground several decades back still hold true. Dawud has recently shown, in addition to the most common share cropping arrangements, unwritten “practice is emerging of elderly people employing a ‘caretaker’ who will sharecrop their plot on the promise that they will inherit the land in future.” Dawud Ali (2012), “Rural Land Registration and Certification in Amhara Region, Reliability and Validity of Certificates in the Eye of the Courts” (LL.M Thesis, Bahir Dar University, School of Law, unpublished, on file with the author) p. 40.

Abebe has established the existence of an intricate system of informal land tenure rules which permit ‘land rents’ in rural Ethiopia contrary to official pronouncements. Abebe Haile Gabriel (1999), “Thriving Informal Land Markets and Patterns of Entitlement Redistribution among Peasant Households” in *Proceedings of the 9th Annual Conference of the Ethiopian Economy*, (Alemu Mekonnen and Dejene Aredo (eds.), Addis Ababa, pp.67-86. Abebe has shown that these informal land markets have redistributive effect in the sense that they allocate resources away from agriculture and more in favor of rich farmers and argues that without such land transactions the rural poor would have fared worse. It is also said, “Land tenure systems are highly complex, national and local situations are made up of a multiplicity of overlapping (and at times contradictory) rules, laws, customs, traditions, perceptions and regulations that determine how people use, control and transfer land.” International Fund for Agricultural Development (2008), “Improving Access to Land and Tenure Security, Enabling Poor Rural People to overcome Poverty”, (Palombi e Lanci, Rome), p. 27. Despite the complex tenure systems on the ground, as shown in Chapter 2, the imperial government adopted a monolithic land tenure system throughout the country.

⁷⁵ Yigremew Adal, note 58.

⁷⁶ *Id.*, p. 15.

have perceived and adapted to decades of top down approaches to land tenure reforms. It has not convincingly made efforts to find out the views and opinions of peasants and pastoralists about the appropriate mode of land tenure system.⁷⁷ In this regard, Tekie Alemu rightly asserts that: “it is seldom, if ever, that farmers are actually asked how they feel about these issues, controversies and the policy options, all of which are entertained and created by outsiders [i.e., the elites] who are usually out of touch with the farmers’ realities.”⁷⁸ Tekie also says most common normative statements regarding land privatization in Ethiopia... begin or end by asserting that “farmers must have rights to sell their lands.”⁷⁹ He says this argument is rarely presented as,

We must have the right to buy the farmers out. Irrespective of the argument or option forwarded, the policy option is presented as if it is nothing but positive to the farmers, while in reality they are probably seeking for their own benefits. The under text of which contains an elitist view, i.e., we know better, we can identify your problems, your solutions, and even your controversies!⁸⁰

Tekie is one sided in mounting an attack against the elites who are on the privatization side of the land tenure debate. I think, equally, there is a reason to critique those in people’s ownership side of it on this very point as they to say to the rural mass that,

You cannot be permitted to sell your land via the market process since it is us who can tell whether a given type of land use would lead to a more beneficial result than the market mechanism. And it is us who shall decide at the center when and to what extent you can sell your land use rights...

It may be sound to summarize this sub-section, using the words of the late Patrick McAuslan who, after reviewing decades of land law reform of seven sub-Saharan African countries, cautions us not to be a reductionist because land reform involves,

very wide mixture of inputs [and] ... there has been in all cases a mixture of motives, ideas, beliefs, hopes and expectations on the part of public officials, politicians and others when they have embarked on a land law reform exercise and by no means all of this variety of concerns focus on tenure issues. It would be naïve to suppose that politicians and public officials were not highly conscious of issues of power – their power – with respect to any reforms that might reduce their power...but it would be correspondingly wrong to assume that that was their only concern. I think order, regularity and predictability – archetypical concerns of the bureaucrat ... – have also been very important in land law reform and it is these concerns as much as any others that have determined the final shape and content of the laws and have limited the enthusiasm or commitment by the centre to the devolution of power to small scale local authorities and communities...Nor can we ignore the influence of the donors...Nor should the UN agencies be left out of this catalogue of external inputs...These agencies have their own policies

⁷⁷ *Id.*, p. 10 and Siegfried Pausewang (2000), “The Need for a Third Alternative: The Amputated Debate on Land Tenure in Ethiopia”, <www.irsa-world.org/prior/XI/papers/4-8pdf> (accessed July 31, 2014).

⁷⁸ Tekie Alemu, note 4, p. 89; see also Hussien Jemma (2003), “Defence of Status Quo versus the Quest for Second Round Reform: Some Remarks on Current Debate over Rural Land Tenure Issues in Ethiopia”, in *Topics in Contemporary Political Development in Ethiopia*, (Department of Political Science, Addis Ababa University).

⁷⁹ Tekie Alemu note 4.

⁸⁰ *Id.*, p. 89.

and approaches to land law reform and these form part of the dialogue with states when land law reform is being undertaken.⁸¹

C. The associative ownership perspective

Some scholars have articulated and subscribed to a land tenure approach alternative to the two perspectives discussed above. This is called associative (devolutionary) ownership perspective and is less prominent because, unlike the two views examined above; this has neither the backing of political parties nor international institutions.⁸² The associative ownership view advocates for a system of associate ownership of land in which communities own their land while members get secure user rights including community supervised land transfers to outsiders including the state.⁸³ The strategy of the associative view is to secure land tenure by restraining the power of state authorities over land through the tool of decentralized decision making.

Siegfried Pausewang critiques the application of people's ownership of land pointing out that local government functionaries threaten peasants with the loss of their lands where such peasants demand government accountability.⁸⁴ Pausewang argues under the present people's ownership perspective peasants are over-exploited, controlled and left insecure of their possessions by local despots as was the case under the Derg and the Imperial regimes.⁸⁵ He yet supports the present land tenure arrangement conditionally and as a second best option. He says the program of land privatization should be avoided "until industries offer sufficient jobs for the redundant peasants...Until then, at least, the present system of collective ownership and a right of access to land for peasants should be preserved."⁸⁶ His support of the status quo as a second best option also lies in past peasant traumas.⁸⁷ Pausewang, therefore, thinks that the majority of

⁸¹ Patrick McAuslan (2012), "50 Years of Land Law Change in Eastern Africa: Transformative or Traditional? A Preliminary Assessment", (referred to the unpublished version, on file with the author) pp. 131-132.

⁸² Hoben calls this view devolutionary. See, Allan Hoben, (2000), "Ethiopian Rural Land Tenure Policy Revisited." Paper Presented at the Symposium for Reviewing Ethiopia's Economic Performance 1991-1999. Organised by Inter Africa Group. Addis Ababa. April 26-29.

⁸³ Yigremew Adal, note 58, p. 10; see also Catherine Boone (2007), "Property and Constitutional Order: Land Tenure Reform and the Future of the African State", *African Affairs*, 106/425 for three possible models of land tenure in Africa; in particular, her communal ownership typology is similar to the associative ownership model being discussed here.

⁸⁴ Siegfried Pausewang (2009), "Ethiopia: A Political View From Below, South African", *Journal of International Affairs*, 16:1.

⁸⁵ *Ibid.* See also, Siegfried Pausewang (1988), "Participation in Social Research in Rural Ethiopia", *The Journal of Modern African Studies*, 26:2.

⁸⁶ Siegfried Pausewang note 85, p. 76.

⁸⁷ *Ibid.*

the peasant population of Ethiopia would support the principles of land rights encapsulated in Article 40 of the Constitution.⁸⁸

Pausewang is nevertheless ready to accept these constitutionally guaranteed land rights with one fundamental proviso as a lesser evil than privatization, that is, if democracy prevails in the country, which means making the provisions of the Constitution a reality; or in the rural context it means a system of government which takes the peasants' views into account by bringing the silent rural actors to the center stage in politics.⁸⁹ However, he thinks that if the real intent is to hold the state answerable to the people, there is another land tenure form namely associative ownership of land with robust user rights to individual members. For Pausewang associative ownership will be accepted by the majority of peasants because it is grounded in rural cultural understanding of land relations and it guarantees that:

...Land remains common property (not state property)... Distribution of access to arable land remains in local hands... Collective responsibility of distribution and social security is maintained... Individual rights to a share in the community's land are preserved... Individual control over the fruits of one's work (including permanent improvements on the land, trees, buildings, etc) is not restricted... There is some limitation of contributions, including taxes, to a level which allows the individual farmer a fair return for additional work.⁹⁰

Pointing out that he is merely providing points for discussion but not a blue print for a new land system for Ethiopia, Dessalegn, apparently another proponent of the associative ownership point of view, on his part, outlines the crux of the model in a fashion pretty much similar to Pausewang's approach but with greater elaboration.⁹¹ The associative ownership path

⁸⁸ *Id.*, p. 81.

⁸⁹ Siegfried Pausewang (1992), "Economic Reconstruction and the Experience of Ethiopian Peasant Communities" in *Two Papers Presented at the Symposium on the Ethiopian Economy, with a Postscript* (Fantu Cheru and Siegfried Pausewang, eds.) (Bergen, Chr. Michelsen Institute).

⁹⁰ Siegfried Pausewang (1990), "'Meret Le Arrashu' Land Tenure and Access to Land: A Socio-historical Overview", in *Ethiopia: Options for Rural Development* (London: Z Books Ltd), p. 47.

⁹¹ First, there is a need to hold "a series of public debates on the issue involving the main stakeholders and a wide spectrum of public opinion." Dessalegn Rahmato, Revisiting note 59, p. 20. Second, this call for a wider public debate is anchored on the assumption that "land is the fundamental basis of the livelihood of the farming population. Land...belongs, directly and without ifs and buts, to the people who use it." *Ibid.* Third, "a sound land policy should provide secure tenure to all landholders at all times...Secure rights means that landholders have the right to dispose of their land in any way they choose." *Ibid.* Fourth, "There must be a recognized institution (a court of law or a special land tribunal, for example) which is responsible for ensuring rights of land and adjudicating conflicts over land when they arise. Such an institution must be politically independent and must have a strong presence in the rural areas." *Ibid.*

Fifth, associative ownership enables,

the rural population to move out of agriculture and seek alternative employment... [because] associative ownership combines private rights with community responsibilities... Under this system, the peasants have secure and individual rights to their holdings but the community, in the form of the peasant association, for example, protects this right if it is threatened by outsiders. The community acts as the guarantor of rights of individual ownership. *Ibid.*

is sound in putting an accent on the question of who is to have effective control over land rather than mere ownership; land tenure security can materialize for the rural mass when they are firmly in control of decision making power over land matters. It is also right in proposing that land tenure model shall be based on a nation`s experience instead of basing it on what Dessalegn calls ‘systems perspective.’⁹² The associative ownership position is also meritorious in giving room for diverse land tenure systems in multi-cultural and multi-agro-ecological countries such as Ethiopia. It distances itself from one factor theories of land tenure. And finally, the associative ownership model`s vision of development from below is a proposal with immense potential.

The associative ownership path is not however immune from criticisms. First, an inexplicable point about this model as articulated by Dessalegn is the claim that the land question in Ethiopia has been politicized and there is a need to de-politicize it when he writes: “Land tenure issues must not be politicized...There will be no secure ownership until the politicization of land is brought to an end.”⁹³ To him, perhaps his associative model is a road towards de-linking the land question from politics. But can and should his model lead to the de-politicization of the land question? But does not the associative ownership perspective entail politicization of the land question by putting land matters in the hands of rightful stakeholders-rural producers? Under the associative ownership scheme the state is forced to deal with a multitude of rural communities in trying to get land for resettlement, investment and public infrastructure. Under this model the state is dethroned as the only decision maker on land matters but its power over land cannot be avoided completely; the state`s power is redefined, for example, in giving it

Sixth, associative ownership can,

...promote the autonomy of the landholder and the empowerment of farming communities...[by defending] rights to land...from encroachments and violations in order to be or remain secure. An autonomous peasantry is the best guarantee that such rights will be vigorously defended when the occasion calls for it. Autonomy involves independence from the influence or control of the state and other external forces, and the ability to pursue one's interests through one's own economic, social and political institutions. *Ibid.*

Seventh, his associative ownership model emphasizes,

improvements in labour productivity which cannot however be achieved with micro-holdings that are today the basic feature of peasant agriculture. The enlargement of farm sizes is necessary, but this will mean some significant changes in the social profile of the rural society...Today, rural society is by and large socially undifferentiated...But I believe rural differentiation should be welcomed, and we should encourage the better-off elements of the population to improve their status. The change from "peasant" to "farmer" is I believe essential, and the pioneers in this change will be the richer peasantry. So, let there be "kulaks"! I am not convinced that we will have to wait for the urban bourgeoisie to rescue the rural economy. The real force behind sustained improvements in livelihoods will come from those who were peasants once but managed to change themselves into farmers. *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

regulatory power over alienation and discriminatory customary land tenure rules and practices within a community. All this involves making a choice about a central resource-land and this is all about politics.

Second, the view in question has not thrown light on some crucial questions such as factors that may lead to legitimate state intervention in a community mandate over land matters, articulation of the meaning of a community, demarcation of village lands as opposed to state land and the power of villages over communal land, land and gender relations, the mode of curbing land accumulation by richer peasants, the place of customary land tenures and institutions and how to tackle long standing inertia of centralized land administration. Issa Shyji`s model sheds light on these issues as the associative ownership perspective discussed here is strikingly similar to his model developed in the Tanzanian context.⁹⁴

Third, one of the main proponents of this perspective, Dessalegn, appears to hold a contradictory position or at best shows ambivalence between associate ownership and privatization perspectives. In one of his latest works, Dessalegn argues “... the agency of the men and women who are responsible for cultivating the land and managing the resources associated with it, and the institutions that have helped or hindered them in their endeavor, must be placed at the center of the agrarian debate.”⁹⁵ This agency concept for him is a broad one encompassing the entire range of political and economic relationships Ethiopian peasants have with the state.⁹⁶ As applied to rural land, for Dessalegn, human agency, which resembles Sen`s approach, means, “...the right to the land without any outside imposition, the right to work [the land] freely and for oneself not for others...the right to dispose of the product from the land to benefit the producers themselves...”⁹⁷ He continues to say “Ethiopian peasants have not enjoyed this kind of freedom, and I believe this has been responsible to a large extent for the failure of agrarian progress in this country.”⁹⁸ He says, citing Fernand Braudel, one of the mysteries of Europe`s progress has been the ‘suborn growth’ of freedoms.⁹⁹ During the Derg regime “agrarian change has removed some of the forces of peasant domination, but on the other hand, it has enhanced the power of the state over the peasant and inhibited the agency of the rural

⁹⁴ *Ibid.*

⁹⁵ *Id.*, p. 21.

⁹⁶ *Ibid.*

⁹⁷ *Id.*, p. 22.

⁹⁸ *Id.*, p. 22.

⁹⁹ *Ibid.*

producers.’’¹⁰⁰ He also asserts ‘‘The central flaw of the land reform of 1975...was its failure to provide peasant households with individual ownership and title deeds. All other weaknesses of the reform...arose from this basic mistake.’’¹⁰¹ Therefore, it is unclear if he opts for land private ownership or just secure user rights over land.

Table 4: Summary of key aspects of the perspectives on land

Perspective	Major argument (s)
Revisionist	Recommends for removal of restrictions on land use rights within the framework of people`s ownership of land especially by permitting alienation and mortgage; and adoption of detailed land law to curb undue official discretion
Privatization	Prescribes for full private ownership of land with a right of alienation
Associative ownership	Allows members of a rural village use rights including alienation within the framework of community ownership of land

Source: own analysis

D. Reiteration

The revisionist, the privatization and the associate ownership perspectives rest on the untenable assumption that the land for all principle still underlies the existing people`s ownership of land. Therefore, they fail to spot and thus explain the nature and mechanisms of the ongoing state-driven land alienation, which will be explained in Chapters 4-8. Besides, the three perspectives focus rather on the security of private landholdings of small rural producers to the neglect of the legal status of the communal landholdings both in sedentary and pastoral Ethiopia, which is discussed in Chapters 7 and 8. They also implicitly assume that land issues in the country are exclusively determined nationally and thereby failing to consider the role of global actors. The international institutions, as discussed in the last chapter, like the three perspectives, advocate for land commercialization and support expansion of corporate farming in Ethiopia and are able to put their prints on the land law of the country, though to a limited degree. And the perspectives glorify transferability of land rights, though in different ways, to the neglect of land relations in the history of the country which experienced gross injustice under private ownership of land.

Further, the privatization view reveals the elites` stubborn persistence to impose a single land tenure system on the whole country in the name of enhancing agricultural productivity,

¹⁰⁰ *Id.*, p. 23.

¹⁰¹ Dessalegn Rahmato, Land, Peasants note 55, p. 294.

economic development and modernization of land tenure systems on the ground. (However, it should be noted that the associate ownership perspective is different in this regard as it provides the potential to accommodate land tenure diversity). This prescription for a unitary approach is made based on inconclusive evidence and judgment about what the elites think the people want because Ethiopia manifests three major kinds of agricultural systems, each entailing a distinct land tenure system. A sedentary farming system prevails in highland parts that support about two third of the Ethiopian populace. The prevalent tenure practice there is private landholding backed by communal landholdings. In the pastoral holdings, which sustain about twelve percent of the Ethiopian population and covers about 64 percent of Ethiopia`s total land mass, the dominant landholding is clan-based communal holdings used for pasturing. The third land tenure form is the system of shifting cultivation prevalent in the south western segment of the country. There are also nuanced land tenure systems within each of the three agricultural systems. Such diverse land tenures emanate from government tenure rules, proximity to towns and migration of people from other agricultural systems and agro-ecological diversity. This demonstrates that the reality on the ground is characterized by multiple tenure rules and tenure conceptions. Even if this obsession with land tenure uniformity has come under different garbs, as Chapters 2 and 3 show, it has been the case throughout the country`s modern history. These two subsequent chapters further suggest that land alienation, as a tendency supported by the State, is rooted in Ethiopia`s history.

* * *

Feudal Appropriations of Land and Its Fruits, 1942-1974

This chapter documents the historical antecedent of the present state-centered land dispossessions by emphasizing Ethiopia's feudal land tenure system that prevailed in the 20th century.¹ As this chapter and the next one demonstrate, there is a close affinity between current and past behaviors of regimes in Ethiopia as land taker despite the fact that there are distinctions in terms of the composition of the players, forms of alienation and of the underlying aim each regime strived to advance. The conspicuous cementing factors in past and present land alienation exercises are: the role of the state as a driver in the taking of land and/or the fruits thereof and attendant effects in terms of the impoverishment of the rural people, of land rights insecurity and of ultimately hampering the people to improve their livelihood asset - land. Thus, land law and policy in today's Ethiopia falls under the influence of the dead hands of the past because it is unable to delink itself decisively from past policies and practices.

The conquest of the southern populations by the Emperor Menelik II (a king in highland part of Ethiopia aka Abyssinia) between late 19th and early 20th centuries, as indicated in the Introduction, Chapters 6 and 7, resulted in the incorporation of a vast territory and diverse populations into the present day Ethiopia. The conquest was accompanied by imposition of feudal land tenure which later began to metamorphose into private ownership in favor of elites that took part in the incorporation process. The imposed land tenure was characterized by arbitrary taxation, forcible personal labor services, compulsory labor for public works, marginalization of customary land tenures, exploitative agricultural tenancy and a dramatic rise in evictions following introduction of commercial agriculture in 1960s and early 1970s.

The outstanding land question of the imperial period was hence how to make the rural populace full owners of the fruits of their land without the preying eyes of state affiliated forces, abrogate uncompensated compulsory labor services, rationalize land taxes and curb threat for

¹ The year 1942 is chosen here as a cut-off point because the Emperor Haile Sellassie I more than his predecessors sought to unify state institutions including land tenure system to pursue his drive for centralization with vigour as of 1942, and 1974 is taken as a watershed in the land tenure history of the country because it marked the abrogation of land tenure systems of the imperial regime and the start of a new era expressed in public ownership of land. The chapter nevertheless goes beyond the 20th century to explain key feudal tenure systems.

land dispossession by feudal and the incipient commercial elites. However, the landed class was resistant to any form of land tenure reform that would undermine their interests and the imperial regime was reluctant to push for beneficial land reform for fear of undermining its political base. The imperial regime, nevertheless, carried out land tenure reform to enhance centralization and modernization. As of 1942, the regime instituted a regular salaried national army and bureaucracy and put in place a national tax system. These measures robbed the provincial nobilities of their power. This was followed by transferring the provincial nobilities from province to province under the emperor's discretionary practice of promotion-demotion, which was given sanctity in the 1931 and 1955 constitutions. The practice of moving the northern nobilities away from their traditional power base did not lead to loss of their land based tribute privileges. It instead entailed consumption of the tribute away from the villages, mainly in favor of towns, which worsened the conditions of the rural population in the northern parts of the country.

The Imperial regime adopted modern laws meant to relegate both the diverse customary land tenure systems and those state land tenure systems imposed on the southern territories in favor of private ownership. In particular, in recompense for the expropriation of the military, legal and fiscal power of the provincial nobilities, the Emperor Haile Sellassie I tried to give them secure land rights in the form of private ownership over land especially in the southern provinces. And the search for financial and technical support for the centralization and modernization projects increasingly tied the country to the international economy. The international linkage manifested itself in a deficit in the country's balance of foreign trade, which in turn led to increasing extractive government policies against the rural population.

In 1960s and early 1970s, there arose elite contradiction within the imperial regime amongst the feudal nobility known as *mesafent* ('men of blood') and the new bureaucratic and capitalist elite known as *mequanent* ('men of merit'). The *mesafent* sought to maintain the feudal status quo whereas the *mequanent* pushed for liberal reform including secure private property rights. These two power elites faced the idealism of university students who advocated political and social reforms including land to the tiller.² As explained in the next chapter, inner political

² This radical group was primarily based in Haile Sellassie I University who wanted to see radical reforms including redistributive land reform.

fighting, combined with other factors, triggered a revolution leading, *inter alia*, to the nationalization of land as expressed in the 1975 Rural Lands Proclamation.

The first section lists and describes the main land tenure forms which prevailed during the Imperial period, namely, customary land tenures, *gult* (feudal land tenure) and private land ownership. The next section deals with the failed attempt to introduce even a mild land tenure reform let alone a beneficial land reform together with the reasons for such failure. The overall emphasis of the chapter is the dispossessing effects of the changing feudal land tenure system.

A. Land tenure forms

The following main land tenure forms existed prior to the 1974 Ethiopian revolution.³

i. Customary land tenures

In the North, *rist* prevailed. *Rist* generally means the totality of a person's patrimony that would pass on to his descendants.⁴ Specifically, *rist* refers to a plot of land a person called *aqegne abat* (founding father) originally occupied and developed into farmland and which he would pass onto descendants. In other words, the founding father appeared to have obtained ownership over the original land in the Lockean way: by unilaterally occupying land found in its natural condition and by annexing his labor with it and these acts of control and of investment resulting in his acquisition of full ownership over the land. Then the founding father would leave the land to his descendants to be owned by them all in common, but to be cultivated individually; thus, an individual could claim *rist* by tracing his descent to the founding father, and such claim did not know of prescription.⁵ Once a member of a lineage group's claim led to actual access to a piece of his ancestor's land, the *rist* landholder would be entitled to cultivate it in his life time but he could not transfer it to outsiders because the principle of *rist* would preclude him from doing so. This led to the assumption that *rist* land would remain in the family circle forever. Thus, local nuances notwithstanding,⁶ essentially, *rist* was a hereditarily acquired relatively

³ These broad classifications because customary land tenures survived legal modernization attempts and diversity also characterized each of the land tenure forms – there were nuanced differences within the *rist* system, as there was diversity within the land tenure systems which prevailed in the south – land tenures of sedentary, pastoral and shifting populations.

⁴ Donald Crummey (2000), *Land and Society in the Christian Kingdom of Ethiopia: From Thirteen to the Twentieth Century* (Urbana: University of Illinois Press) p. 9.

⁵ Molla Mengistu (2008), “Rural Land Tenure System in Ethiopia: Legal Rights and Its Implementation in Amhara National Regional State”, *Eth. J. L.*, 22:2, pp. 156-9.

⁶ *Rist* land had local variations. One such local variant of *rist* land was *desa*, which prevailed in Tigray province.

absolute usufruct right over a piece of farmland.⁷ *Rist* recognized the principle of equality of heirs, regardless of their sex, but *rist* in the north was not egalitarian through and through since it did not recognize, for instance of, the land rights of Muslims and of occupational minorities such as potters and tanners.⁸

In the South, following conquest, the state parceled out farmlands held by the indigenous peoples to those who participated in its military campaigns, *balabat* (co-opted local chiefs) and the Ethiopian Orthodox Church in the form of *gult* and retained a sizeable part of the land for itself in the name of state domain.⁹ By the 1950s, for instance, the emperor had given 106,304 *gasha* of land (1 *gasha* equals 40 hectares) to royal families, the crown land and few top level land lords accumulated 28,848.5 *gasha* rural land and 3,538,605 *gasha* of urban land by few landlords.¹⁰ In the south, the introduction of the *gult* system led to the tacit repeal of customary land tenures to some extent and in some other cases it used them through *balabat* in a fashion pretty much similar to the colonial powers treated customary land tenures elsewhere in Africa. At the time of the introduction of the *gult* system to the south in 19th and 20th centuries, the sedentary indigenous people of the south practiced communal tenure system quite similar to *rist* system described above.¹¹ Andargachew Tiruneh says,¹²

Very little is known about the land tenure system that existed in the southern half of Ethiopia before the end of the 19th century. It would not be surprising if there were parallels between the systems of the north and south as there had been a good deal of interaction between the peoples of the two regions.

As a matter of fact, the southern communities` traditional legal institutions generally and their land tenure systems particularly continued to operate even after the introduction of the *gult*

⁷ Harrison Dunning (1970), "Land Reform in Ethiopia: A Case Study in Non-Development", *UCLA L. R.*, 18:2, p. 274.

⁸ Bereket Kebede (2002), "Land Tenure and Common Pool Resources in Rural Ethiopia: A Study Based on Fifteen Sites" (Oxford: Blackwell Publishers) p. 128.

⁹ For differing interpretations of the history of Menelik's southward expansion, see Merera Gudina (2003), *Ethiopia: Competing Ethnic Nationalities and the Quest for Democracy, 1960-2000* (the Netherlands: Shaker Publishing) and Kjetil Tronovoll (2009), *War & the Politics of Identity in Ethiopia* (UK: Long House Publishing Service) pp. 24-26.

¹⁰ H.W. Michael (1981), "Zemecha: "An Attempt at Rural Transformation in Ethiopia" in *Approaches to Rural Transformation in Eastern Africa* (Okoth-Ogendo, ed.) (Book Wise Limited), p. 79-81.

¹¹ Shiferaw Bekele (ed.) (1995), *The Evolution of Land Tenure in the Imperial Era: An Economic History of Modern Ethiopia Vol. I: The Imperial Era, 1941-74* (Dakar The CODESRIA Book Series) p. 72-142. See also Bahru Zewde (2008), "The Burden of History: The Constraints and Challenges of the Democratization Process in Ethiopia" in *Society, State and History: Selected Essays* (hereafter *Society, State and History*) (Addis Ababa: Addis Ababa University Press) p. 335.

¹² Andargachew Tiruneh (2003), "The Peasant Revolution That Never Was", *Fortune*, 3:47, p. 12; Shiferaw Bekele, note 11.

system. The transplantation of a modified form of the *gult* system to the south did not lead to the elimination of preexisting customary land tenures. Pragmatic considerations necessitated *de facto* tolerance on the part of the state of customary practices including the land tenures systems of the people there. The state did not have the requisite infrastructure and administrative reach to impose itself on the people in the south. People did not have reasons to detach themselves from their long standing customary institutions. Norman Singer states,

The central government did nothing to prevent the traditional systems of law from operating. An interference with that operation could have meant a complete disruption of the institution most closely valued by members of traditional society and an impossible workload for the governors... The government would not appoint a full complement of judges to adjudicate in the provinces... The core of provincial governors was burdensome enough to administer as no system of communications existed. The customary system remained unchanged. The Ministry of Interior performed legal functions required for the settlers in the south who went into the newly acquired territories, while the local population merely adjusted themselves to their new neighbors and continued with their own pattern of existence.¹³

What is said in general terms in this quote should be true for land tenure. Bahru Zewde also argues that even if there was an interference with customary institutions after the incorporation of the southern parts of Ethiopia into Menelik's empire, customary institutions remained to be of vital force for the local population and that this was possible because the emperor's rule had been, as a matter of fact, "more of a decentralized monarchy rather than a centralized one"¹⁴ and that his "imperial authority was exercised through the annual collection of tributes rather than by means of direct intervention in local administration."¹⁵ The customary land tenures in the South were no exception. In this vein, Ann Lambton tells us about the continued survival of customary land tenures in the post imperial incorporation of the south including the reasons for the survival of such tenures.

These feudal tenures were superimposed on older titles in disregard of existing land rights; but such preexisting land rights such as communal tenures of great variety, continued to exist...In spite of legal reforms, the old tenures linger on. Some of them, notably the collective tenures, no doubt, appear anachronistic to the western-trained economist. But it is important to remember that they have been preserved in conditions of geographical isolation as forms of group security-a security which may have little in common with security as understood by economists, but which has meaning for the local people.¹⁶

¹³ Norman Singer (1971-1972), "The Ethiopian Civil Code and the Recognition of Customary Law", *Hous. L. Rev.*, vol. 9, pp. 466-467.

¹⁴ Bahru Zewde (2002), "Systems of Local Governance among the *Gurage*: The *Yajoka Qicha* and the *Gordanna Sera*" in *Ethiopia: the Challenges of Democracy from Below*, (Uppsala: Nordiska Afrikainstitutet) p.18.

¹⁵ *Id.*, p. 10.

¹⁶ Ann Lambton (1971), "An Approach to Land Reform", *Bulletin of the School of Oriental and African Studies*, 34:2, pp. 224 & 227); see also Heinrich Scholler and Paul Brietzke (1976), *Ethiopia: Revolution, Law and Politics* (Munich, Weltforum Verlag) p. 77. On the question whether the Imperial regime was a feudal system, see Frederick C. Gamst (1988), "Feudalism in Abyssinia? Further Commentary on the On-going Controversy", in *Proceedings of the Ninth International Congress of Ethiopian Studies* (Moscow, 26-29 August 1986, USSR

ii. *Gult*

Nature of gult: The *gult* system had its roots in the northern part of Ethiopia, serving in that part of the country as a “material cornerstone of the state” for centuries.¹⁷ Emperor Menelik II extended *gult* to the southern territories in late 19th century. Emperor Haile Sellasie I sought to abolish *gult* and thus the political foundation of the *gult* class in 1920s and early 1930s. Between 1942 and 1974, Haile Sellasie I intensified his pre-Italian invasion reform measures to end the *gult* system.

The term *gult* literally means stationing and broadly speaking *gult* can be taken as assignment of fief.¹⁸ *Gult* showed variations from place to place, time to time and beneficiary to beneficiary. *Gult* could on occasions be created over markets and grazing lands, springs, though commonly established over farmland.¹⁹ The beneficiary of *gult* was called *gultanna* while the person whose land was encumbered with *gult* was called *gabar*. *Gabar* in the northern Ethiopia reflected the land cultivator’s obligation to pay tribute to the state and there *gabar* hardly carried “a sense of social subordination and inferiority of status.”²⁰ On the contrary, in the south, *gabar* connoted superior-inferior “social relationship established by the state between the immigrants and members of the local society.”²¹ In contrast to the northern *gabar*, the *gabar* in the south was culturally different from his landlord.²²

Even if some treat the *gult* system as a form of administrative power granted by the king to *gult* holders,²³ there is good reason to regard *gult* as property right over land because the *gult* holder enjoyed rights over specific parcels of land individually, he could frequently transfer his right for free or consideration, and had the opportunity to accumulate *gult* land through various mechanisms.²⁴ Furthermore, a *gult* holder first obtained *fructus* right over the *gabar* land as well as labor obligations, he could later get title over his *gabar*’s land, which either led to the

Academy of Sciences Africa Institute), pp. 70ff, where it is argued that the system qualified for a feudal system given its decentralized and de-monetized features.

¹⁷ Donald Crummey, note 4 p. 258.

¹⁸ *Id.*, p. 10.

¹⁹ *Id.*, p. 257.

²⁰ *Id.*, p. 223.

²¹ *Ibid.*

²² John Markakis (1989), “Nationalities and the State in Ethiopia”, *Third World Quarterly*, 11:4, p. 119.

²³ Allan Hoben (1973), *Land Tenure among the Amhara of Ethiopia: the Dynamics of Cognate Descent* (Chicago: Chicago University Press); Richard Pankhurst, State and Land *infra* note 28, p. 113.

²⁴ Donald Crummey, note 4 pp. 8-9.

conversion of the *gabar* to a tenant or his outright eviction. Thus, *gult* was a type of land tenure which had gradually eaten away the land tenure over which it was superimposed. This melting away of the *gabar*'s original land rights resulted in a change in status of the two parties: the *gult* holder became land owner while the *gabar* mutated into a tenant or a farm worker or even an evictee.

Gult in the south: *Gult* was dominant in the south which encompassed the vast eastern, southern and western parts of the Ethiopian empire.²⁵ The extension of *gult* to these parts of Ethiopia had to do with the country's attempt to forge its current territorial shape in the second half of the 19th century when Emperor Menelik II incorporated this diverse people and vast territory.²⁶ The economic driver for this conquest was a search for resources such as fertile arable land, gold, slaves, ivory and later agricultural products chiefly coffee destined for domestic consumption by the dominant elites and international market while the political driver was the emperor's thirst for territorial expansion and consolidation of his power.²⁷

The conquest was followed by redistribution of land to a range of beneficiaries. The underlying theory behind such redefinition of land rights was that "the king was ultimate owner of all the land in the country and from him stemmed the right to occupy, own, and use it."²⁸

²⁵ *Id.*, p. 223.

²⁶ Merera Gudina note 9, pp. 93-116. See also Donald Crummey, Land and Society *supra* note 4. Linguistically, the incorporated southern peoples consisted of Semitic, Cushitic and Omotic language speakers. Their life styles included hunting and gathering, cattle and camel herding, intensive cultivation of *Enset* (false banana) and the plow cultivation of cereals and pulses. Religiously, the majority of eastern people adhered to Islam whereas people in the south and southwest followed traditional religion along with some traces of Christianity. In their political arrangements, they included those who followed democratic governance and monarchies. Variations were witnessed in the manner in which they were incorporated into Menelik's territory: in some cases, maneuvers short of war led to retention of local autonomy by the people with an arrangement to pay a fixed annual tribute to the rulers in Addis Ababa. Richard Pankrust, 28 pp135ff. But the "majority of the southern and eastern peoples were first incorporated into the Ethiopian empire by means of the *gultanna-gabbar* relationship." Kjetil Tronvoll, note 9, pp. 25 & 26.

And that was done following fierce battles. The *gultanna* class spoke language, professed religious faith and belonged generally to a culture different from the *gabar* class in the south. The *gult* holding class implanted its own culture in the southern populations. The *gultanna-gabbar* relationship in the south thus led to triple dominations: economic, political and cultural. This difference in cultural background of the *gultanna* and *gabar* accentuated the exploitative economic relationship.

²⁷ Hussein Jemma (2004), "The Politics of Land Tenure in Ethiopian History: Experience from the South" (hereafter The Politics of Land), *Paper Prepared for XI World Congress of Rural Sociology*, Trondheim, Norway) p. 4; see also John Markakis, note 22, pp. 118-1130.

²⁸ Donald Crummey, note 4, p. 11; see also Richard Pankrust (1966), *State and Land in Ethiopian History* (Oxford: Oxford University Press) pp. 106-107. Pankrust argues that "the sovereign's traditional ownership of the land

Under this doctrine, upon conquest, the conquered territory got merged with the king's land domain and thus arose his right to apportion such land among the participants in the conquests in any form he deemed fit such as *gult*. The beneficiaries included the king's entourage in the military conquests (i.e., the nobility, the provincial governors, the Church, the *balabat*) and the losers being the indigenous lay people turned into *gabars*. In the south, land redistribution in the form of *gult* had been a continuous state of affairs; as people kept on flowing to the South either to serve in the state administration or to settle therein, the state also kept on allocating land to them.²⁹

The *gabar* had the liberty to work on the land, choose what to grow and when to grow it. He had the right to transfer his land rights to his heirs and other persons of his liking according to the dictates of his own custom. The *gult*-holder did not intervene in the decisions of the *gabar* in relation to the land so long as the *gabar*'s dealing with his land would not adversely affect the collection of tributes.³⁰ The *gabar* was obliged to support his lord with a complete range of services, including several days of agricultural labor per week, billeting, regular payments of agricultural produce and customary gifts to his lord. The labor services were exacted not just from the *gabar* but from all able members of the *gabar*'s household. His household was subject to *gult* holder's conscription. The *gabar* was also responsible for effecting constellations of payments to a range of local functionaries such as tribute collectors, judges and local militias put in place by the *gult* holder, especially by the nobility. The *gabar* was not allowed to leave his land for good.³¹

Richard Pankhurst summed up the burdens of the *gabar* under the *gult* system as: "legion and heavily weighed on him."³² The *gabar* had to sell his produce cheaply to intermediaries who would sell him goods at exorbitant price putting him at a disadvantageous position both as seller and buyer.³³ The *gult* holder did not work on the land nor did he invest the tributes he collected from the *gabar* in agriculture. He consumed the vast bulk of such tributes, passing some portion

was a highly theoretical affair" given the prevalence of the communal ownership of land governed by the custom of the people.

²⁹ Merera Gudina, note 9.

³⁰ Donald Crummey, note 4, p. 223

³¹ Richard Pankhurst, note 28, p.140.

³² *Id.*, p. 211.

³³ Fasil Kiros, *The Subsistence Crisis* *infra* note 64, p. 63.

thereof on to the state, and investing the rest in the lucrative business of building rental houses in towns.³⁴

The forcible transplantation of the *gult* system into the south brought about both winners and losers.³⁵ The state won in extending its machinery to the southern peoples through the instrumentality of the *gult* holding class, which also emerged victorious in establishing its claim over fertile land, produce thereon and pastoral products. The landlords used their dominance in the parliament in the 1960s to entrench their landed rights in the Civil Code in the form of full private ownership free from the *gabar*'s claim over the land as well as in the form of agricultural tenancy.³⁶ The southern *gabar* lost his title to land, in some cases even access to it, its produce, and most importantly his dignity until he temporarily reclaimed them all at the time of the Ethiopian revolution in 1975.

Towards the legal abolition of gult: gult served the conquest era's purpose of stretching imperial power to the south and tapping on its resources. But as of early 1930s, the Emperor Haile Sellassie I thought that the *gult* system was unsustainable because he saw that the greater part of tributes the peasantry paid in the form of produce, money and labor dues and occasional gifting never reached the palace treasury.³⁷ Most significantly, the *gult* system impeded his aspiration to be an absolute ruler because the *gult* system was founded upon the enjoyment by provincial nobilities of some degree of military, judicial, administrative and tributary autonomy. The emperor's political ambition was well articulated in the first written constitution of Ethiopia in 1931, whose adoption triggered fierce debate between the allies of the emperor supporting political centralization and the provincial aristocrats who stood in defense of the *gult* system.³⁸ Having settled the debate in his favor, he endeavored to translate this plan of abrogating *gult* through the enactment of land measurement (*qalad* system) and land tax decrees in 1930s.

³⁴ Donald Crummey, note 4, p. 224; see also Tesgaye Tegenu, note 41, p. 228.

³⁵ Hussein Jemma (2001), "The Debate over Rural Land Tenure Policy Options in Ethiopia: Review of the Post-1991 Contending Views", *Eth. J. Dev. S.*, 23:2.

³⁶ Book III of the Code, consisting of over five hundred articles, deals with the different ramifications of the land rights of landlords; a significant part of Book IV of the Code also regulates various contracts pertaining to immovable property. The provisions of the Code on accession (Articles 1172-1181) and tenancy (Articles 2975-3018) were influenced by the dominant land owning class who were members of the Codification Commission and of the two houses of the parliament. The draftsman of the Code, David, stated that the parliament introduced important modifications in his draft. For this, see The Civil Code of Ethiopia, 1960 and Rene David (1963), "A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries", *Tul. L. Rev.*, 37:2, pp. 187-204.

³⁷ Richard Pankhurst, note 28, pp. 178-179.

³⁸ Emperor Haile Sellassie I (1936), *Hiwotena Ye Eteyopia Ermeja*, (in Amharic), (England: Bath) p. 142.

Haile Sellassie's land tenure reform measure through the *qalad* and land tax system was interrupted by the five year Italian occupation of Ethiopia (1936-1941). When the Italian occupation was over in 1941, Haile Sellassie started to consolidate his pre-war successive land edicts in the form of land tax building on the invader's attempt to abolish *gult*, tithe, and labor services that *gabbar* used to pay to landlords.³⁹

To him, a correct political entry point for land tenure reform was to present these laws as aiming at increasing government revenues, as guaranteeing the acquisition of private ownership over land as well as modernizing the backward nature of the extant land tenure systems. Nevertheless, from the point of view of the emperor, the primary objective of the land tax laws was to reorder the network of relationships built around land from provincial level (i.e., *mesafint*, nobility) right down to a village setting (i.e., *chika shum*, tax collector) and to ensure that dense feudal patronage relationship centered around land to depend entirely on the will of the center.⁴⁰

The Revised Constitution of 1955 and other prior and subsequent subordinate laws meant to reorganize the administrative structure of the state made the power base of provincial and sub-provincial officials entirely dependent upon the wish of the Emperor. In doing so, he effectively robbed the regional nobility of their power, military, administrative and financial, that emanated from their tribute collection right. To redefine the *gult* holding class's tribute relationship with its local population was to redefine its relation with the central government by centralizing the government as expressed through institution of a system of central appointment of salaried provincial and sub-provincial administrators and judges, doing away with the private army of governors in the provinces and putting in its place an army charged to the central government treasury. As Tsegaye Tegenu puts it, the emperor's assault on the *gult* class was part of his multifaceted endeavor to transform the "fiscal military state into enlightened absolutist state by removing political and economic particularization and by introducing centralization through standardization and uniformity..."⁴¹

³⁹ Donald Crummey, note 4, p. 242. See Richard Pankhurst, note 28, pp. 197-202, for the description of Haile Sellassie's pre-war reform measures.

⁴⁰ See Christopher Clapham (1969), *Haile-Sellassie's Government*, (New York: Federick A Praeger Publishers) pp.15-26. For a discussion of the emperor's effort to establish an absolute monarchy, see V. S. Yagya (1988), "Formation of Ethiopian Absolutism (The First Half of XX Century)", in Proceedings of the Ninth International Congress of Ethiopian Studies (Moscow, 26-29 August 1986, USSR Academy of Sciences Africa Institute), pp. 239ff.

⁴¹ Tsegaye Tegenu (1996), *The Evolution of Ethiopian Absolutism: The Genesis and the Making of the Fiscal Military State, 1696-1913* (Uppsala, Sweden) p. 54.

Qalad: The imperial government introduced *qalad* (i.e., a system of land measurement) in order to control land and produce hereon unimpeded by intermediary forces. *Qalad* aimed at the imperial state's attempt to find out the exact amount of land held and cultivated by each land holder. The *qalad* system was followed by land grants to the *gult* holders already settled, *balabats* and those settlers freshly attracted from the north by the prospect of the *qalad* system. These land grants to the *gult* holding class conferred a conditional right in the sense that land title was given to this class with the obligation to develop the land and to render administrative services to the state and to pay taxes on their agricultural produce directly to the state. To the *gabar*, the *qalad* system resulted in loss of any residual claims they may have had.⁴² The combined result of *gabar* status and of the seizure of land via the *qalad* system was the creation in large parts of southern Ethiopia of a social system which combined subordination, poverty, and cultural alienation.⁴³ This shift from appropriation of labor services (*gult* system) to *qalad* system showed the state's interest to directly appropriate agricultural production itself and for itself.

Land taxes: In 1942, the state introduced general land tax that graded farmland into *lem* (fertile and being cultivated), *lem tef* (less fertile land and partly cultivated) and *tef* (not under cultivation and equivalent to empty land).⁴⁴ The 1942 land tax decree was justified on the ground that the payment of tax was a guarantee of private ownership.⁴⁵ In 1944, this general land tax was revised and stipulated for the abolition of “any other taxes, services and fees” previously paid by those working on the land to the landed elites.⁴⁶ The two land tax laws replaced numerous types of in kind land taxes by a single tax in cash, to be paid not to any other intermediary, but to the state. In 1947, the state put in place the educational tax⁴⁷ and then in 1959 the health tax.⁴⁸ In 1966, the state abrogated secular *gult* including its variant *rist-gult* and *siso-gult*, requiring *gult* holders and their respective *gabar* to pay tax in kind directly to the state.

⁴² Donald Crummey, note 4, p. 224.

⁴³ *Id.*, p. 225.

⁴⁴ A Proclamation to Provide for a Tax on Land, 1942.

⁴⁵ Bahru Zewde, “Some Aspects of Post-Liberation Ethiopia (1941-1950)” in *Society, State and History* note 11, pp. 176-177.

⁴⁶ Land Tax Proclamation, 1944; see for the development of land and other tax laws in Ethiopia, see Taddese Lencho (2012), “Towards Legislative History of Modern Taxes in Ethiopia (1941-2008)”, *Ethiopian Journal of Law*, 25:2.

⁴⁷ Educational Expenditure Proclamation, 1947.

⁴⁸ The Health Tax Decree, 1959.

In 1967, another tax law eliminated the tithes (payment in kind of one tenth of the *gabar`s* produce); instead, a progressive agricultural income tax was imposed, now to be levied on the harvest as opposed to on land areas.⁴⁹ With these tax laws, the state on paper transformed tribute to tax, and made it no longer lawful for intermediaries to collect tribute from *gabar*. In other words, the age-old secular *gult*-right over land was abolished by the tax laws. But it was largely a mere legal exercise as *gult* persisted on the ground.

In the south, *qalad* and land tax laws exacerbated the conditions of the *gabar*. One effect of the tax reforms was the loss of residual rights which the *gabar* may have claimed over the land he was working on because the tax laws enabled those who paid land tax in their own name to acquire private ownership thereon. In actuality, land taxes were paid in the name of *gult* holders, not in the name of the *gabar*. This resulted in the alienation of the legal ownership of farmlands and land of the herders in the south. Second, the tax decrees merely illegalized the collection of tributes from the *gabar*. These laws did not actually eliminate various kinds of labor services the *gabar* rendered to his lord. The state did not deploy its machinery to enforce this aspect of the tax reforms. As a result, the landlords were able to effectively shift the newly imposed various in-cash taxes on to the *gabar*. The state`s primary end in decreeing these tax laws being the elimination of “the political power of the *gult*-holding nobility, not its social influence or its economic wealth,” it let them carry out their extractive activities.⁵⁰ John Markakis sums up the conditions of southern peasants:

The expropriation and distribution of a very large portion of land in the south among the victors had a dramatic effect on the native population. The relationship of persons to land was radically transformed practically overnight by force majeure. The southern peasantry, which found itself on land claimed by the state, lost whatever rights it had held traditionally over the land. The people were transformed into *gabbars* of the state and of the privileged group to whom the state guaranteed rights over such land. In the southern provinces... the peasantry cultivating land expropriated by the state lost whatever rights it had enjoyed over such lands and was reduced to the status of tenant quartered on the land of another.⁵¹

Table 5 and Table 6 indicate the changing nature of land tenure through increase in percentage of tenancy and its attendant growth in the percentage of absentee landlords in pre-revolutionary southern Ethiopia. Table 7 and Table 8 also show the growth of the size of privately owned farmland in Sidamo Region.

⁴⁹ Agricultural Income Tax Proclamation, 1967.

⁵⁰ Donald Crummey, note 4, p. 241.

⁵¹ John Markakis as quoted by Hussein Jemma in The Politics of Land Tenure note 27, p. 5.

Table 5: Estimated tenancy in percentage before 1974⁵²

Province	Percentage of tenancy
Shoa	51
Arusi	45
Wollega	54
Gamu-Gofa	43
Harar	49
Sidamo	37
Kaffa	59
Illubabor	73
National	50

Table 6: Percentage of Tenants and of Total Area Cultivated by Tenants in Sidamo Administrative Region⁵³

Wholly Rented		Partly Rented		Total	
Tenancy	Area	Tenancy	Area	Tenancy	Area
37	35	2	1	39	36

Table 7: Absentee Land Owners in Pre-1975 Period in Sidamo Administrative Region⁵⁴

Absentee Owners Percentage	Percentage Area of Absentee Owners
25	42

Table 8: Type of landholding and their percentage in Sidamo province in 1967⁵⁵

Number of parcels	Type of land holding in percent			Total
	Private holding	Tenant holding	Joint private and tenant holdings	
376,000	61	37	2	100

iii. Private ownership of land

The Imperial Government enacted a Civil Code in 1960 (the Code) as another measure of the modernization of land tenure. The Code was a legislative culmination of the privatization of land process envisaged by *qalad*, various land tax laws and the two imperial constitutions. Under the Code, it was thought wise to let land freely circulate in the market for the purpose of moving it from those who value it less to those who value it more, facilitating the collateralization of land, and thereby enhancing land productivity. It is said “the conception of

⁵² A. Eshete (1981), “The Rural Scene and Rural Transformation in Ethiopia” in *Approaches to Rural Transformation in Eastern Africa* (Okoth-Ogendo, ed.) (Book Wise Limited), p. 21.

⁵³ Ministry of Land Reform and Administration, “The Major Features of the Prevailing Land Tenure System in Ethiopia”, Vol. 1 (Addis Ababa, 1971) pp. 35 and 39.

⁵⁴ *Id.*, pp. 33 and 39.

⁵⁵ *Ibid.*

property contained in the Code is that of absolute ownership with no social obligations.’’⁵⁶ And Paul Brietzke concludes that the key feature of Ethiopia’s private law is its ‘‘orientation towards nineteenth century capitalism with no ameliorating provisions associated with the welfare state in the West and with broadly-based development in the Third World.’’⁵⁷ The Code swept away custom generally and *rist* and customary land tenures particularly because the latter were considered to impede land markets, encourage incessant land litigation, fragmentation, diminution of land and thus impediments to the modernization of the agriculture and thus the wider economy.⁵⁸ The imperial state made through the Code an admission of, as Gordon Woodman in another context pointed out, the existence of competing land law regimes other than its own, but the state opted in vain to silence such other land tenure regimes with the assumption that land would best be deployed for development if regulated only according to liberal notions of property.⁵⁹

The Code’s provisions were crafted in ways that would further enhance the tenure security of landlords given the rather skewed distribution of the country’s agricultural land at the time and the Code’s removal of the checks and balances built into customary tenures. The Code included provisions, regulating the relationship between landlords and tenants.⁶⁰ As Harrison Dunning remarks, such provisions treated: ‘‘agricultural tenancy as a simple contractual relationship, and, inexplicably, permitting a maximum share rent of seventy five percent, even though customary maximums apparently never exceeded fifty percent.’’⁶¹ In depicting agricultural arrangements as a matter of contract alone, these provisions unrealistically assumed that the tenant was on a par with his landlord, and thus he could negotiate with his landlord in order to strike a deal truly reflective of his legitimate interests.

Dunning also describes this assumption of the Code as flying ‘‘directly in the face of the agrarian realities of southern Ethiopia, where tenants frequently occupy a position little better

⁵⁶ John Van Doren (1994), ‘‘Positivism and the Rule of Law, Formal System or Concealed Values: A Case Study of the Ethiopian Legal System’’, *J. Transnat’l L. & Pol’y*, vol. 3, p.182-183.

⁵⁷ Paul Brietzke (1974), ‘‘Private Law in Ethiopia’’, *J. Afr. L.*, 18:1, p.151.

⁵⁸ For contrary views on this, see, Harrison Dunning, note 7, p. 300 and Sandra Joireman (1996), ‘‘Contracting for Land: Lessons from Litigation in a Communal Tenure Area of Ethiopia’’, *CJAS3*, vol. 30, pp. 437-8; Allan Hoben, note 23, p. 17; Bereket Kebede, note 8; The Civil Code, Article 3347 (1).

⁵⁹ Gordon Woodman (2009), ‘‘Customary Law in Common Law Systems’’ *IDS Bulletin*, 32:1, p. 2.

⁶⁰ The Civil Code, Articles 2975-3018,

⁶¹ Harrison Dunning, note 7, p. 280.

than that of serfs.’’⁶² Under the Code, a tenant could not invalidate a tenancy agreement on the ground that its terms were substantially more favorable to the landlord than to him for the Code does not recognize the doctrine of unconscionable contract.⁶³ Under the circumstances, the Code thus offered a green light to landlords to use their economic, social and political dominant position to secure the consent of their respective tenants in respect of farmland lease and to use the state justice machinery to enforce its terms, even if those terms were more onerous to the tenant than the then existing practices defining landlord-tenant relationships. Therefore, the Code sanctified exploitative agricultural tenancy arrangements in the name of freedom of contract.

Insertion of certain clauses with a tint of feudal interest here and there by no means diluted the basic liberal land tenure thinking upon which Rene David’s Code was founded; instead the incorporation of a hitherto dominant land tenure thinking in the Code as an exception implied the establishment’s strong interest to see the dying out of feudal tenure. The Code was a culmination of land privatization process desired by progressive elements in the country - educated elites who were absorbed in government bureaucracy and incipient capitalist class. As indicated in Chapter 9, the economic model pushed through the Code was the dominant model worldwide by then among international institutions chiefly the WB. In essence, the Code’s role was legitimating land grabs that took place during the southern conquest and attempt at entrenchment of the land so grabbed by presenting it as if the land grab did not happen. The emperor’s strategy was to take away military, executive, judicial and legislative, taxation powers from the provincial nobilities in return for secure property rights in land.

Table 9: A summary of main land tenures and their nature during the Imperial regime

Land tenure	Features	Area of its prevalence
Customary land tenures	Non-transferable use rights obtained from the concerned community	Northern and Southern Ethiopia
<i>Gult</i>	Imperial grant with a right to collect tribute from rural producers	Northern and Southern Ethiopia
Private ownership of land	Use and control with market transfer right	Southern and Central Ethiopia

⁶² *Ibid.*

⁶³ The Civil Code, Article 1710.

B. Land tenure reform attempts

i. Need for beneficial land tenure reform

An analysis of the state of agriculture revealed the felt need for rural land redistribution to the landless and regulations of agricultural tenancy for agricultural development.⁶⁴ But the Code, which wished to transition Ethiopia from customary and feudal tenures to liberal land tenure, was not taken as an appropriate response under the circumstances because it did not envisage land redistribution to the poor or regulation of agricultural tenancy that would protect tenants. The Code consolidated the status quo in respect of rural land while the intended land reform was expected to reshuffle it in favor of the rural poor. Hence, the Code and the land reform initiatives implied contradictory objectives. The Code ‘de-politicized’ tenure issues by merely presenting them as technical issues to be handled mechanically by private law while the aspired reform measures to some degree acknowledged the fundamentally political nature of the issue.

ii. Government plans without land reform

The imperial government failed to reflect meaningful land reform measures in their three successive five year development plans.⁶⁵ The first Five Year Development Plan (1957-1961) stated that there was a need to make private ownership in land more secure by determining “ownership rights, boundary lines and land values” with a view to facilitating land markets, ensuring a “more correct assessment of taxes” and thus productive investment in land.⁶⁶ Unfortunately, the plan did not outline anything about the tenure security of the small holder *gabar* and tenant population.

⁶⁴ In the early 1970s, about 80-90 percent of the estimated 23 million population of Ethiopia engaged in rain-fed subsistence agriculture of which about 3 million either faced food shortage or struck by famine. (Fassil Kiros (2005), *Enough with Famines in Ethiopia: A Clarion Call* (hereafter *Enough with Famines*) (Addis Ababa: Commercial Printing Enterprise) p. 70.) The peasant sector that was encumbered with the *gult* system contributed about 60 percent of the GDP. The annual per capita income of the population was about 50 USD. National illiteracy rate was estimated to be over 90 percent. Harrison Dunning, note 7, p. 274. Even the state admitted that the percentage of tenancy reached about one-half of all agricultural producers and landlessness in the southern Ethiopia was growing. Fassil Kiros (1993), *The Subsistence Crisis in Africa: The Case of Ethiopia* (hereafter *The Subsistence Crisis*) (OSSREA) pp. 33 & 40-41.

⁶⁵ Harrison Dunning, note 7.

⁶⁶ *Id.*, p. 278.

The second Five Year Development Plan (1963-1967) included the objectives of improving land-lord tenant relations and undertaking cadastral surveys and land registration.⁶⁷

The Third Five Year Development Plan (1969-1973) emphasized export-oriented capital intensive large-scale commercial farms to be established in thinly populated parts in the main by foreign investors.⁶⁸ Ren`e Lefort says,

For the imperial regime, agriculture was the engine for development. But as the regime came to an end, it oscillated between two strategies. For the first, which remained marginal, “small farmers are efficient and are capable of being the engine of growth and economic development” on condition that they receive help to increase their remarkably low productivity whence the timid appearance from the 1960s onwards of “package programmes. In the second strategy, which dominated and received the support of international organisations, these “subsistence farmers” are incapable of “productivity growth”. Salvation could only come from the development of “large and mechanized farm enterprises.” Hence the emergence of “agrarian capitalism” or “mechanised feudalism” through land concessions...⁶⁹

The fourth Five Year Development Plan (1974-1978) was being drafted in the dying years of the regime.⁷⁰ The draft plan as well as a constitution being drafted in 1974 was too late

⁶⁷ The plan however expired without legislative backing. The second plan was a failure by the admission of the state itself.

⁶⁸ On the eve of the revolution in 1974, there were an “estimated 5,000 large-scale farms covering 750,000 hectares, with infrastructure, field layouts and machinery designed for large-scale operation.” Paul Brietzke (1976), “Land Reform in Revolutionary Ethiopia”, *The Journal of Modern African Studies*, 14: 4, pp 637 & 651. To this end, the state offered to the commercial large farm sector attractive investment incentives in the form of cheap land, of tax holidays and of exemption from custom duties on capital goods. Scholler and Brietzke *supra* note 16, p. 75. See also Bahru Zewde, “Environment and Capital: Notes for a History of the Wonji-Shoa Sugar Estate 1951-1974” in *Society, State and History* note 11, p. 125. The state itself engaged in commercial farms concentrating its investments in cotton, fruits and sugarcane plantations along the Awash Valley that brought about eviction of pastoralists and semi-pastoralists. In pockets of southern Ethiopia such as Afar, Arsi, Jimma, Sidamo, Wollega and Harar, landlords and other commercial farmers started cultivating *teff*, wheat, barley, coffee and oil seeds destined for national and international markets. Ann Lambton, note 16, p. 231. These investments hastened the conversion of *gult* land into private ownership which brought about turning the *gabar* into tenants and then to their ultimate evictions. *Id.*, pp. 241-242. Those who were rendered landless in this process could not make use of an Imperial Order that pledged them up to 20 hectares of land from government land since few ordinary people were aware of its existence and even those who knew about the law could not “afford the lengthy procedure and bribery of local officials necessary to establish a claim to land.” Scholler and Brietzke, note 16, p. 77. The emphasis in the second and third plan was to increase agricultural production, and not to deal with the equity or the tenure security sides of the existing land tenure system. Harrison Dunning, note 7, p. 285; see also Fassil Kiros, *The Subsistence Crisis* note 64, pp. 77-94.

⁶⁹ Ren`e Lefort (2010), *Ethiopia`s Election: All Losers*, <<http://www.opendemocracy.net>> (accessed 21 August 2013).

⁷⁰ It decisively departed from the previous plans in recognizing the importance of the land tenure security of peasant, in sidelining large-scale commercial agriculture and in taking note of the serious lack of equity in the land redistribution. The draft plan stated these ideas in broad terms as “the goal of development should not be merely quantitative growth but must also involve the improvement of living standards and the equitable distribution of wealth.” Dessalegn Rahmato (2009), *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s and 2000s* (Addis Ababa: Addis Ababa University Press) p. 52. This draft plan got expression in the draft constitution of 1974, which under Article 5 stipulated that Ethiopia would aspire for “fair distribution of property and uniformity in the living standards of all.” And, under Article 136, it was stated that every Ethiopian who supports themselves by farming shall have the right to use government land and that there shall be ceiling on the size of one`s landholding and that all land is free commodity owned in common by all Ethiopians and is sacred

to save the regime from collapsing; instead, these drafts served as precursors for the turbulent storms to come soon.

A sign of land tenure reform was witnessed only after the 1960 attempted military *coup d'état* when the state set up a Land Reform Committee in 1961. In the same year, this Committee proposed tenancy regulation and land titling.⁷¹ The draft tenancy legislation aimed at fixing rent to be paid to landlords between twenty-five percent and fifty percent, abolishing once again personal services rendered by tenants to landlords, and assuring land tenure security to agricultural tenants by a minimum of four years and reducing tenancy agreements into writing.⁷² The draft tenancy law was submitted to the Council of Ministers only in 1970. When the tenancy bill was referred to the parliament, the popularly elected Chamber of Deputies approved it whereas the Senate, whose members consisted of nobilities appointed by the Emperor, rejected the proposal.⁷³

iii. Reasons for failure to introduce beneficial land reform

The reason for the failure to introduce beneficial land reform lies in contradictory interests within and outside the state and lack of balancing act on the part of the Emperor and in lack of political will. The regime could not reconcile internal political contradictions among old guards and the emergent class in response to the radical group's demand for land reform: the *mesafent* sought to maintain feudal land tenure, the *mequanent* wanted to see the prevalence of private tenure as embodied in the Code. Both were out of touch with reality on the ground.

trust for the present and succeeding generations of Ethiopia and to be conserved, cared, exploited by the Government for the benefit of the whole population. The 1974 Draft Constitution of Ethiopia (unpublished, on file with the author).

⁷¹ Ann Lambton, note 16, p. 229.

⁷² Harrison Dunning, note 7, p. 280.

⁷³ For Lambton, the rejection of the tenancy bill by the Senate showed the virtual impossibility of regulating sharecropping rents or providing security of tenure "by legislation unless such measures are part of a general land reform policy which will weaken the economic and political power of the landowner." See, Ann Lambton, note 16.

The draft land measurement and titling statute, which also sought to guarantee land tenure security, was also not approved because of the huge institutional arrangement and the attendant costs its implementation required. In the absence of state policy on land redistribution to the mass of Ethiopian peasants, its promulgation could not have made the conditions of the peasantry any better. Lambton says, using a Kenyan comparison, "where inequalities of wealth are great, registration can easily be used by the powerful to override the claims of the weak" and thus land registration should come "after land reform, not before." *Id.*, p. 230. The Land Reform Committee's suggestion for "measures for the redistribution of land to small owners by expropriation of holdings in excess of maximum limits" and complimentary measures to enhance the productivity of such small land owners was to no avail. *Id.*, p. 229.

Outside the state bureaucracy, while the emergent commercial class seemed to have sided with the *mequanent*, university students advocated for a course of action antithetical to both the *mesafent* and the *mequanent*: land to the tiller. Peasants did not have any coherent demand for land reform even if they opposed land alienation and appropriation of the fruits of their labor through occasional rebellions. As considered in Chapter 9, international institutions such as the USAID sought land reform implementation of a uniform type of private ownership of land within the tradition of neoclassical economics.

In this situation, the Emperor showed political ineptness and indecisiveness even if the design of the political system concentrated all secular and religious powers in his hands which could allow him to push for some form of balanced land reform measures using for example his emergency powers. Lambton wrote: “it is probably true to say that the government and the governing class are not wholly conscious of the need for reform, or, indeed, willing to undertake reform, while an entrenched landlord class resists any proposals to reduce the burden of rents and taxation of the peasantry.”⁷⁴ This lack of willingness (and insensitivity) on the part of the ruling class is, for example, illustrated by a certain governor Tekle Giorgis’s behavior who described peasants who complained about hardships and suffering imposed on them by the feudal system as: “these villains are like camels; they always cry, weep, and groan when they are loaded, but in the end they rise with the burden that is put on them and carry it.”⁷⁵

Lastly, the imperial regime failed to draw upon relevant comparative experience. Notwithstanding important contextual distinctions between these Asian countries and Ethiopia, the 1940s and 1950s Taiwanese and South Korean land reform experiences were out there for emulation.⁷⁶ In both countries, land reform was judicious for it led roughly to a win-win out

⁷⁴ *Id.*, , p. 240. Thus, Markakis characterizes the imperial land tenure reform effort as “possessing maximum formalism and minimum substance.” John Markakis as quoted in Scholler and Brietzke, note 16, p.74. Dunning said: “no land reform can succeed in the absence of appropriate... political change.” Harrison Dunning, note 7, p. 271. See also Klaus Deininger (2003), “Land Policies for Growth and Poverty Reduction” (The World Bank and Oxford University Press,) p. 32 where it is stated that in countries such as Ethiopia, “Landlords could easily restrict peasants’ alternatives and maintain control over land and labor...” and also pointing out that as illustrated by the imperial land tenure system in Ethiopia, land reform is not independent of the political process.

⁷⁵ H.W. Michael, note 10, p. 82.

⁷⁶ Unlike Ethiopia, Taiwan had good land database, strong state bureaucracy and government whose political fate was not tied to the feudal class. See Fred Harrison (1980), “Five Lessons for Land Reformers: The Case of Taiwan”, <http://www.cooperativeindividualism.org/harrison_taiwan_land_reform.html> (accessed May 6, 2011).

In Taiwan, the state used its political power to impose land reform on landlords, leading to the distribution of farmland to tillers in the form of full ownership with highly subsidized long term mortgage and accompanied by agricultural support systems to the peasants. Anthony Koo(1966), “Economic Consequences of Land Reform in

come: the state gained political support from peasants who received secure land rights and the landlords obtained compensation for their land and above all the reform triggered the needed structural and social change in the respective national economies.⁷⁷

C. Reiteration

Apart from the need to maintain power, the Imperial regime appeared to be more concerned with simplification of the diverse and intricate land tenure conceptions on the ground than introducing land reform that would better the condition of the rural masses. The tenure systems in place exhibited anything but uniformity.⁷⁸ The state seemed to have been motivated to make land easily governable from the center by putting in place a system that would enable it to know, among others, who was holding how much land and the terms and conditions thereof, who was imposing land tax on whom and how much. The state wanted to find out this and alter the same in a way palatable to itself without shaking its political power base - the landed class. The series of land related tax decrees passed between 1930 and early 1970s, land registration efforts and the enactment of the Code were meant to achieve this purpose by granting land ownership to the ruling class at the expense of the masses.

Critics pointed out rightly that the land tenure reform of the imperial regime was formulated “without extensive knowledge of existing conditions in the field...”⁷⁹ Thus, it became merely ‘theoretical’ having “little relevance to local conditions...”⁸⁰ However, what these scholars underemphasized is that the state wanted to transform, not bless, the diverse land

Taiwan”, *Asian Survey*, 6:3, pp. 150-157; see also Peter Dorner (1969), a Book Review, *American Journal of Agricultural Economics*, 51:3, pp. 710-712. Peter Dorner (1972), *Land Reform and Economic Development*, (hereafter Land Reform) (*Baltimore: Penguin Inc.*) In Taiwan, the feudal landlords did not lose either for they obtained compensation in the form of bonds and cash which they invested in the industrial sector. C. Clyde Mitchell (1949), “Land Reform in South Korea”, *Pacific Affairs*, 22:2, pp. 144-154; Justin Maloney (2000), “Land Tenure History and Issues in the Republic of Korea”, <<http://www.spatial.maine.edu/~onsrud/Landtenure/CountryReport/Korea.pdf>>(accessed October 20, 2011. South Korea followed a similar approach. There the land reform started with regulation of agricultural tenancy, followed by distribution of public land to the poor and then by implementation of land to the tiller program.

⁷⁷ *Id.*, Peter Dorner, Land Reform.

⁷⁸ As quoted in Molla Mengistu, note 5, p 157 Margery Perham says,

The existence of several tenure systems made the nature of the right to land and the role of the then land administration institutions complex. As Margery Perham illustrated, the situation was at least as intricate as in early medieval England but lacked any Dooms Day Book to give a clear point of departure and none of the excessive raveling’s of generations of scholars to help the inquiries.

⁷⁹ Harrison Dunning, note 7, p. 271.

⁸⁰ *Id.*, p. 240.

tenure systems founded upon differing notions of rights into a single uniform land tenure system with nationwide applicability. In particular, the state wanted to put in place a perspective about land that emphasized the economic aspect of land via a body of clear, comprehensive, uniform and written tenure rules backed by titling. Hence, the state was preoccupied with the pursuit of its 'legibility'⁸¹ project in its land tenure programs. Such legibility or "standardization and uniformity"⁸² scheme clearly disfavored the poor, temporarily favoring the emperor by weakening the powers of provincial lords as well as raising his revenue, and by according greater tenure security to land owners vis-à-vis the state.

The land tenure security of peasants had been undermined by dispossession and exploitative agricultural tenancy in favor of the feudal class. The land question of the day was thus restitution and/or redistribution of land to the poor, not just regulation of agricultural tenancy. On the eve of the 1974 revolution, the imperial regime did not even begin to seriously address this land question. It rather tabled land tenure reforms and plans that merely proposed mild concessions in the form of regulation of agricultural tenancy from the landed class. In fact, some land tenure reform measures particularly the ones carried out through rural land tax and land registration decrees weakened the political power of the landed class in relation to the emperor but, in the form of recompense, the emperor conceded to the landlords progressively strong property rights in land as expressed in the form of private ownership. "What the nobility lost in political power it recouped in greater guarantees of its property. Land ownership, which was conditional in the feudal period, became progressively absolute."⁸³ The conferment of robust land rights on the feudal class by the state meant the insecurity of the agricultural population, which was manifested in deprivation of their agricultural produce, of title to their ancestral land and ultimately of their evictions arising out of the actions of the Emperor himself and the entire constellation of the feudal class and incipient agricultural capitalists.⁸⁴

⁸¹ James Scott (1998), *Seeing Like A State, How Certain Schemes to Improve the Human Condition Have Failed*, (New Haven and London, Yale University Press).

⁸² Tsegaye Tegenu, note 41.

⁸³ Bahru Zewed, "Economic Origins of the Absolutist State in Ethiopia (1916-1935)" in *Society, State and History* note 11, p. 101; see also Tsegaye Tegenu, note 41, p. 40-41.

⁸⁴ Fasil Kiros, *The Subsistence Crisis* note 64, pp. 188-189; see also Dessalegn Rahmato (1993), "Land, Peasants, and the Drive for Collectivization in Ethiopia" in *Land in African Agrarian Systems*, (Thomas J. Bassett and Donald E. Crummey) (eds.), (Madison: The University of Wisconsin Press) p. 280-281, "What made the system stagnant and a serious impediment to progress was rather the exploitative property relations involved and the siphoning of the peasant surplus to meet the consumption needs of the dominant classes."

As the next chapter shows, in the Ethiopian case, failure to push through beneficial land reform on account of lack of political will and ill-diagnosis of the situation opened the road for radical elements in society to topple the imperial government and introduce a radical but a short-lived incomplete land reform. The underlying analysis of this chapter and the next chapter is to add historical dimension to the overall claim of the thesis that whatever the regime and to whatever the form of land tenure they adhered, there is a tendency to deprive peasants and herders of their land rights.

* * *

3

Partial Land Reform, 1975-1990

This chapter indicates the historical continuity of the ongoing land alienation that revolves around state action. It shows, during the Derg, dispossessions of land and its fruits were motivated by the ideology of socialist agriculture in favor of state farms and rural cooperatives at the detriment of small-scale rural producers. As the material in the previous chapter explained, the same rural appropriations had been made under the Imperial state for the benefit of landlords and nobilities with similar marginalization effects on the countryside.

The internal contradictions in the Imperial regime, as mentioned in the previous chapter, incapacitated it to push for a beneficial land reform. Such contradictions, unmet demands for social and political reforms together with other immediate factors such as the rise in fuel price caused by the Arab-Israel War brought about rebellion in the army and urban unrests that ultimately led to the demise of the regime and power seizure by the Derg in 1974.

The Derg passed statues with far-reaching consequences-nationalization of rural, urban lands, extra-houses, factories, services and commercial farms.¹ The Public Ownership of Rural Lands Proclamation of 1975 (the Rural Lands Proclamation) was one of these revolutionary laws touted to raise productivity by ensuring land tenure security and by ending social injustice in the countryside.

This legislation kindled a hope for the subjugated rural masses. But the hope for a better life dashed away soon for the Derg's seemingly sweeping land reform as embodied primarily in the Rural Lands Proclamation failed to contribute to the country's agricultural development namely, "to increase agricultural production and rural income, and thereby lay the basis for the expansion of industry and the growth of the economy by providing for the participation of the peasantry in the national market." Instead the country registered "a declining trend in per capita food production, a general stagnation in agricultural growth, and a decline in per capita grain availability in the rural areas."² The failure was due to betrayal of its basic tenets in the course of

¹ Government Ownership and Control of the Means of Production Proclamation No. 26, 1975 and Government Ownership of Urban Lands and Extra Houses Proclamation No. 47, 1975.

² Dessalegn Rahmato (1990), "Land, Peasants and the Drive for Collectivization in Ethiopia" in T. Basset and D. Crumme (eds.), *Land in African Agrarian Systems* (Madison, University of Wisconsin Press) p. 286.

implementation by compulsory appropriation of the fruits of the land and land tenure insecurity entailed by the program of socialist modernization of agriculture, with replaced the ideology of modernization pursued by the imperial regime.

The chapter outlines the fundamentals of the Rural Lands Proclamation, the manner in which the Derg expropriated agricultural produces from peasants, their pursuit of socialist modernity and the implication thereof for land tenure security of the rural masses.

A. The Rural Lands Proclamation

i. Its Tenets

The fundamentals of the rural Lands Proclamation are as follows. First, it abrogated the prevailing multiple forms of land tenure discussed in Chapter 2, i.e., *rist*, *gult*, private land tenure and diverse customary land tenures. The proclamation stipulated,

... the relationship between landowner and tenant is abolished...peasants in rist area shall have possessory rights over the lands they presently till...no person may put claims to land in rist areas...all obligations of the nomadic people to pay dues to balabat or any other persons are hereby annulled...No person shall hold rural land in private ownership...No law...practice, written or customary shall...have force...in respect of situation provided in this Proclamation.³

Second, the law replaced these diverse land tenures by a single land tenure mode: “all rural lands shall be the collective property of the Ethiopian people...”⁴ Third, the Rural Lands Proclamation accorded inalienable use right to all peasants subject to personal cultivation and periodic redistribution. It stated that any person “...with no other adequate means of livelihood...”shall be allotted land sufficient enough”...for his maintenance and that of his family’ provided the “size of land to be allotted to any framing family shall at no time exceed 10 hectares.”⁵

The same legislation stated that a peasant shall personally cultivate the land and that he may not use hired labor to cultivate his holding.⁶ It prohibited land alienation in whatsoever form in providing that “No person may by sale, exchange, succession, mortgage, antichresis, lease or otherwise transfer his holding to another...”⁷ This is as opposed to the imperial land tenure regime that increasingly started to conceive land as a commodity which could be used to increase

³ Public Ownership of Rural Lands Proclamation No. 31, 1975, Article 3 (1& 2).

⁴ *Id.*, Articles 3 (1&2).

⁵ *Id.*, Paragraph 2 of the Preamble, Articles 4 (1, 3, 5) and 6 (2 and 4), 10 (1/c), 11 (2/c), 18 and 22 (1) and see also the Resettlement Proclamation No. 78, 1976.

⁶ *Id.*, Articles 4 (5) and 6 (1).

⁷ *Id.*, Article 5

productivity provided the right set of liberal property rules was put on the ground, feudal tenures eliminated, customary tenures replaced or given a secondary role within the liberal framework. This conception was given prominence with the conviction that it would enhance agricultural productivity, which would bring about national economic growth that would in turn, have a trickledown effect on the population. On the contrary, the Derg reconceived land as having no economic value for the individual; land was conceived as an asset for survival of small landholders and its produce to be appropriated not by them alone but by the society as whole. Hence, this was in diametric opposition to the imperial regime's modernization and commodification policies as outlined in the previous chapter.

Fourth, ex-tenants were allowed to retain their farm plot free of feudal tributes and personal labor services. Evictees regained their land, and thus, to them the land legislation had the effect of land restitution. Top feudal elements and their cronies were removed from the southern Ethiopia while intermediate feudal functionaries were reduced to ordinary peasants. Indigenous chiefs who served as *balabat* saw their land leveled down to the size of the landholdings of ordinary peasants. Hence, the Derg used the Rural Lands Proclamation to dis-empower the landed class who did not work the land but depended for their sumptuous life on land cultivated by others.

Fifth, the Rural Land Proclamation took an ambivalent stance in regard to local autonomy in land administration, initiation and implementation of rural development programs. On the one hand, the bill appeared to have departed from the long standing centralization policies and practices of the imperial state. In this regard, the proclamation divided rural Ethiopia into villages each with a minimum of 800 hectares of land and forming a peasant association in each of these villages. These peasant associations substituted the defunct imperial rural political structures. The peasant associations were mandated to carry out development by administering land including distribution and redistribution of rural lands and establishing judicial tribunals to hear land disputes,⁸ marketing and credit co-operatives,⁹ undertaking villagization program, excluding from distribution mining and forest lands and places of historical and antiquarian significance, administering and conserving any public property within the area especially the

⁸ Article 28 of the Rural Lands Proclamation annulled rural land cases pending in the ordinary courts, prohibited regular courts from entertaining new rural land cases and vested judicial tribunals of peasant associations with the power to handle all rural land disputes.

⁹ It was and is a form of traditional cooperative arrangement in rural Ethiopia.

soil, water and forest.¹⁰ Initially, only ex-tenants, ex-hired agricultural workers and ex-landowners with less than ten hectares of land were permitted to be members of a peasant association.¹¹ Assumption of leadership was to be based on election by the general assembly of a peasant association.¹²

For the government of matters concerning two or more peasant associations, the proclamation set up a second level rural administration called woreda peasant association composed of delegates from each association established at an area level to coordinate the functions of peasant associations, to change the boundaries of areas so that peasants within a woreda would have, as far as possible, equal holdings, allot unoccupied land to any person who has no land or other means of livelihood, establish a woreda judicial tribunal to hear and decide appeals from the decision of the judicial tribunal at the area level as well as first instance jurisdiction to hear and render final decision over land disputes arising between areas.¹³ For inter-woreda matters, a third tier of peasant association called an awraja peasant association was formed to coordinate the functions of woreda peasant associations and to establish an awraja judicial tribunal which shall hear and render final decision over land disputes decided at first instance by a woreda judicial tribunal.¹⁴

The Rural Lands Proclamation depicted these three layers of peasant associations as autonomous rural development institutions, as deciders and implementers of local development projects, and thereby signaling a bottom-up approach to rural development. The sketchy nature of the Rural Lands Proclamation could also be interpreted as allowing local experimentation in regard to land tenures as the non-existence of procedural rules in connection with land dispute settlements would invite application of traditional procedural principles and rules. The inadequacy of the rules that mandated land redistribution could be argued to have helped local level adaptations.

While the above is the centrifugal aspect of the Rural Lands Proclamation, it also contained strong tendencies of the country's age-old centralization impulses. The first element of the post-revolutionary survival of centralization tendency is reflected in the law's declaration of all rural

¹⁰ The Rural Lands Proclamation, Articles 8 and 10.

¹¹ *Id.*, Article 9 (1)

¹² *Ibid.*

¹³ *Id.*, Article 11 (1 & 2).

¹⁴ *Id.*, Article 11(3 & 4).

lands as collectively owned by the Ethiopian people. This notion of ownership, in principle, meant the rural people themselves would through their respective peasant associations administer land. It put land under the control of the real users. But as a matter of fact, it meant government ownership of all rural lands. This was made without any legislated notion of government trusteeship and this in effect gave immense power to the Derg to handle land matters as they deemed fit.

Further, despite the fact that the Derg sought to pass off the land tenure embodied in this legislation as essentially the same as land rights enjoyed under various customary laws, the land tenure model adopted clearly separated itself from customary land tenures because people's ownership means land rights would be given to any peasant regardless of their place of or ethnic origin by the state as an allocator and re-allocator of all rural land, not any more by a tribe and that there would be a uniform land tenure system to be followed throughout the country, and that there would not be any room, at least *de jure*, for alienation of land use rights as opposed to customary land tenure practices which on some occasions allowed it.¹⁵

Another mark of centralization in the proclamation is the power vested in the Ministry of Land Reform and Administration (the Ministry) that was mandated to assist peasant associations in redistributing and distributing land, help (with the cooperation of the Ministry of Interior) in the formation of peasant associations at every level, and assign at least one Land Reform Officer to every woreda.¹⁶ The Land Reform Officer was to: give advice to peasant associations and act as chairman of judicial tribunal of the peasant associations established at woreda and awraja levels. The Ministry was mandated to assign surveyors to help in the demarcation of areas and in any other related activities.¹⁷ These provisions couched as 'help or advice' or 'assist' peasant associations in fact allowed the national government to dictate land and other local matters of governance. Rural autonomy given in one hand was taken by the other as the Derg appreciated the centrality of land to political control and thus they understood that to have a vital say over this resource was to have command over the entire country as they made it clear in the preamble of the Rural Lands Proclamation, which in part reads:

...in countries like Ethiopia where the economy is agricultural a person's right, honour, status and standard of living is determined by his relation to land... it is essential to fundamentally alter the existing agrarian relations...

¹⁵ For similar distinctions, Government of Tanzania, *Report of the Commission of Inquiry into Land Matters*, vol. 1 (Dar es Salaam: Ministry of Lands, Housing and Urban Development, 1994), p. 13.

¹⁶ The Rural Lands Proclamation, Articles 10 (1), 12, 14 and 15).

¹⁷ *Id.*, Article 15 (2).

in order to lay the basis upon which all Ethiopians may henceforth live in equality, freedom and, fraternity... the development of Ethiopia of the future can be assured... only by instituting the basic change in agrarian relations...¹⁸

As considered below, family based agricultural production was hinted in the Rural Lands Proclamation. But a close reading of the key provisions reveals a seed of collectivized and centralized production was present in it. Siegfried Pausewang correctly observes that the Derg “...withdrew most of the local autonomy and self-administration peasants had enjoyed from 1975 to 1977. This is the significance of the 1977-1978 changes in peasant association leadership and in assimilation of peasant associations as local organs of state administration.”¹⁹ This was confirmed, to be discussed later in this chapter, by the agrarian policies and practices of the Derg that emphasized collective agricultural production. Thus, the Derg gravitated to centralized approach to land administration with its underlying top-down approach to development. It seems that, the Derg’s weakness in political power in the early years of their rule compelled them to send ambiguous signals in the legislation under consideration. But the Derg’s later actions as reflected in law, policy, plan and practices made their intention to centralize matters abundantly clear. To this tendency, historical inertia expressed in the form of centralized distribution of land by the imperial state and the Derg’s adherence to ideology of socialist modernization lent hand.

ii. Appropriation of the fruits of land from small farmers

As stated above, the drafters of the Rural Lands Proclamation pledged that any Ethiopian who was willing and able to personally cultivate land should be given a farmland of a certain size so that they would become the full owner of the produce thereof and that this tenure arrangement was anticipated to raise rural income thereby creating a condition for rural and thus national growth. Subsequent legislation and policy instruments regarding grain quota system, agricultural producer cooperatives, forced resettlement, villagization and state farms brought about expropriation of the fruits of the peasant’s labor and loss of ancestral land and property thereon without compensation.

A possible explanation advanced by the dominant literature is what might be called the exploitation argument that holds that the Derg failed to honor their promise “to make the tiller the owner of the fruits of his labour.” This explanation of the failure of the land reform is intuitive: if peasants are put in a situation where they produce while someone else reaps, they are

¹⁸ The Rural Lands Proclamation, the Preamble.

¹⁹ Siegfried Pausewang, note 25, p. 46.

insecure about the ownership over the fruits as well as the land itself; this is more so in the case where that someone else (as the ultimate decider over their farm plot) can threaten them with evictions from or frequent relocations of their land.

In the initial three years, 1975-1978, the Derg adhered to their commitment to make the tiller the full beneficiary of his “toil and sweat”. The Derg aspired to enable the “peasant to have access to markets where he can obtain equitable prices for his agricultural produce.”²⁰ In these early years of the revolution, the Derg through deployment of about 50,000 high school and university students and cadres to rural Ethiopia even assisted peasants to build silos and stores for the purpose of storing their produce until market conditions improved. The students and other functionaries sent to the countryside also helped peasants harvest their produce and improve their literacy. Peasants began to be owners, for the first time in many generations, of the fruits of their land. Peasants were at liberty to use their produce as they pleased; there was no interference from the central government by way of exacting agricultural produce. Generally, their life conditions showed visible improvement.

However, the promise to make peasants owners of the fruits of their ‘toil and sweat’ could not be kept after 1978 because “...basic grain prices jumped by more than 30 percent in 1976 and continued to rise in the following years.”²¹ The cause for a hike in grain prices in the towns might have been a combination of greater consumption by peasants, disruption of production in the context of revolutionary turmoil in the countryside and global rise in fuel prices.²² A shift away from the Derg’s ‘hands off’ approach in regard to peasants’ produce was also explained in terms of the Derg’s fear that urban people would take to the streets, but they also desired to feed their burgeoning army. Therefore, the Derg imposed a grain quota system so that peasants had to deliver a grain quota to the Agricultural Marketing Corporation (AMC), a state company created for this end, which in turn diverted its purchases principally to the urban population, the military and industries.²³ Price ceilings on grains were far below what the market could fetch for farmers. In support of some of the extractive measures, the Derg had legislation on their side, which provided that “it is the national duty of every peasant who has been

²⁰ The Rural Lands Proclamation, Preamble paragraph, 2 and the Rural Land Use Fee and Agricultural Activities Income Tax Proclamation, 1976.

²¹ Dessalegn Rahmato note 2, p. 287; Siegfried Pausewang (2009), “Ethiopia: A Political View From Below,” *South African Journal of International Affairs*, 16: 69, pp. 6-7.

²² Taffara Deguefe` (2006), *Minutes of an Ethiopian Century*, (Addis Ababa: Shama Books) p. 500 & 522-523).

²³ Fasil Kiros (1993), *The Subsistence Crisis in Africa: The Case of Ethiopia* (OSSREA), pp. 140-141.

provided with the right of use of rural land and who derives agricultural income therefrom to contribute his share to the funds required for the implementation of social, political and economic development programs.’’²⁴ Pausewang describes the shift as,

...the land reform of 1975 did actually redistribute resources, giving peasants more to eat (and invest), by allowing them to keep those parts of their produce which earlier had to be delivered to landlords...this was done quite deliberately...by the political leadership...But the same leadership soon realized that redistribution to the advantage of peasants had been granted at the expense of the urban population. To satisfy the urban poor, and to finance growing state expenditures, they had to withdraw the distributed privileges again, step by step.²⁵

In addition to the grain quota system, the regime imposed land use fees and numerous compulsory contributions including annual fees that had to be paid to mass associations (i.e., youth, women and peasants associations), and to finance the war with Somalia and several ethno-national liberation groups as well as compulsory labor to producers` cooperatives and public work programs.²⁶ The state imposed a flat rate annual land use fee, which was 10 Birr and for most farmers another 10 Birr in the form of agricultural income tax reckoned on the peasant`s produce.²⁷ The state also imposed an export tax of 2 percent and a surcharge on coffee exports.²⁸ Between 1982 and 1987, the government collected between 15 and 20 percent of their total tax revenues from peasants.²⁹

The exploitative thesis commands scholarly backing. John Cohen argues that due to unfavorable political economy of the Derg the urban elites compelled the rural masses to feed the towns in a confiscatory fashion, resulting in loss of incentives on the part of the peasantry to produce a surplus.³⁰ Mesfin Woldemariam also explains the state of mind of average rural producers as follows.

²⁴ Peasant Associations Re-organization and Consolidation Proc. 77, 1979, Preamble 3.

²⁵ Siegfried Pausewang (1990), ‘Meret Le Arrashu’ Land Tenure and Access to Land: A Socio-historical Overview (hereafter Meret Le Arrashu), in *Ethiopia: Options for Rural Development*, (Siegfried Pausewang *et al* (eds.) (London: Z Books Ltd), p. 46.

²⁶ Namely the Oromo Liberation, the Ogaden Liberation, the Tigray Liberation and the Eritrean Liberation fronts.

²⁷ Donald Crummey (2000), *Land and Society in Christian Kingdom of Ethiopia, From the Thirteen to the Twelfth Century*, (Addis Ababa University Press) p. 248

²⁸ *Id.*, p. 248

²⁹ *Ibid.*

³⁰ Dessalegn Rahmato (2009), *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s`-2000s`* (Ethiopia: Addis Ababa, Addis Ababa University Press). John Bruce also claims that ‘‘The extractive programs of the Derg impoverished peasant households and extended and deepened rural poverty. Grain requisitioning and the control of agricultural marketing contributed significantly to the suffering of the peasantry in the famine years of the 1980s.’’ John Bruce *et al* (1993), ‘‘After the Derg: An Assessment of Rural Land Tenure Issues in Ethiopia’’ (unpublished, on file with the author), p. 2. Mesfin Woldemariam on his part has subscribed to this when he writes,

...peasants held the belief that producing more attracts greater number of hyenas. The prevailing thinking was that it was better to get poorer than letting another person with might expropriate one's produce. When we consider the matter deeply, what was desired was not being in state of impoverishment. Avoidance of assault on one's liberty or space was the preferred course of action because surplus produce invites assault on one's autonomy; the preference was to remain impoverished instead of producing more which invites assault and enrich assaulters.³¹

Yet, one cannot buy the exploitation thesis as it is. First, the exploitation thesis sees peasants as sitting ducks in their failure to count in their strategy to avoid or minimize the effects of the national government's attempt to take resources out of the countryside. That is, the exploitation thesis erroneously assumed that the peasants had no agency. For example, peasants' strategy of "hiding the size of their land" as well as their agricultural produce is discounted. John Bruce says "...It is likely that some forms of organizations were strengthened or invented in resistance to oppressive and unreasonable government demands."³²

Second, at the heart of the exploitation thesis is the existence of cause and effect relationship between the government's measure of extracting agricultural surplus from the rural populace and lack of growth in agricultural production. For one needs to set a parameter, e.g., in terms of the amount of surplus extracted from the countryside, before one can safely conclude that the rural population was forced to contribute to the national economy more than their fair share. But the proponents of this thesis did not establish this.³³

Still further, the exploitation thesis presumes that the Derg had a clear intention to make peasants (as producing households) owners of the fruits of their labor and that such intention was embodied in the Rural Lands Proclamation perhaps relying on the preamble of this legislation which intends "to make the tiller the owner of the fruits of his labor..." However, nowhere in the substantive section of the Rural Lands Proclamation was peasants' full ownership of the

rural producers are milked without replenishing the peasant's capacity to produce...[The peasantry is subjugated to] predatory social classes (landlords, the government) whose interests lie in surplus extraction from peasants even when this kills the goose that lays the golden egg...peasants are trapped in seamless webs of socio-economic forces over which they have no control. It is the supra-exploitative nature of these socio-economic and political forces, the irreducible claims of outsiders, that stunts the productive capacity of the producer... (My translation from Amharic.) Mesfin Woldemariam (2012), *Mekshef Ende Etiopia Tarki* (in Amharic) (Addis Ababa: Ethiopia), p. 28.

³¹ Dessalegn conquers with Mesfin when he argues as a result of surplus extraction by the Derg through their rural agents, the peasant "begins to calculate very carefully how much energy he will spend on self-subsistence and how much he will 'give up' to supporting the lives of other people who add more to his misery than to his well-being. Thus, agriculture productivity from peasant small holders has generally decreased..." For this see, Nyong'o, Peter Anyang' (1990), *Ethiopia: The Debate on Delinking in Adjustment or Delinking? The African Experience* (Tokyo: United Nations University Press) p. 72 and C.C. Wrigley (1988), "Ethiopia Starves", *The Journal of African History*, 29:1, pp. 108-109.

³² John Bruce *et al*, note 30, p. 2.

³³ Eshetu Chole (1990), "Agriculture and Surplus Extraction" in *Ethiopia: Options for Rural Development* (London: Z Books Ltd), pp. 89ff.

fruits of their labor explicitly incorporated. And technically speaking, a preamble is a programmatic rather than a right conferring element of legislation.

Unlike the claim of the exploitation thesis the short period of full ownership of the fruits of land by rural producers in Ethiopia ended not primarily because the Derg faced serious shortage of grain supplies in the towns nor for fear of urban revolt but most importantly due to the Derg's underlying ideological policy preference. The urban opposition groups were either decimated or had fled and the rest were cowed or made part of mass associations. Thus, there was no probability of uprising. I think, the action taken to extract resources from rural producers can primarily be explained in terms of their collectivist ideology, which seems to make sense when one recalls the Derg's slogan in their Economic Policy that "man is to support himself and his community..."³⁴ The idea was to send the message in clear terms that family farming did not hold any future by dis-incentivizing that form of agricultural production through compulsory extractive measures.

Further, even if one concurs with the promoters of the exploitation thesis that there is an intuitive relationship between being a full owner of one's produce and land tenure security, their tendency, at least of some of them, to see privatization of land as the only way out of the problem is not convincing. Land privatization as a solution was discussed in Chapter 1. Broadly speaking, the land privatization approach argues that the Rural Lands Proclamation failed to contribute to development because it granted limited rights to peasants and if the Derg had conferred land ownership rights upon peasants or at least some form of transferable land rights, the intended purpose of releasing "for industry the human labour suppressed within such [the feudal] system" could have been realized. It is a desire for the legal system as a tool to define and guarantee the broadest possible latitude to a landholder preferably to be expressed in terms of full land private ownership.

Finally, the exploitation thesis shares the neo-patrimonial perspective in arguing that the Derg's sole purpose in extracting resources from the rural masses was to perpetuate their power at any cost and that to this end the Derg used land and its surplus production to build loyalists. The problem of development is thus internalized or made to confine itself to the bounds of the Ethiopian territory. Thus, to both approaches, the Derg was inherently anti-developmental and devoid of long term development objectives. These claims do not however go with the

³⁴ The Origins and Future Direction note 40.

modernizing aspirations of the Derg as reflected in their long-term plans and projects of transforming the Ethiopian society.

iii. The program of socialist modernity and its implications for land

The Derg's appropriation of the fruits of land was accompanied by a policy whereby smallholders were required to surrender their land to collective entities in favor of income arising out of collective production.

a. The Derg's modernization of agriculture

Existence of agricultural collectivization ambitions from the outset: Despite the fact that some commentators were of the view that the Derg were following a smallholder agriculture path, it is argued here that there was in fact a shift in the agricultural policies of the Derg away from small holder agriculture in favor of collectivized agricultural production after 1978 because they had the intention to replace peasant farming by collective farming from the very outset.³⁵ This was meant to be attained through resettlement, villagization and producers' cooperatives. The Derg nevertheless could not give it a try during the first five years of the revolution because they were in existential threat emanating from within and without.³⁶

A push by the Derg for collectivized agricultural production after 1978 was a matter of bringing their vision of socialist agriculture embedded in the policies, laws and institutions including plans to the forefront. One indication of the Derg's collectivization intent was their failure to redistribute state farms to peasants in view of the small size of their landholdings after the land redistribution which was about 1hectare (and in other areas much less than a hectare). Another indication of the Derg's early commitment to collectivist mentality was expressed in the smallness of land size given to a household in settlement sites; for example, in Kaffa and Illubabor, for an average size of five family members, it ranged between 0.26 hectare and 0.71

³⁵ For example, Heinrich Scholler and Paul Brietzke (1976), *Ethiopia: Revolution, Law and Politics* (Munchen, Weltforum Verlag) p. 86, said,

The creation of farms that are too small from the stand point of long-term economic development - no more than 10 ha and usually much smaller - means that present policies emphasize, of necessity, economic maintenance and the immediate satisfaction of land hunger at the expense of large productivity increases.

³⁶ The war with Somalia, civil war with separatist groups in the north and poor inherited economic base pushed the Derg to struggle first for survival than pushing for grand objectives such as construction of the economy along the socialist path.

hectare.³⁷ This suggests that settlements sites were meant to be prelude to collectivization but not permanent self-sustaining family farming systems.

Perhaps the clearest indication of the collectivist mind-set of the Derg was the economic policy of *hibretesebawinet* (Ethiopian socialism) that was announced shortly before the coming into force of the Rural Lands Proclamation. Ethiopian socialism, to the Derg, was an indigenous philosophy capable of pulling the country out of its predicaments:

...The political philosophy [sprang] from the culture and the soil of Ethiopia; and, moreover, [it emanated] from the aspirations of the broad masses; and not [imported] from abroad like some decorative article of commerce. ...It [would] also be a philosophy which brings Ethiopia closer to those of her progressive neighbors committed to fairness and human justice as well as the broad masses of humanity ... It [would], finally, be capable of providing effective solutions to our long standing political and economic problems.³⁸

Ethiopian socialism “...emanates from our great religions which teach the equality of man, and from our tradition of living and sharing together, as well as from our history so replete with national sacrifice...”³⁹ The Derg presented Ethiopian socialism as embracing the following central values: “equality, self-reliance; the dignity of labor; the supremacy of the common good...” The Derg’s articulation of Ethiopian socialism concluded that “...That is our political

³⁷ Degefa Tolossa (2003), “An Assessment of Agricultural Policies in Ethiopia (1957-1991) with Special Emphasis to Regional Development” in *Topics in Contemporary Political Development in Ethiopia*, (Tafesse Olika *et al* (eds.) Department of Political Science, Addis Ababa University), p. 122.

³⁸ *Ye Ethiopiya Ye Economina Ye Maheberawi Edget Meri Eqed* (1977-1986) (hereafter the Perspective Plan), (Addis Ababa, 1977) p. 146.

³⁹ *Id.*, p.146. This underlying thinking behind Ethiopian socialism was reflected in the preamble of the Rural Lands Proclamation as “...the development of Ethiopia of the future can only be assured... only by instituting basic change in agrarian relations which would lay the basis upon which, through work by cooperation, the development of one becomes the development of all.” This made abundantly clear that the mode of agricultural production in the minds of the policy designers of the time was not private one, but a collective mode of agricultural production. The authorization under the Rural Lands Proclamation to transfer lands held by pre-revolutionary commercial farms into state farms reinforced its collectivist state of mind and the direction of agricultural support system away from small holder agriculture to large and medium scale agriculture held by producers’ cooperatives and the state itself. The Ethiopian socialism also embraced the idea of cooperation, which meant the “development of one becomes the development of all Man is meant to work to support himself and his community... Henceforth, the interests of the community will be paramount.” The Rural Lands Proclamation, Paragraph 4 of the Preamble and The Origins and Future Direction note 40, p. 146.

Rural land related laws and policies of the Derg that seemingly focused on the achievement of peasant self-sufficiency through household production in fact emphasized agricultural production beyond self-feeding such as surplus production to feed the urban population for export and for local industries. This could be said to be a shift from concern for agricultural subsistence to that of production and productivity beyond family consumption that could be attained only via socialist agriculture, which meant creation of big and medium farms through massive labor force and merger of small peasant farms. Thus, the economic policy declared that “those who operate cooperative farms will be given special government support and assistance.” See the Origins and Future Direction note 40, p.149.

philosophy. And those are the principles upon which the foundations of the new Ethiopia will rest.’’⁴⁰

More generally one of the ethos of Ethiopian socialism as embodied in the economic policy entailed cooperative rather than individual work. The economic policy wistfully looked back upon a golden lost era in the tradition of Ethiopia where cooperative and collective endeavors were valued more than individual one and “what took precedence in traditional Ethiopia was the interest and welfare of the family and the community.”⁴¹ And the state set out to restore that idyllic Ethiopian rural life.

Cooperative formation: In order to realize socialist modernity, the Derg required peasants to establish producers’ cooperatives.⁴² This became pronounced in the Rural Lands Proclamation which also dealt with villagization and settlement as a prelude to collective as opposed to individual farming with its implications for access to farmland and inputs.⁴³ This was followed by the establishment of the Resettlement Authority⁴⁴ and the Peasant Associations Organization and Consolidation Proclamation that envisaged the establishment of producers’ cooperatives with the following objectives:

...to organize and develop cooperatives in all places and at all levels in order to lay down the foundation for socialist agriculture so that the peasantry may benefit from joint labor...To enable the peasantry to work collectively and speed up social development by improving the quality of the instruments of production and the level of productivity.⁴⁵

The main goal of agricultural producers’ cooperatives was:

to increase agricultural production by making use of modern technology and by consolidating the small and fragmented holdings...to promote and establish socialist conditions in rural areas and to safeguard the political and social interests of the peasantry; [and] to create the conditions appropriate for facilitating planned development.⁴⁶

Agricultural producers’ cooperative societies were to be crafted out of peasant associations, which would: “put the main instruments of production under the control of, and

⁴⁰ “Declaration of the Provisional Military Government of Ethiopia: ‘Ethiopia Tikdem’: The Origins and Future Direction of the Movement, 1974” (hereafter the Origins and Future Direction) in Heinrich Scholler and Paul Brietzke, note 35, pp-141-150 & p. 146; Taffara Deguefe, note 22, p. 503, said: “At this time this homespun ideology [Ethiopian socialism] appealed to all of us. It was made to fit the conditions and the needs of Ethiopian society and we accepted it as part of the much needed social reform policy.” See Dessalegn Rahmato, note 2, p. 295 for the characterization of Derg as professing to adhere to ‘participatory socialism.’

⁴¹ The Origins and Future Direction note 40, p. 143.

⁴² The Rural Lands Proclamation, Articles 10 (5), 23 and 26.

⁴³ *Id.*, Articles 10 (8), 18 and 27.

⁴⁴ Resettlement Authority Establishment Proclamation.

⁴⁵ Peasant Associations Organization and Consolidation Proclamation No. 71, 1975, Preamble and Article 5 (5).

⁴⁶ Fassil Kiros, note 23, p. 114.

when necessary to gradually transfer their ownership, to the society; pay the members according to the quality and quantity of their work.’’⁴⁷ The state came up with a policy on agricultural producers’ cooperatives in 1979.⁴⁸ This policy envisaged peasant associations to be ephemeral, to be replaced by producers’ cooperatives.⁴⁹

The Derg offered better land, credits, subsidies, agricultural extension services and lower taxes to attract peasants to producers’ cooperatives.⁵⁰ Producers’ cooperatives had the privilege to demand compulsory labor services from non-member peasants during peak seasons.⁵¹ They were to be aided by service cooperatives through the supply of agricultural inputs, cheap consumer goods and output marketing.⁵² State-driven compulsory transfer of land from small holders to producers’ cooperatives without compensation for the land or for the property on the land, in some cases, without even giving those forcibly deprived of land the chance to remove the property on their land. The elites in the state farms and producers’ cooperatives were given the opportunity to preside over immense wealth - landed, labor and other resources. In addition to the incentives approach, the Derg deployed the strategy of co-opting poor and (medium level) peasants to membership and by trying to draw the leadership of cooperative association from such peasants.⁵³ Yet, the main device to enlist membership to producers’ cooperatives was party indoctrination.

⁴⁷ Peasant Associations Organization and Consolidation Proclamation, Articles 8 (1), 8 (3) and 8 (5).

⁴⁸ The Provisional Military Administrative Council, Policy on Agricultural Producers’ Cooperatives, Addis Ababa, June 1979.

⁴⁹ In this policy, the state planned producers’ cooperatives to pass through three stages; namely *malba*, *welba* and *weland*. *Malba*, as the first stage in the transformation of peasant associations into agricultural producers’ cooperatives, involves conversion of “farmland except for up to one-fifth of a hectare” (which would be left for individual cultivation) into collective property and “the use of implements and draught animals for cooperative production.” Fassil Kiros, note 23, p. 114. *Welba*, the second stage, would come into being when “all land [would be] made collective property” (except one-tenth of a hectare left for individual use) and “when all implements and draught animals are made cooperative property.” *Ibid*.

And *weland*, the highest stage in the development of agricultural producers’ cooperatives, would come into existence, when “all land of several *welba* and their other means of production to be brought under its control (the average land size to be 4,000 hectares)...” *Id.*, p. 115. At this stage, private property would be abolished and replaced by collective property involving collective production and sharing of income from such collective production. In the three stages of producers’ cooperatives, members would receive ‘income’ to be calculated on the basis of criteria such as work and implements contributed to the cooperative society. *Id.*, p. 114-115.

⁵⁰ Fassil Kiros, note 23, p. 116; Dessalegn Rahmato, note 2, p. 290-292.

⁵¹ Bereket Kebede (2002), “Land Tenure and Common Pool Resources in Rural Ethiopia: A Study Based on Fifteen Sites” (Oxford: Blackwell Publishers) p. 131.

⁵² Peasant Associations Organization and Consolidation Proclamation, Art.7.

⁵³ *Id.*, Article 8 (3).

Perspective Plan: A Ten Year Perspective Plan meant to run from 1984 to 1994 (the Plan) was adopted. The Plan considered its ultimate aim to facilitate the construction of socialist society in Ethiopia through the vehicle of agricultural transformation.⁵⁴ The Plan gave priority to the enhancement of productivity in the agricultural sector, whose accelerated growth was to be attained through the instruments of socialist agriculture as reflected mainly through large farms organized around state farms and agricultural producers’ cooperatives.⁵⁵ The road for producers’ cooperatives would be paved by complementary measures such as villagization and population resettlements.⁵⁶

At the beginning of the Plan period, 1984, the peasant sector occupied over 95 percent of the cultivated land and produced about 98 percent of total production which was planned to decline to 39.6 percent in area and 36.6 percent in production upon the expiry of the Plan in 1994.⁵⁷ As shown in the table below, by the end of the Plan period, in 1993/94, agricultural producers’ cooperatives were projected to “encompass 52.7% of all peasant households and would account 48.5 of the total cultivated area.”⁵⁸ This was from 1.4 percent in cultivated area and production at the start of the plan period.⁵⁹ And the state farm sector “would account for about 6.2% of cultivated area by the year 1993/94.”⁶⁰ In general, the Plan has the “objective of ensuring the undisputable dominance of socialist relations of production in the economy and raising the productivity of such socialist sector.”⁶¹

Table 10: Socialist Agriculture in the Ten-Year Plan⁶²

	1984-5		1994	
Farming Sectors	Area	Production	Area	Production
Peasant	95.4	94.8	39.6	36.6
Cooperatives	1.4	1.4	52.2	51.9
State farms	0.4	0.2	6.4	10.0
Settlement sites	0.4	0.2	1.8	1.5

⁵⁴ Perspective Plan note 38, p. 8.

⁵⁵ *Id.*, pp. 25-26.

⁵⁶ *Id.*, pp. 29-31.

⁵⁷ Degefa Tolossa, note 37, p. 120.

⁵⁸ Fassil Kiros, note 23, p. 122; and Perspective Plan note 38, p. 35.

⁵⁹ Degefa Tolossa, note 37, p. 120.

⁶⁰ Perspective Plan note 38, p. 122.

⁶¹ *Id.*, p. 36.

⁶² *Ibid.*

Member of the Agricultural Producers` Cooperatives (APCs) except the cadres were unhappy because as an informant put it peasants “toiled for the few.”⁶³ By this the informant meant the APCs had to deliver a portion of their produce below market price to the AMC and the rest of the produce would be divided among members including those with little or no contribution to production. Another informant said,

amerachoch (producers` cooperatives) shortened the life span of its members. Those who joined it perished in their early age due to overwork. Only few are alive today. Most members did not like it. Even their oxen hated it. Those who were in the *amerachoch* were feared and disliked by non-member relatives and neighbors.⁶⁴

Peasants say they were driven away from their fertile individual as well as communal landholdings in favor of the APCs.⁶⁵ The cadres did not give them time to clear their property on their farmlands which they had to hand over to the APCs.⁶⁶ Such property was run down by APCs oxen or vandalized for which no compensation was paid nor was there a judicial recourse.⁶⁷ They were forced to relocate to inaccessible and marginal areas to start life anew. Such marginal areas served as buffer zones for the APACs farms. A peasant told the researcher that “our farms shielded the crops of the APCs against wild animals.”⁶⁸ On top of this, “after we developed the marginal land by clearing the forest and making it suitable place for farming and habitation, the cadres used to come to expropriate a good portion of this land for the APCs for no apparent reason, and of course, with no compensation.”⁶⁹ Non-members were visited with hefty fines when their cattle strayed on the APCs` farms.⁷⁰ They were forced to till farmlands and harvest for APCs during peak seasons without any compensation.⁷¹

b. Reasons for the Derg` agricultural modernization

The reason for the Derg deciding to abandon small holder agriculture in favor of socialist agriculture was the so called peasant inadequacy, which meant the key villain for agricultural

⁶³ Interview 07 with a farmer, September 16, 2012.

⁶⁴ *Ibid.*

⁶⁵ Interview 08 with a farmer, September 16, 2012; as the present researcher learned from informants, the Derg could not however mobilize all peasants to join APCs. For example, in Sidamo Province due to a number of constraining factors, formation of producers` cooperatives focused on those farmers who possessed good agricultural land located in accessible locations. Therefore, there were a number of peasants who did not join the APCs. Their attitude to the APCs was not positive at all.

⁶⁶ Interview note 65.

⁶⁷ Interview 09 with a model farmer, September 16, 2012.

⁶⁸ Interview 10 with a local resident/public servant, September 16, 2012.

⁶⁹ Interview 15 with a farmer, September 18, 2012 and interview 24 with a landless farmer September 19, 2012.

⁷⁰ *Id.*, interview 15.

⁷¹ *Ibid.*

underdevelopment was neither land tenure security⁷² nor politics (both of which the Derg claimed to have sufficiently resolved) but peasant deficiency which includes inherent problems of peasant landholdings such as scattered and small nature of farm plots, lack of land use plan, lack of adequate agricultural extension services, lack of requisite qualities in the peasant population including their low level of literacy and work ethic, rising demography,⁷³ peasants' stubborn adherence to backward farming methods and lack of receptiveness of new techniques of production, and "insufficiency of modern infrastructure in the rural areas."⁷⁴

The Derg reasoned maintenance of the existing tiny and scattered plots farmed by illiterate peasants with the use of archaic farming methods would not enable the country to achieve its objectives - feed itself, supply raw materials to its industries, earn foreign currency and generally transform the economy. On the basis of figures shown in the table below, the Derg believed that maintenance of these minute farm plots would mean continuation of starvation.⁷⁵ The Derg employed statistics gathered by the imperial government on the size of peasant landholdings to paint the picture that the peasant economy was seriously and irremediably constrained by the size of their holdings as well as the lack of contiguity of many of the plots of rural households.⁷⁶

⁷² To the Derg, the land question was solved once and for all by the Rural Lands Proclamation and the state by no means posed tenure insecurity for the peasantry. The Derg never admitted lack of tenure security in the sense that the farmer could not invest in his land because of the feeling that the state functionaries would dispossess him. The Ten-Year Perspective Plan note 38, p. 11, states that "Ethiopian peasant is, without dispute, assured of the ownership of the fruits of his land and labor." According to this perspective, nor did various collectivization projects created a sense of land tenure insecurity for the peasants.

⁷³ Perhaps, the only tenure related factor conceded as a problem by the Derg was absence of rural land use policies in Perspective Plan note 38, pp. 31, 40 and 71. And accelerated population growth and declining land resources were held "responsible for pushing the already vulnerable agrarian sector to the brink of disaster." For this, see Dessalegn Rahmato, note 2, p. 68.

⁷⁴ Dessalegn Rahmato, note 2, pp. 67-68.

⁷⁵ *Id.*, p. 284, who stated that "Under existing conditions, the average rural Ethiopian household of 4.5 members required about three to four hectares of good-quality land...to meet all its basic needs and outside obligations and to have a modest marketable surplus." The initial distribution and later redistribution of land brought about the size of a household's landholding to range between 0.5 and 2.00 ha.

⁷⁶ This statistics shows little change over time; it discounts the peasant's access to communal land. Some also contest the method used in gathering the data leading to this structure of small farmers' landholding; for this, see Siegfried Pausewang, note 25, p. 45, even if statistics are dubious, "... once they are printed, [they] become the truth, and since it is no longer possible to repeat the exercise, it is hard to convince administrators that the only statics they have got are useless."

Table 11: Average Size of Landholdings of Peasant Households in 1974/75 and 1977/1978⁷⁷

Size (Hectares)	Percent	
	1974/75	1977/78
Under 0.10	1.2	1.9
0.11-0.50	23.6	26.5
0.51-1.00	25.2	22.7
1.01-2.00	25.2	29.3
2.01-5.00	18.7	18.2
5.01-10.00	4.0	1.3
10.01 and above	1.8	0.1
Total	100	100

In regard to backward tradition blocking progress, the Derg stated that “weight of tradition inhibits the search for new ideas or new methods of work; indeed tradition codified in religious practice often defines the conditions of labor and the forms of employment.”⁷⁸

An argument based on peasant inadequacy discounts the Derg’s political and land tenure policy failures by externalizing the matter to cultural and non-cultural factors such as rural demography and holds rural producers who were victims of inappropriate policies responsible for their own predicaments. In addition to fruit extractions recounted above, the peasant sector which contributed around 95% of total production received 60% fertilizers and 30% improved seeds.⁷⁹ This is as opposed to the diversion of 40% percent of the total amount of fertilizer and around 70% of the improved seed to state farms which constituted only 3.5% of total agricultural production in spite of the fact that in 1985-86, for example, “the peasant sector out produced the cooperative sector with respect to every major cereal and pulse when measured in crop yield per hectare...”⁸⁰

Such thinking also hides the Derg’s negative attitude towards the peasantry, that is, the underlying reason behind the inadequacy thesis was that the Derg’s “attitude toward Ethiopia’s farmers was even more contemptuous than the emperor’s had been...”⁸¹

⁷⁷ T. Teka and T. Nichola (1983), “Rural Poverty Alleviation: The Case of Ethiopia”, IDR Research Report, (Addis Ababa University) p. 31.

⁷⁸ Dessalegn Rahmato, note 30, p. 67.

⁷⁹ Fassil Kiros, note 23, pp. 120-121.

⁸⁰ Donald Crummey, note 27, p. 249.

⁸¹ *Id.*, p. 245. Dessalegn argues that the main reason for resorting to collective agriculture was “political and doctrinal rather than economic” because there was not any class in rural Ethiopia that threatened the power of the Derg and that small scale agriculture did not exhaust its full potential and the needed complimentary support system was not provided to this sector. See Dessaleng Rahmato, note 2, pp. 286-285. Bruce says, “In a fundamental sense, the government’s attack on both individual and common property rights in land and other natural resources was part of an attempt to undermine all forms of traditional supra-household social organization

c. Land tenure implications of the Derg's agricultural modernization

This socialistic orientation of the Derg in the agriculture sector had obvious implications of changing rural land tenure from private user rights to collective use rights and thus ultimately with a bearing on the land rights of the peasant. In particular, the planned forcible conversion of peasants into members of producers' cooperatives would bring about change of peasant private landholdings into cooperative holdings. This meant, making cooperative farms out of multitude of small and scattered farm plots already under the possession of peasants. Thus, the policy was intended to transform peasants into farm workers of agricultural cooperatives who would be getting income based on their labor contribution to such cooperatives.

As mentioned above, the instruments for consolidating farmlands were peasant resettlement and villagization schemes to pave the road for agricultural cooperative formation. In order to create contiguous village settlement, peasants were involuntarily relocated to places other than their ancestral site. Moving people under villagization programs led to loss of their ancestral grounds and property thereon without compensation: "There was no compensation for houses and perennials."⁸² Cooperative formation, resettlement and villagization projects as instruments to construct socialist agriculture were augmented by state farms for "at the height of its expansion activities, some peasants were evicted from their land to make way for mechanized state agriculture..."⁸³ Allan Hoben provides the following statistics to show the dispossessing effect of the move towards socialist agriculture.

Over the decade the Ministry of Education evicted approximately 80,000 households for its school-building programs. The Ministry of Coffee and Tea evicted over 15,000 households, water projects evicted 29,000, state farms over 90,000, and the Ministry of Agriculture 38,000 (for forestry and extension). These figures are dwarfed by the two million households (an estimated 8-10 million people) who were evicted and relocated by collectivization and villagization, and the more than one-half million households who were moved to the western lowlands in the resettlement campaign...⁸⁴

Besides, in regard to the land tenure implications of the Derg's agricultural policies, Dessalegn said,

and to facilitate the transition to socialism." John Bruce *et al*, note 30, p. 2. Andargachew also concurs that in taking socialist agrarian measures "the government had in mind the pursuit of a socialist programme according to which individually cultivated small plots were condemned as inherently unproductive." Andargachew Tiruneh, "The Peasant Revolution That Never Was", *Fortune* 3:47 (Sunday, February 23, 2003) p. 12. The Derg presented agricultural collectivization as a panacea for the ills of rural Ethiopia.

⁸² Zenebe Feleke (2009), *Neber* (in Amharic) Part II, (Addis Ababa: Ethiopia) p. 80.

⁸³ Dessalegn Rahmato, note 2, p. 292.

⁸⁴ Allan Hoben (1995), "Paradigms and Politics: The Cultural Construction of Environmental Policy in Ethiopia", *World Development*, 23:6, p. 1011.

...rural extension agents quite frequently alienated farmland and common pasture belonging to the peasants and PAs [Peasant Associations] and allocated it to cooperatives whenever the latter complained of shortage of land. This practice was fairly widespread and aroused resentment. Eviction of peasants from their land to make way for cooperatives also became routine. Poor peasants who had insufficient or mostly marginal land often formed cooperatives to have access to higher-grade land. The government provided this by evicting other peasants, who, in turn, were frequently offered marginal land. This...created...insecurity among peasants...⁸⁵

Dessalegn correctly puts the transformation of the dominant peasant agriculture into collective agriculture through the devices mentioned here was seen by the Derg “in terms primarily of *property ownership*...”⁸⁶ (emphasis in the original) The socialist property regime envisioned by the collectivist agriculture was given expression in the Derg’s 1987 constitution. Articles 12-18 of this constitution provided that:

The forms of ownership of the means of production are socialist, that is, state and cooperative ownership, private ownership and other forms of ownership as determined by law. State ownership is public ownership. The Ethiopian State shall, through the ownership of key production, distribution and service enterprises, play the leading role in the economy. Natural resources, in particular land, minerals, water and forest, are state property. Private ownership shall, guided by state policy, carry out activities beneficial to the national economy.⁸⁷

These constitutional provisions recognized hierarchy within socialist property, the highest place in the ladder being taken by state property, followed by cooperative ownership, private property and then other forms of property ownership such as personal property and property owned by mass and professional associations.⁸⁸

This meant a change in land tenure system itself from possessory right given to peasants under the Rural Land Proclamation into collective land use, where the holdings of each peasant would be merged through the instruments of the APCs so that peasants would be turned into laborers who would receive income proportionate to their contribution in the collective

⁸⁵ Dessalegn Rahmato, note 2, pp. 291-292.

⁸⁶ Dessalegn Rahmato (1990), “Cooperatives, State Farms and Smallholder Production” , in Ethiopia: *Ethiopia: Options for Rural Development*, (Siegfried Pausewang *et al* (eds.) (London: Z Books Ltd).

⁸⁷ Bereket Kebede, note 51, p. 130; James McCann (1995), *People of the Plow: An Agricultural History of Ethiopia, 1800-1990* (Madison: The University of Wisconsin Press), p. 253.

⁸⁸ The Derg’s 1987 was called the Constitution of the People’s Democratic Republic of Ethiopia (PDRE Constitution) and was adopted after thirteen years of their rule without a constitution. See R. Khalfina (1980), *State Property in the USSR*, (Moscow: Progress Publishers), pp. 9-61, for the place of socialist property, its development and hierarchies and relationship among various forms of property in the USSR, which the PDRE Constitution mimicked.) See Fasil Nahum (1980), “Socialist Ethiopia’s Achievements as Reflected in its Basic Law”, *Eth. J. L.*, vol. 11, where Fasil treated the PDRE Constitution as a consolidation of the Derg’s various laws passed between 1974 and 1986. See also Menghistu Fisseha-Tsion (1988), “Highlights of the Constitution of the Peoples’ Democratic Republic of Ethiopia (PDRE); A Critical Review of the Main Issues”, *Review of Socialist Law*, 14:2, p. 129 & pp. 176-178 for a comparison of the close affinity between the PDRE Constitution and the USSR Constitution.

enterprise.⁸⁹ This means making socialist agriculture out of existing private agriculture to some extent in a fashion similar to the collectivization efforts of Tanzania.⁹⁰ An important weapon the Derg sought to deploy in favor of this transformational project was the Derg's land policy which put control over land firmly in their hands. In this land policy, the peasant was de-linked from his tribe and custom in terms of accessing agricultural land; now he had to get access to land from the state alone. Sub-tribal control over land envisaged by *utuwa* (see Chapter 6 for more on this.) and the likes - thus land control by multiple sub-ethnic communities - was put to an end in favor of people's ownership of land administered and controlled by the central government using its political units extended down to the household.

B. Reiteration

The Derg were appropriators of land and its fruits.⁹¹ In terms of development ideology, the Derg aspired to make "a giant leap from an extremely individualistic form of production to a highly socialistic system, with all the economic, political, social, cultural as well as behavioral changes which this would imply."⁹² Such plan for societal leap was founded upon rejection of local context and thus contributed to their failure "I would not go anywhere by abandoning the place where my grandparents lived; where my parents lived and brought me up; where the

⁸⁹ There were 170 service cooperatives in 1988 in Sidamo Province; the number of member peasant associations being 790 and the number of participating households was 204, 550. For this, see, Ministry of Agriculture, Annual Report of Cooperative Organization Division (in Amharic), (Addis Ababa, June 1988), p. 32.

⁹⁰ The similarities between the Ethiopian project and *Ujamaa* village program (1973-1976) lie in: coercive and occasionally violent state actions involved and the justifications given by the authorities; namely improvement of the lives of the population moved by providing them with roads, schools, clean water, clinics and modern agricultural inputs efficiently, administrative convenience by "reorganizing human communities to make them better of political control and to facilitate the new forms of communal farming favoured by the state" and aesthetic; and both campaigns were disastrous economically and ecologically. For this, see James Scott (1999), *Seeing Like A State, How Certain Scheme to Improve the Human Condition Have Failed* (New Haven and London, Yale University Press), pp. 238ff. But the Derg used rather violent means and the number of people moved in Ethiopia was much larger. For the land rights implications of the Tanzanian program, see also Issa Shivji (2002), "Contradictory Perspectives on Rights and Justice in the Context of Land Tenure Reform in Tanzania" in *Cultural Transformation and Human Rights in Africa* (Abdullahi A. An-Na'im, ed.) (London: Zed Books) p. 192ff.

⁹¹ During the Derg, there was a potential for rural transformation because there was initially a fundamental beneficial change in regard to land for land was taken away from the feudal forces and put in the hands of peasants. And similarly, the fruit of the land was given back to those who toiled on the land exclusively without exploitation by external forces. But this was short-lived and not transformational. For this, see H. W. O. Okoth-Ogendo (ed.) (1981), *Approaches to Rural Transformation in Eastern Africa* (Nairobi: Book Wise Limited), pp. ix-xv.

⁹² Fasil Kiros, note 23, p. 135; setting aside Fasil's contentious claim of the prevalence of 'extremely individualistic form of production' in Ethiopia, it is sound to take his emphasis on the Derg's inability to make a giant leap to bring about all-rounded societal transformations.

umbilical cords of my grandparents, of my parents, of myself and my children were buried.’’⁹³

However, the issue went beyond mere sentiment:

...a peasant had often several perennial cash crops such as eucalyptus trees, fruit trees and vegetables in his garden; and his farmland was close to his residence; but when he was forced to relocate to his new village, he had to abandon these things; the villages were far away from his new residence.⁹⁴

Informants said they were relocated as many as six times due to the programs of APCs and villagization.⁹⁵ Land redistributions were undertaken several times by peasant associations in response to demands for land by those who lost their landholdings for the APCs, villagization and landless peasants.⁹⁶ Peasants were involuntarily moved around several times or made a member of the APCs as a result of government measures relating to cooperatives, hamlet formation and land redistribution but their complete eviction was not recorded as a result.⁹⁷ People were involuntarily moved within a short span of time from their traditional abodes to resettle them in villages centrally planned in template forms with the official justification that they would be provided with agricultural inputs, physical and social infrastructure efficiently.⁹⁸ In the new villages, a peasant was given a garden plot and a temporary farm plot. The villages were to be transformed eventually into collectivization -producers` cooperatives. It was remarked, “The cadres were working to change us into a proletariat but not make us more productive.”⁹⁹ It is also said that “peasants developed sufficient capabilities to make full use of the resources of their environment. This ability and know-how are threatened by collectivization and may eventually be lost if individual peasant initiative is smothered by collective discipline.”¹⁰⁰

Besides, the Rural Lands Proclamation and its implementation were not “within the frame of certain traditional values of common relevance in peasant culture” and contrary to the fact that “...land rights and agricultural practice are an integral part of rural culture.”¹⁰¹ Brietzke puts the Rural Lands Proclamation as one of the most sweeping of contemporary land reform ‘packages’ that seeks to start with *tabula rasa* even if the country`s land tenure was based on

⁹³ Zenebe Feleke, note 82, p. 80.

⁹⁴ *Ibid.*

⁹⁵ Interview notes 63, 65 and 67.

⁹⁶ Interview notes 68 and 69.

⁹⁷ *Ibid.*

⁹⁸ James Scott note 90, pp. 247ff.

⁹⁹ Interview note 65.

¹⁰⁰ Dessalegn Rahmato, note 86, p. 104.

¹⁰¹ Siegfried Pausewang, note 25, pp. 46-47.

centuries of tradition.¹⁰² It was also observed that, “Underlying the adoption of a strategy of socialist agriculture following the model of the Soviet Union was an impatient impulse to modernization, to transform Ethiopian farming by introducing tractors, fertilizers, improved seeds, and intensive mono cropping.”¹⁰³

The Derg’s transformational ventures (cooperatives, villages and resettlements) were invariably planned from Addis in disregard of local customs and experiences in legion fashion. These projects were enormous in terms of the population and other resources they sought to mobilize. And, in terms of state praxis, we should note that such projects were underpinned by the slogan “We shall conquer nature!” echoed by the Derg. The projects were backed by the coercive force of totalitarian state which resulted from the elimination of opponents within and outside the Derg and the degeneration of the Derg themselves to the personal rule of the strongman - Colonel Mengistu Hailemariam.

The Derg were determined to allocate land and provide support to cooperative, villagization, resettlement projects despite their manifest lack of economic viability and social costs and even in the event of failure on the part of donors to lend a hand. The Derg were equally determined to take land and other resources away from the peasant sector, which they saw as ‘backward and bound to disappear’, in order to channel them to these modernization projects. The Derg decimated the already weak civil society they inherited from the imperial regime in favor of effectively controlled mass and professional associations and when civil societies were allowed to function, their role was confined to relief activities. It would be fitting to say that the Derg operated in fact in the context of a non-existent independent civil society.

In the Ethiopian case, through the instrument of state ownership of land under the Rural Lands Proclamation, the Derg arrogated to themselves, the mandate to move people around, diminish or consolidate the size of their landholdings as they deemed fit and appropriate the fruits of their land. It was also aimed to govern those land matters in accordance with state laws to the disregard of the multiple tribal land tenure practices. In their effort to transform society and nature, the Derg viewed land as having no market value; land was taken rather as an asset to be deployed by them for their centrally planned modernization schemes without legal and

¹⁰² Paul Brietzke (1976), “Land Reform in Revolutionary Ethiopia”, *The Journal of Modern African Studies*, 4:14, pp. 645-646.

¹⁰³ Donald Crummey, note 27, p. 249; Christopher Clapham (2006), “Ethiopian Development: The Politics of Emulation”, *Commonwealth & Comparative Politics*, 44:1, pp. 137-150.

customary constraints. Land was viewed as a site for raising productivity and production by mobilizing labor and scientific inputs to be achieved by bringing scattered villages together, by consolidating peasants` small and fragmented plots and by transforming peasants into farm workers in cooperatives and state farms.

The next chapter investigates whether the historical tendency of land and fruit alienation from rural producers described in this and previous chapter presents itself in today`s land tenure system of Ethiopia, and if so, how, why and with what implications for small agriculturalists and herders.

* * *

4

Ethiopia`s Shifting Land Policy

The privatization, the revisionist and associative ownership perspectives discussed in Chapter 1 have reacted to people`s ownership of land approach by attacking its ban on land alienation. The present chapter takes an issue with the land alienation theme that runs through the three perspectives by indicating the existence of an ongoing shift in orientation in the implementation of people`s ownership of the land perspective towards state-driven land alienation as opposed to market-led land alienation.

This requires an examination of the nature of the people`s ownership of land approach before the onset of the shift, the factors which have set the shift in motion, the extent of the shift and identification of the concrete manifestations of the shift.

There are two possible ways of looking at what is happening on the ground: one is that there is a genuinely mixed objective of providing land for the peasants while at the same time advancing a capitalist economy for rapid development. The other is that there is a stronger shift in direction, with the focus shifting to enabling rapid economic growth and encouraging the ‘modern’ farmer and foreign investor while retaining the rhetoric of land for the peasants for legitimization purposes. The chapter considers the latter as the more plausible argument.

As indicated in the Introduction, the present ruling party, the EPRDF, following the overthrow of the Derg, formed the incumbent Government in 1991. The Government adopted programs including an agricultural development program articulated in Agriculture Development Led Industrialization (ADLI). ADLI pledged a virtuous cycle of national development and social recovery of post-socialist Ethiopia founded upon the enhancement of the productive capabilities of small farmers.¹ ADLI especially put subsistence farmers at the centre not only of the country`s agricultural development strategy but also its development in general “to lift the peasant masses out of their abyssal poverty, to achieve nationwide food security, and to stimulate the foundations of an industry.”² In regard to land, this smallholder based development strategy

¹ Hashim Tewfik (2010), *Transition to Federalism: the Ethiopian Experience* (Ottawa, Forum of Federations).

² Ren`e Lefort (2011), “The Great Ethiopian Land-grab: Feudalism, Leninism, Neo-liberalism...”, <<http://www.opendemocracy.net/ren>> (Accessed August 21, 2013).

implied what is called people's ownership of land which pledged provision of a non-transferable, free and secure land use rights to all rural producers.

However, by the end of 1990s, after a decade long experiment with ADLI, Ethiopia was able to register about 5 percent average economic growth, which is far below the expectation of the Government.³ Generally, the Country could not overcome fifty years (1950-2000) of economic stagnation.⁴ Food security was not attained nor could agriculture stimulate industry. With this, the Nation's hope of economic recovery dwindled. Due to this unsatisfactory economic performance, intra-party political crisis and some global factors, after 2000 and especially, after the 2005 elections,

[The government] sought new ways of justifying its rule. In a reversal of its earlier principle, it vaunted the idea that democracy could only be attained if development in the form of economic growth was realized. "Double digit" growth and a number of development successes thus became new sources of legitimacy claims. In a nutshell, EPRDF's message to domestic and international audiences was that 'we might lack a genuine mandate from our electorate, but at least we brought about economic improvement as a result of our economic and development policies and investment in infrastructure.'⁵

In putting accent on economic growth, the Government turned around and stated that,

Ethiopia has no choice except employing free market economy in the time of globalization. The option provided here is to be good actor and competitor or to be an observer of such drama. There is no place to hide in this time of globalization, since the world is becoming a clear and plain field.⁶

The idea of free market economy is nevertheless modified by a developmental state notion which is described as a 'correct and scientific path', giving the state a privilege to engage in "selected strategic economic activities".⁷ This post-2000 development is dubbed as *hedasse* (renewal) period among party-government circles and it has been anchored on the state's objective of preserving political power through rapid economic growth.⁸

³ Alemayehu Geda *et al* (eds) (2011), *Readings on the Ethiopian Economy* (Addis Ababa: Addis Ababa University Press) pp. 20-25.

⁴ *Ibid.*

⁵ Tobias Hagmann and Jon Abbink (2011): "Twenty Years of Revolutionary Democratic Ethiopia, 1991 to 2011", *Journal of Eastern African Studies*, 5: 4, p. 586; Even though agriculture has registered 7 percent growth on average for the last two decades, the surplus from agriculture has not been sufficient enough to support the push for significant industrialization and the expected structural change. For this, see MOFED (2013), "Development and Poverty in Ethiopia (1995/6-2011)" (hereafter Development and Poverty) (Addis Ababa: Ministry of Finance and Economic Development).

⁶ As quoted in Jean-Nicolas Bach (2011), "Abyotawi Democracy: Neither Revolutionary Nor Democratic, A Critical Review of EPRDF's Conception of Revolutionary Democracy in Post-1991 Ethiopia", *Journal of Eastern African Studies*, 5:4, 641 p. 652.

⁷ EPRDF (2011), "The Renewal Path and Ethiopian Renaissance", (Addis Ababa: EPRDF) p. 107.

⁸ Kassahun Berhanu (2013), "CAADP Ethiopia: A New Start?" Working Paper 060, <www.future.agricultures.org>. p. 2 (accessed November 12, 2013).

Commentators have recognized this shift and its implication for democracy and federalism as manifested through narrowing political space, namely post-2005 treatment of opposition political parties and of the independent media, enactment of anti-terrorism and restrictive NGOs and civil societies` laws, increasing centralization of economic decisions and bestowal of discretionary power upon administrative agencies.⁹ But these observers have not examined its implication for rural development strategy much less for land policy.

The current chapter indicates that, since 2000, the Government has brought to the forefront new economic actors namely agricultural investors and model farmers who had been given marginal attention, if not suppressed and excluded, in the previous decade, but without completely abandoning its rhetoric of pro-poor equitable development. The Government has developed successive strategic plans, and passed land laws to implement this partial change of direction. The issue this chapter investigates is the form of land tenure security which has emerged in post-2000 period, specifically whether these government plans and laws imply a departure from the idea of peasant security and egalitarianism embodied in pre-2000 land policy and the nature and extent of that shift. It should nevertheless be noted that even the *pre-hedasse* period retained economic thinking about land, though latent, which is now being brought to the surface clearly and forcefully as a matter of policy and practice.

The chapter concedes that post-2000 land policy and land laws entailed by the partial shift have not gone to the point of completely sacrificing the earlier professed social goal of land as embodied in people`s ownership of land. The land law of this period rather embodies a mix of socialist and market oriented ideals by seeking to allow land market as controlled by the State through retention of restrictions on transferability of land use right. The pre-2000 and post-2000 periods represent different visions of development: grassroots development based on boosting the productive capacity of small farmers versus development which is driven by urban and rural elites - commercial farmers. Hence, a Janus-faced land law has emerged, land rights which are expressed both in economic (tradable rights) or social (non-transferable rights) terms but tending to putt an accent on the former.

⁹ Assefa Fiseha (2012), "Ethiopia`s Experiment in Accommodating Diversity: 20 Years` Balance Sheet", *Regional and Federal Studies*, 22:2, 435-473; Sisay Alemahu Yeshanew (2012), "CSO Law in Ethiopia: Considering its Constraints and Consequences", *Journal of Civil Society*, 8:4, 369-384 and Tom Lavers (2011), "The Role of Foreign Investment in Ethiopia`s Smallholder-focused Agricultural Development Strategy", Land Deals Politics Initiative Working Paper 2, <www.future.agricultures.org> (accessed November 12, 2013).

Subsequent chapters will develop this new dimension of land policy by documenting a re-emerging idea of ‘land to the improver’ discourse that increasingly regards land as an asset to raise capital tending to undermine the ‘land to the tiller’ ideal behind people’s ownership of land. The ‘Land to the improver’ motto is embodied in expropriation legislation, state sanctioned practice of land *kontract*, the legal status of rural communal lands and undue administrative leeway offered to land administration authorities. Now ‘enhanced land users’ who essentially are traditional elites are brought to the picture with the state as a distributor of land to them through lease system. At the same time, the renewal period land policy retains that features of land policy meant to advance social equity - people’s ownership of land which is accompanied by restrictions on transferability of land rights and government power to redistribute land. Thus, the adherence by the Government to the socialist principle that views land as a “social utility – a source of general welfare – rather than as an exploitable commodity”¹⁰ during *pre-hedasse* is being modified.

The present chapter puts subsequent chapters in their political economic context. The first section discusses the features of the *pre-hedasse* agricultural development policies and their implications for land policy. It, in particular, articulates the characteristics of people’s ownership of land underpinned by the idea of free agricultural land for all rural citizens. The second section examines an ongoing change in the content of agricultural policy during *hedasse* period, the factors that have dictated the change of direction and its effect on land policy.

A. Implications of pre-2000 agricultural development policy for land policy

i. The nature of pre-2000 agricultural development policy of Ethiopia

The EPRDF led Government’s emphasis on ‘equitable development’, between 1991-2000, was reflected in their various sector development programs. The centre of these sector based programs was ADLI, which promised primacy to intensive subsistence farming by small farmers with some government subsidies. Development was aspired to be achieved on the back of peasants. ADLI was augmented by a food security strategy and agricultural cooperative legislation.¹¹

¹⁰ G. Kitching (1982), *Development and Underdevelopment in Historical Perspective: Populism, Nationalism and Industrialization*, (London: Methuen) p. 36.

¹¹ Government of Ethiopia (2002), “Food Security Strategy”, (Addis Ababa: Government of Ethiopia); and Peasants’ Cooperatives Proclamation, 1994.

One reason for this agriculture policy was the “dictates of the science of economics” and “experience of other countries:” what Ethiopia has in relative abundance is labor and land; and the trick is to capitalize on both, but not on capital which is scarce.¹² The majority of the Ethiopian population constitutes smallholder farmers with an average landholding of less than one hectare and enhancing their productivity would trigger a virtuous cycle of agricultural development by ensuring food security, by raising their income which would increase their demand for manufactured goods including agricultural inputs, and by producing raw materials, agricultural export products and which in turn would stimulate industry.¹³

The other reason was the EPRDF realized that their predecessors' demise had largely been attributed to the failure to cater to the interest of peasants. Third, the peasants served as a stepping stone for the EPRDF's overthrow of the Derg and believed to remain faithful to their political support base. As a party which initially adhered to Marxist ideology, one cannot also underestimate Marxist undertones of the policy.

ADLI, as a family farm model, has gained acceptance among development scholars and international institutions as donors like the WB have purported to have envisioned a model of development for Africa that is driven by smallholder agriculture.¹⁴ The Government position banked on the empirical literature that shows small farms produce higher produces per hectare of land than large farms in the same condition and that peasant smallholder production improves agricultural output, employment and equality and promotes development.¹⁵

But from endogenous analysts a multitude of criticisms have been leveled against ADLI that have served to “highlight inherent contradictions and political motivations lurking beneath its surface.”¹⁶ Thus, one criticism was that if ADLI succeeded, then there would be more

¹² Government of Ethiopia (2002), “Industrial Development Strategy of Ethiopia”, (Addis Ababa: Ministry of Information), pp. 13-19.

¹³ ADLI resembles early rural development policies pursued in the USSR as documented by, Anthony Payne and Nicola Phillips (2010), *Development* (UK: Polity Press) pp. 44-55, under catch-up theory of development.

¹⁴ Klaus Deininger (2003), “Land Policies for Growth and Poverty Reduction” (The World Bank and Oxford University Press).

¹⁵ Peter Dorner (1972), *Land Reform and Economic Development*, (Baltimore: Penguin Inc.); see also Michael Lipton (2009), *Land Reform in Developing Countries: Property Rights and Property Wrongs* (Routledge); Peter Hazell *et al* (2010), “The Future of Small Farms: Trajectories and Policy Priorities”, *World Development*, 38:10, where they have argued that small farms are still a key strategic option for poor countries. For a contrary view, see Paul Collier (2009), “Africa's Organic Peasantry: Beyond Romanticism”, *Harvard International Review*, 31:2

¹⁶ Steven Davies (2008), “The Political Economy of Land Tenure in Ethiopia” (PhD Thesis, University of St. Andrews, <<http://research-repository.st-andrews.ac.uk/>> (accessed March 12, 2010).

surpluses without convincingly telling one as to where such surpluses could be sold because, domestically, there are more farmers than non-farmers (i.e., more producers than consumers). And, internationally, volatility of the global market for agricultural goods makes the global market for primary agricultural goods unreliable.¹⁷ The other critique is that experience of China and India does not show success in ADLI like programs. These countries have succeeded where they have adopted policies of agriculture and industrialization in tandem without unduly privileging one over the other.¹⁸ Moreover, put in doubt is ADLI's claim that there is 'excess idle land' to be given to the existing large percentage of landless and the land hungry; the skepticism emanates from the growing number of the landless and the land hungry due to high rate of rural population growth and the inability of the industrial sector to significantly absorb excess labor.¹⁹ Given this last observation, the strict pursuit of ADLI was said to create general land tenure insecurity and plot miniaturization.

After an assessment of ADLI as of 2000, the Government said that they treated peasants unwarrantedly as an amorphous whole and little was done to initiate rural differentiation. Hence, a shift in agricultural policy emerged from within the Government. A Government strategy paper says, "We did not realize that we could not supply fertilizers and seeds as well as other agricultural technologies and extension services to all small farmers."²⁰ ADLI gave commercial farmers a tangential role in agricultural development. By their own admission, the Government had entertained "a huge and deep suspicion towards private investors" including commercial agriculturalists.²¹ The Government conceded the limits of a decade long experimentation with ADLI, which had had its own objectives of ensuring food self-sufficiency, food security, supplying raw material for industries and earning foreign currency to stimulate a virtuous circle of national economic transformation. Thus, the EPRDF led Government confession that:

We found ourselves in situation where peasants led hand - to mouth life, without significant linkages among themselves and to the market...The Government did not embrace fully and properly especially global market, for both the good of our politics and the sector's own development. There simply was mere pursuit of food self-sufficiency and food security without integration to agricultural commercialization through diversification and specialization.²²

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ EPRDF (2006), "Development, Democracy and Abiyotawi Democracy" (hereafter Development) (Addis Ababa, EPRDF) p. 67.

²² *Id.*, pp. 68-69.

In the pre-renewal period, 1991-2000, “the EPRDF-led Government adopted a patchwork of ideas arising out of remnants of post-1991 EPRDF attitudes, [i.e., during the period of their struggle against the Derg, 1974-1990]...” towards free market, the role of the state, and agricultural policies but much more leaning towards the party`s legacy of Leninist development trajectory.²³ A party document says,

Even if we started dismantling the command economy inherited from the defunct regime with the cooperation of the World Bank, we were determined to slow down the privatization program, incline to retain the commanding heights of the economy, and show conviction in the advisability of state interventions in key economic sectors.²⁴

Hence, “we did not take the crucial policy stance that accelerated economic growth through a promotion of commercial agriculture should be given a primary place to eliminate poverty.”²⁵

ii. The implications of ADLI for rural land policy - people`s ownership perspective

As indicated in the Introduction, the end of the transitional government period was marked by the coming into effect of the Constitution in 1995, which addresses land matters in Article 40 that bans private ownership of land and offers use rights to small farmers and pastoralists. It provides, “Land...shall not be subject to sale or to other means of exchange” but without making clear whether the ban relates to land rights less than ownership such as use rights or to both land ownership and any of the sticks in land use rights.²⁶ The Constitution further states the principle of non-eviction of peasants and herders from their land and avails land use rights to investors without prejudice to the rights of peasants and pastoralists in this regard.²⁷ And the regions are mandated in the Constitution to administer land while the Federal Government is given the authority to enact land utilization laws.²⁸

In order to amplify this constitutional clause and to map out the land rights implications of ADLI and other ancillary documents, the Rural Land Administration Proclamation (the 1997 Rural Land Proclamation) was enacted in 1997, which attributed land tenure insecurity to

²³ *Id.*, p. 68 & 70.

²⁴ *Id.*, p. 67.

²⁵ *Id.*, p. 70.

²⁶ See the Minutes of the Economic Committee. Unfortunately, the minutes of the Constitutional Assembly do not shade light on these questions because the debate that took place on this article was rather exclusively fixated on a single aspect of the issue, namely, private versus public ownership of land.

²⁷ Article 40 (6) of the Constitution.

²⁸ Articles 51 (5) and 52 (2, d) of the Constitution.

peasants' memories of past rural land redistributions and lack of determination of the scope of their land rights.²⁹

ADLI, the Constitution, the 2005 Rural Land Proclamation that replaced the 1997 Rural Land Proclamation and regional rural land laws embody the notions of peasant security and egalitarianism.³⁰ The idea of peasant security is discussed below in terms of use rights, tenure security, access to rural land to investors, agricultural support schemes and underlying land rights conception and justifications. Another aspect of peasant-oriented land policy is egalitarianism – the ethos of agricultural land for all. Points discussed in the sub-sections below also include federal and regional political arrangements with their implications for decentralized land administration as well as constitutional interpretation. The underlying issues considered

²⁹ The Constitution, under Articles 51 (5), 52 (2.d) and 55 (2.a), provides that further details about such rights shall be worked out by laws of federal and regional governments where the former is mandated to pass land use legislation while the latter are given the power to administer land on the basis of such federal legislation. In relation to determination of the land rights of peasants, this law reaffirmed and expanded what has already been enshrined in the Constitution. The statute described a peasant's land right as a 'holding right', which means the right to use the land for agricultural purposes, the right to lease it, the right to inherit it to those family members who depend on the land for their livelihood and full ownership right over the fruits of the land and the right not to be evicted from such holding right. The Rural Land Administration Proclamation, 1997. The implication of this for land policy seems clear: the land security of small holders who already possess farmland would be assured and agricultural land would be given to those with little or no land without payment primarily for livelihood of rural households. Therefore, the law provided for "security against eviction and displacement from holdings on any grounds other than total or partial distribution of holdings", food security and egalitarianism in its reference to fair and participatory land redistribution to meet the state's commitment to "ensure free assignment of holding rights both to peasants and nomads". *Id.*, Articles 5-7.

Moreover, the 1997 Rural Land Proclamation was seen as a beacon of hope for regional autonomy in land matter as the Constitution offers 'nations', 'nationalities' and 'peoples' the power to administer land. This land law stated,

the Constitution provides that Regional Governments are empowered to administer land and other natural resources in accordance with Federal laws, which calls for the enactment of a federal land law that is of 'a general scope' so that it permit them to pass land laws of their own which address the peculiar circumstances of the locality. *Id.*, Preamble and Article 6.

The law considered itself as a broad framework as indicated by its attempt to formulate general criteria for the contents of regional rural land laws stating that regional land laws shall:

assign holding rights sufficient for subsistence, both to peasants and nomads, subject to the particular conditions of the locality; to orphans not having attained majority, the physically weak and to similar others; fix criteria, such as family responsibility and formation of a new marriage, for qualification to a holding right; and as well as set out standards, in a descending order of priority based on family-size and such other objective factors. *Ibid.* See also the EPRDF (2013), "Our Land Policy and the Revised Lease Proclamation", (hereafter Our Land Policy) *Addis Raey*, 3:8, for the detailed description of the land policy.

³⁰ The Transitional Government Charter adopted in June 1991 was silent about Ethiopia's land policy in the country. Later in the same year, the government adopted economic policy that was indicative of their intention to continue people's ownership of land followed by the enactment of investment law which hinted that land would be given out to investors in the form of lease. Then, in 1993, urban land law legislation was passed providing for a marketable land use rights over urban land through the system of lease.

here are: whether there is a trend for a shift in Ethiopia`s land law and policy, and if so, to suggest its direction, the extent of and the reasons for the shift. The point sought to be conveyed in the discussion is that the land policy envisaged by ADLI is people`s ownership perspective and it is revisionist in nature since it retains the fundamentals of the Derg`s land policy but it is crafted in a double-edged sword fashion as it has the possibility of moving it to land alienation.

a. Peasant and pastoralist security

Peasants` rights over their farmland are rights of use that are recognized in the Constitution, using phrases such as ‘the right of use’ and to be enjoyed ‘without payment’ and these rights are elaborated by subsequent federal and regional subsidiary Statutes.³¹ These user rights over rural land manifest certain features which emphasize the social dimension of land.

First, the use rights accorded to peasants are not something given to the head of a farming family or any particular member therein. The right is bestowed upon the farming family as a unit and ongoing concern.³² It is the right of the present and future members of such family considered collectively and inter-generationally so long as a member thereof continues farming. Hence, it is a joint user rights given to the living and the yet to be born members of such rural household.³³ The main legal implications for the joint nature of the user rights are two: such conception of user rights gives a member of a rural household who is of age a right to demand

³¹ The Constitution, Article 40 (4 & 7); the Rural Land Administration and Land Use Proclamation, 2005; Oromia Rural Land Administration and Use Proclamation, 2007 and The Southern Regional State Rural Land Administration and Utilization Proclamation, 2007.

³² The Rural Lands Proclamation, 1975, Article 4 and the 2005 Rural Land Administration and Land Use Proclamation, Article 8.2.

³³ Third, Ethiopian land law conceives use rights in land separate from the property on the land. The peasant can claim the ownership of immovable things on the land produced by labor or capital, not the land on which those immovable things stand as well as those things (e.g., minerals and trees) that are on the land attributed to nature. Hence the Constitution stipulates:

Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and, where the right of [land] use expires, to remove his property, transfer his title, or claim compensation for it. The Constitution, Article 40 (7)

This idea of keeping ones claim on the land apart from labor and or capital related property on the land is made abundantly clear in subsidiary laws. (The 2005 Rural Land Administration and Use Proclamation, Article 2 (4)) And this land versus fixtures on land dichotomy means, in other words, “...a separation of the soil itself from things attached to it... There is thus a distinction between interests in the land itself and interests in things on or attached to the land ...the rights to or in buildings...are separate from the right to the land.” Kwame Akuffo (2009), “The Conception of Land Ownership in African Customary Law and Its Implications for Development” *RADIC*, vol. 17, p. 65.

redistribution and any member of the household specially the one heading it cannot validly transfer the user rights without the consent of all the other members.³⁴

Second, this joint land use rights is conceived in the Constitution as a democratic right as opposed to a human right, perhaps a unique dichotomy of bills of rights in this Constitution. This characterization of the user rights is clear from the structure of Chapter 3 of the Constitution entitled ‘Fundamental Rights and Freedoms’ that is divided up into ‘Human Rights’ and ‘Democratic Rights’, Article 40 that deals with land rights being one of these.³⁵ The implication of dubbing land rights as democratic as opposed to human is that land use rights can be contracted and expanded as the case may be through the democratic decision making process subject to the non-eviction principle, which is outlined below. Put differently, the use rights is not a type of right which fences the farmer in and keeps out the State; the State can use its policy and legislative instruments to deploy land rights to public purpose. Further, the idea of democratic right with regard to land is that peasants, for that matter all citizens, are given the opportunity to participate in national and regional level collective decision making processes pertaining to the allocation and the mode of use of this common asset, land, through their “direct democratic participation;” land use would be put to further those collective decisions instead of deploying it to solely advance the whims of any particular landholder.³⁶

Third, the use rights of peasants over an agricultural land are meant to serve the primary purpose of subsistence.³⁷ True to its joint nature, the land use rights are tied to the subsistence of rural households as a unit. Such user rights are not granted exclusively for the survival of a given member thereof. As a subsistence asset, the law does not allow peasants to use land for non-agricultural ends nor does it permit them to deprive themselves of it totally and permanently either through market or social transfer mechanisms. Hence, peasants can engage in an agricultural venture they deem proper for an indefinite period of time, retain ownership of the fruits of their land and are constitutionally assured of the right to receive fair price for their harvest and have a conditional power to transfer their land rights via donation and inheritance.³⁸

³⁴ The 2005 Rural Land Administration and Land Use Proclamation, Article 8.

³⁵ The Constitution, Articles 14-28 and Articles 29-44.

³⁶ Article 8 (3) of the Constitution provides for direct popular participation in addition to representative democracy.

³⁷ Government of Ethiopia (2001), “Rural Development Policies and Strategies of Ethiopia”, (Addis Ababa, the Ministry of Information).

³⁸ The Constitution, Article 41 (8).

The extant rural land law of Ethiopia seeks to reiterate subsistence as its overriding objective in two important ways. One is that peasants would risk loss of their land if they fail to use it continuously and properly for agricultural purpose by undertaking proper land conservation measures and they would also risk dispossession when they fallow their lands for a period more than fixed by regional land statutes.³⁹ This duty to proper and continuous land use reiterates the role of farmland as a livelihood asset.

The other is the law`s restrictions on land transfer through social and market methods. For example, peasants are allowed to rent out only part of their lands, for a short period of time, upon the consent of concerned family members and with the prior approval of local authorities; and land donation is also circumscribed because peasants can only bequeath part of their land, only to a family member who is dependent on such land and even then they must secure the consent of their household members and get the blessing of local Government authorities.⁴⁰ Peasants cannot collateralize their user rights for that could eventually lead to alienation. And agricultural land may be inherited only by a person who used to live with the deceased deriving his/her livelihood out of such land and with no other source of earning. The aim is to preclude peasants from depriving themselves and their family of a survival asset. And conversely, the law tends to prohibit persons other than investors with other means of sufficient income from acquiring farmland.⁴¹

An anti-eviction constitutional clause is inserted in the Constitution. According to the government, “to the rural poor the priority is to be protected from the risk of losing their land,”⁴² which is sought to be ensured, first, through grant of constitutional immunity against eviction from their land declared in the Constitution: “Ethiopian peasants have the right to...protection against eviction from their possession”.⁴³ The restraint against the state means the constitutional commitment on the part of the state not to evict peasants from their land possessions. The other side of this immunity clause also seems to require the state to protect

³⁹ The Southern Regional State Rural Land Administration and Utilization Proclamation, Article 13.

⁴⁰ *Id.*, Article 8.

⁴¹ This is because for a person to be eligible to inherit agricultural land from a peasant, such person must fall within the rubric of a family member, which is defined as a person having no other means of earning and dependent for his/her survival on the agricultural land in question. For this, see the Southern Regional State Rural Land Administration and Utilization Proclamation, Article 2 (7).

⁴² Olivier De Schutter (2011), “The Green Rush: The Global Race for Farmland and the Rights of Land Users”, *Harvard International Law Journal*, 52:2, p. 532.

⁴³ The Constitution, Art. 40 (4 & 5).

peasants against eviction emanating from non-state forces such as investors or community authorities. In other words, peasants are given a constitutional immunity against dispossession by forces including the government.

Then for the State, so long as peasant`s user rights is concerned, there is a ‘red line’ drawn in the Constitution which the Government cannot cross without transgressing the Constitution nor can the Government let or acquiesce non-state actors to cross this buffer zone. Admittedly, there is a possibility of compulsory land redistribution in the pursuit of ‘land for all’ principle, which will be taken up shortly. Yet proper interpretation of land redistribution should not lead to total eviction; land redistribution should entail only a partial deprivation of peasants` land. And if land reallocation occurs, compensation for improvements to and property on the land will be due. And a further concession is made that there might be expropriation but should that occur it should be for “public purpose subject to payment in advance of compensation commensurate to the value of the property”⁴⁴ and arguably, the non-eviction principle should warrant provision of a substitute agricultural land or a meaningful alternative means of livelihood.

There is a constitutional ban on land alienation. The existing land laws also protect peasants against their own follies since they rule out any meaningful transfer of land rights through the formal market channels. In essence, the laws have made the land use rights of peasants inalienable for the Constitution stipulates “Land...shall not be subject to sale or to other means of exchange.”⁴⁵

Besides, state officials assert that there is a historically rooted perception of land tenure insecurity among the rural population as there appears to be a diminished trust in government land administration institutions owing again to history; and a good way of securing land rights is via land certification program.⁴⁶ To this end land certification has perhaps come to obtain legal

⁴⁴ The Constitution, Art. 40 (8).

⁴⁵ *Id.*, Art. 40 (3).

⁴⁶ It should be noted that the government characterizes their land tenure arrangement as impeccable and there exists no land tenure insecurity in rural Ethiopia. The late Zenawi said, “We agree that peasants need to know that their access to land is secure in the long term. We feel that we have achieved the necessary levels of security by making it clear that access is a permanent right passed on through inheritance. How more secure can you get? This is security in perpetuity!...” For this, see Meles Zenawi (2000), “Introductory Speech and Responses to Panel Questions” at International Association for Geodesy Ethiopian Economic Review Symposium. Addis Ababa: Ethiopian Economic Review. Hence, to the government, if there is land tenure insecurity at all, it is not related to the existing form of state tenure arrangement but it owes its origin to lack of good land administration, peasants` unpleasant past memories of frequent land redistribution and misappropriation of the fruits of their

and institutional backing of the state. Institutionally, several regions have established units responsible for effecting land registration and certification. And legally, the current land laws, both federal and regional, provide for cadastre and certification of all land.⁴⁷ It is as a result of these apparent legal and institutional commitments of the government that millions of peasants have obtained land certificates.

So far, out of 13,000,000 rural households, land registration has been completed for about 6,216,819 households, and they have received first level land user right certificates. The regional distribution is: 2,484,693 households in Oromia, 2,400,000 households in Amhara, 632,000 households in Tigray and 700,126 households in [Southern Regional State]. During the next 5 years, the remaining 6,783,181 households will receive first level certificates in four regions (Amhara, Oromia, Southern Regional State and Tigray). Moreover, second level certificates in cadastral map will be issued for about 1 million households in pilot project areas. The issuance of first level and second level land certificates would improve land tenure security with more flexible and transparent rights.⁴⁸

Further, as part of the small farmers` security scheme, the Constitution singles out peasants and gives them priority when it comes to access to land among classes of potential rural land users. It seems to give first priority in regard to access to land to peasants over investors when it prescribes, “*Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, [the] government shall ensure the right to private investors to the use of land on the basis of payment arrangements established by law (emphasis supplied).*”⁴⁹

This privilege is made quite clear in the Rural Land Proclamation which states,

*subject to giving priority to peasant farmers...: Private investors that engage in agricultural development activities shall have the right to use rural land in accordance with the investment policies and laws at federal and regional levels.*⁵⁰

b. Agricultural support system

labor as well as exploitative feudal relations. The causes of land tenure insecurity are externalized; perception emanating from the country`s historical antecedents is there to blame for. Some argue the land certification process as an exogenous factor which has enhanced trust towards government institutions in connection with land, for this, see Mintewab Bezabih *et al* (2011), “Trust, Tenure Insecurity, and Land Certification in Rural Ethiopia”, *The Journal of Socio-Economics*, vol. 40.

⁴⁷ Rural Land Administration and Use Proclamation, Article 6 and the Southern Regional State Rural Land Administration and Utilization Proclamation, Article 6

⁴⁸ Government of Ethiopia (2006), “Ethiopia: Building on Progress a Plan for Accelerated and Sustained Development to End Poverty (2005/06-2009/10)”, (hereafter PASDEP) vol. i & vol. ii, (Addis Ababa: Ministry of Finance and Economic Development), pp. 97-98; and PASDEP, vol., ii, p. 8.

⁴⁹ The Constitution, Article 40 (6).

⁵⁰ Rural Land Administration and Use Proclamation, Article 5 (4). In addition, land rights of sections of the Ethiopian society other than peasants and pastoralists are not elaborated in the Constitution. Use rights are not accorded to them at the constitutional level, not to say about non-eviction principle. Their rights are left entirely to the vagaries of legislation as opposed to the rights of the peasants which are dealt with in a relatively elaborate fashion in the Constitution including withdrawal of some of the key rights from ordinary legislative processes. Hence, the EPRDF-led government`s land policy apparently privileges peasants as a social group that is they think they are “a key basis for democracy and development.” See note 21.

Subsistence as the fundamental purpose of land rights as enshrined in the current laws of Ethiopia does not necessarily mean that the state wants peasants to use their land for the sole and exclusive purpose of meeting their subsistence needs. Peasants are in fact encouraged and expected to produce more than their own basic material subsistence, for instance, to meet the state's requirement of feeding the urban population and contribute to generation of foreign currency. But it is realized that given the conditions of the rural people protection of user rights, though necessary, is not sufficient even to enable them to derive their basic livelihood. The State seems to appreciate those small rural producers must be enabled to turn their user rights into basic necessities by removing their inadequacy to enable them to be improvers of their own land. Thus, on top of providing them with land use rights as foundation for rural subsistence, the Government pledges to work aggressively on the supply of complementary support schemes. This arises from the conviction that the problem of agricultural underdevelopment in the country is not in the main insecure land rights but it is rather an issue to be solved through the provision of a host of complimentary support systems such as physical infrastructure, social services, supply of basic agricultural inputs and facilitation of markets for agricultural products so that peasants get fair price for their produce.⁵¹

ADLI's apparent focus on complimentary measures seemed to have learned from the experience of countries such as Japan and Taiwan that carried out a successful land reform. In these countries, judicious land reform exhibited four features, namely effecting land redistribution in a comprehensive way in such a way that landlessness was reduced considerably, providing agricultural extension services, supplying multiple cropping and variety of seeds, and availing the people of rural services and infrastructure.⁵² Kidane Mengisteab says the latter three

⁵¹ *Ibid.*

⁵² Haile Kebret (1999), "Land Reform, Revisiting the Public versus Private Ownership Controversy", in Proceedings of the 9th Annual Conference of the Ethiopian Economy, (Alemu Mekonnen and Dejene Aredo (eds.)), Addis Ababa, p. 56; government actions back the pledge to provide land to those who need it as a livelihood asset. To wit, at least one major land redistribution program was carried out in Northern Ethiopia, sending the message that this could be replicated in other regions. Intermittent but significant resettlements and distribution of rural commons to the landless and the land hungry have also happened. Major land redistribution programs, for instance, were carried out in 1997 in Amhara Region State as well as in the 1980s in Tigray Regional State. As fieldwork for this thesis shows, intra-regional resettlements have occurred in many highland parts of the country for the last two decades to meet the growing landless estimated to be at least 10 percent of the rural population and to relocate drought affected people. And rural land certification programs promoted to offer greater land tenure security delivered land certificates to millions of small farmers. Government bureaucracy that includes the Ministry of Agriculture nationally and agriculture units at regional, zonal, district and sub-district levels which are meant to control of distribution of 'scientific inputs', offer advice to minimize pre-and-post-harvest wastages and help small producers obtain fair prices for their products. And the government has trained

factors were missing in the Ethiopian case during the Derg regime. He says ‘‘Ethiopia’s land reform [was] ... unsuccessful case ... (because) the distribution of land was not accompanied by favorable allocation of other resources to the peasantry.’’⁵³ Kidane nevertheless failed to mention land alienation tendencies present in past land laws of the country. ADLI was predicted thus upon Government supply of a comprehensive system of agricultural support to the rural poor.⁵⁴

c. Egalitarian access to land

On top of the emphasis on peasant security accompanied by support schemes, the social side of land policy in Ethiopia pledges land for all Ethiopian citizens equally and for free. It is encapsulated in the Constitution, which provides that ‘‘Ethiopian peasants have the right to obtain land...’’ and ‘‘Ethiopian pastoralists have the right to free land for grazing and cultivation... The implementation shall be specified by law.’’⁵⁵ The specific law referred to here has been enacted and it stipulates that,

a) Peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge: b) Any citizen of the country who is 18 years of age or above and wants to engage in agriculture for a living shall have the right to use rural land; children who lost their mothers and fathers due to death or other situation shall have the right to use rural land through legal guardians until they attain 18 years of age: c) Women who want to engage in agriculture shall have the right to get and use rural land.⁵⁶

As Chapter 3 indicated, this egalitarianism has its roots in the 1975 Rural Lands Proclamation, which provides that:

...without differentiation of the sexes, any person who is willing to personally cultivate land shall be allotted rural land sufficient for his maintenance and that of his family... the Woreda peasant association shall upon request allot land from an area which has unoccupied land to any person who has no land or other means of livelihood.⁵⁷

The social aspect of land also invokes the revolutionary motto of ‘land to the tiller.’ According to the framers of the Constitution, the main tenet of the land to the tiller slogan popularized by the 1974 Ethiopian revolution was to guarantee land use rights to peasants and assure them of ownership right over the fruits of their land.⁵⁸ The slogan ‘land to the tiller’ was not meant to provide peasants with private ownership of land nor was it meant to allow them to

and deployed over 33,000 rural extension workers throughout rural Ethiopia and established thousands of grain marketing cooperatives to bridge yield gap observed in small holder production and ensure small-scale farmers get fair prices for their produce.

⁵³ Kidane Mengisteb (1990) *Ethiopia: Failure of Land Reform and Agricultural Crisis* (New York: Greenwood Press) p. 35 and *Id.*, Haile Kebret, note 52.

⁵⁴ See note 21.

⁵⁵ The Constitution, Article 40 (4 & 5).

⁵⁶ Rural Land Administration and Use Proclamation, Article 5 (1).

⁵⁷ The Rural Lands Proclamation, 1975, Article 4 (1) & Article 11 (2. c).

⁵⁸ See the Minutes of the Constitutional Assembly of the Constitution, 1994, (unpublished, on file with the author).

trade their use rights precisely because that was not the demand of the peasantry nor was it the request of the urban based leftist political organizations which gallantly fought for it. It is also thought that land alienation negates the intergenerational nature of land. Thus, to the designers of the Constitution, the land to the tiller motto should be construed to mean secure use rights for the present generation and the posterity.⁵⁹

In addition to its congruity with the aspirations of the revolutionary activists, it is claimed that this rendition of the land to the tiller slogan is consistent with and in fact a progress over the indigenous land tenure systems of various ethnic groups in Ethiopia under which ethnic group members were given use rights while land ownership was retained by the community as a whole.⁶⁰ It is claimed that the people's ownership scheme is an advance over traditional land tenure practices because such traditions confined access to land only to members but the public ownership system would avail land to any Ethiopian citizen, irrespective of their ethnic origin, who needs land for their subsistence. Thus, it has a liberating role for some social groups.

When and if such citizen starts deriving a sustainable livelihood from off farm sources, the state should take the land to make it part of the common land fund to be redistributed to those in need as and when necessary in the opinion of the local authorities. Yet, the interpretation of the land to the tiller slogan to mean according private ownership over land to individual members of the current generation would violate the principle that land is an intergenerational asset and, consequently, that any Ethiopian who is willing to live off farming and yet is unable to earn their living from other sources shall have free and secure access to it.

On the other hand, people's ownership of land would be consistent with the 'land to the tiller' motto because this in essence means individuals have no private ownership right over land and do merely possess inalienable use rights to be administered by government for and on behalf of the people. Under this scheme of people's ownership of land, since citizens have an abstract ownership interest in every piece of land located within the bounds of the country, they may claim for the concretization of such ownership interest when they are not in a position to derive income for a living from other means, making in that context, real the hitherto individual

⁵⁹ *Ibid.*

⁶⁰ It is not clear whether this invocation of tradition also includes the way different governments conceived land in the long history of the country that tends to consider the state as an owner of land located in the territory of Ethiopia, the people being entitled to a derivate use right. The only thing that changed in this long history of government appears to be the use of different terminologies designating the entity claimed to have owned land - the king, the public, and the nations, nationalities and peoples of Ethiopia.

citizen`s potential land ownership right. The perspective might as well argue that its redistributive scheme is not inconsistent with the equal opportunity ideal enshrined in the Constitution.⁶¹ Though in a different context, Joseph Singer has argued to legitimize property reallocation of some kind in terms of equal opportunity as follows.

Property rights have just origins today only if each person has the equal opportunity to acquire them... we cannot be indifferent to social, economic, and legal barriers that continue to prevent access to the property system today ... using democratic means to limit or reallocate property rights to ensure equal opportunity and to promote social relations compatible with a free and democratic society is not only not a violation of property right but compelled by the very reasons we created property rights in the first place.⁶²

This land-for-all-motto is to be implemented through redistribution of existing peasant landholdings and distribution of communal land, which the state claims as its own. The motto is based on the principle of common ownership of land embodied in the Constitution, which suggests indivisible ownership of land by every Tom, Dick and Harry and concertized with an allocation of a piece of agricultural land when they have no means of living.⁶³ The ‘land for all’ slogan is also kept to prevent the reemergence of asset inequality with its attendant ethnic inequality and exploitation that was the order of the day in pre-Revolutionary rural Ethiopia.⁶⁴ The principle is not simply an empty slogan because land redistribution has been reflected in federal and regional land laws and actually implemented in some parts of Ethiopia through compulsory redistribution of peasant landholdings at a significant level recently.⁶⁵

d. Justifications for peasant security and egalitarianism

The social conception of land reflected in the people`s ownership of land approach as explained above denies peasants of the right of private ownership over land and it also precludes them from alienating land use rights.⁶⁶ The social dimension of land emphasized in Ethiopia`s

⁶¹ See Article 25 of the Constitution.

⁶² Joseph Singer (2011), “Original Acquisition of Property: From Conquest and Possession to Democracy and Equal Opportunity”, *Indiana Law Journal*, 86:1, pp. 16-17; Joseph Singer (2011), “The Reliance Interest in Property Revisited”, *Harvard Journal of the Legal Left*, vol. 7, p. 82.

⁶³ The Constitution, Article 40 (3).

⁶⁴ See note 58.

⁶⁵ This refers to the controversial 1997 land redistribution program implemented in the Amhara Regional State.

⁶⁶ Given the government`s conception of property rights to land as use rights for peasant`s welfare purpose, it is not desirable to allow the peasant to collateralize such land use right for that ultimately implies land alienation. To subsist on the land he/she must be enabled to use it productively but not collateralize it. It might be rightly argued that land use rights collateralization is necessary to enhance productivity through the purchase of agricultural inputs such as seeds, fertilizers and oxen. And the argument goes that when the peasant who collateralizes his/her land use rights fails to settle his/her debts, the mortgagor will sell the use right out to a more able and efficient user. But these inputs might be made available to peasant through credit arrangements that do not require real security such as through micro financial institutions. In fact, land use collateralization is unrealistic in the context

land laws offers reasons anchored on consequence-based arguments including avoidance of social dislocation of massive proportions and loss of collective self-rule of ethnic minority groups.

Land alienation equals en masse peasant displacement: According to a State document named Rural Development Policies and Strategies, if permitted, land alienation would lead peasants to engage in distress sales.⁶⁷ This document continues to state that this is a significant concern in a country stricken by chronic mass poverty and frequent droughts which can significantly contribute to distress that could compel them to sell out their lands to those with money leading to unfair re-concentration of land. To the document in question, the few who could accumulate land (urban and rural elites) would possibly use such land in three ways: letting it idle⁶⁸ or putting it to mechanized farming⁶⁹ or engaging in tenancy arrangements.⁷⁰ Some scholars endorse this Government policy analysis of the repercussions of permission of land alienation. For example, Hussein Jemma says,

of rural Ethiopia where lands are fragmented and miniaturized, land markets undeveloped. For these reasons banks are not willing to extend loans to peasants by taking land use rights in the form of security because they know that they are unprepared to administer such scattered and small sized farm plots in view of the undeveloped nature of land markets.

⁶⁷ See note 37, pp. 73ff.

⁶⁸ In leaving land idle, the rich class is deploying the land for speculative purposes, which drives an otherwise productive labor, i.e., peasants, out of the rural areas and at the same time it has the effect of withdrawing land from production.

⁶⁹ The option of mechanized farming also displaces productive labor, which is contrary to comparative experiences that show that small holder farming is more productive than large farms because of the problems of shirking on the part of farm workers whose behavior on the farms cannot be adequately supervised due to prohibitive management cost. *Ibid.* There may be a different argument as between subsistence production and production of commodities for export, e.g. flowers. The latter requires technological skills and organization which are difficult to achieve outside of large scale. Supervision feedback, July 2014; see also Elias Nour (2012), “The Investment Promotion and Environment Protection Balance in Ethiopia’s Floriculture” (PhD Thesis, The University of Warwick). This means farm mechanization would not help the country achieve agricultural productivity. Further, it is not good for stability for conflicts between farm owners and farm workers would create political and social unrest in the country side.

⁷⁰ The third option for the land rich is to enter into tenancy arrangement whereby rural people would work on land, which would undermine productivity because of the problem of shirking in the context of lack of effective state regulation of the relationship between landlords and tenants. See note 37. Tenancy too would have a negative effect on rural politics and it would be a return to the exploitative landlord-tenant relationship rampant in pre-revolutionary Ethiopia. Hence, like the mechanized farming arrangement, unregulated or weakly regulated tenancy arrangement would not help rural politics either by virtue of its empowerment of landlords at the expense of the liberty of tenants, which the latter would fiercely resist. The accumulation of land for speculative ends and agricultural mechanization scenarios would result in massive rural-urban migration. Given the undeveloped nature of the industrial and service sectors, this would lead to rising urban unemployment and un-employability due to the undeveloped nature of peasant labor. The result would be social and political unrests given the fact that the Ethiopian state cannot afford to provide them with unemployment benefits.

There is a strong fear shared by all concerned parties that land privatization will lead to social stratification, the eviction of a large number of poor farmers and to resurgence of tenancy...on the basis of past experiences and current tendencies, it is possible to envisage the likelihood of the revival of land alienation, tenancy and eviction of peasant farmers...It is highly likely that privatization will lead to land concentration in the hands of the powerful and the rich.⁷¹

Hussein thus thinks that the introduction of private ownership of land would bring about tenancy and eviction. He adds the important point that land would be concentrated not only in the hands of rich people but also men of political power. Gebru Mersha shares this concern,

... privatization of land will create a massive eviction of peasants and the displacement of pastoralists. ...poor peasants, who comprise the overwhelming majority of the rural population, will be the first victims of that policy. Moreover, the pre-reform landlords, who batted on the meager 'surplus' produced by the peasants, mostly tenants, will now be replaced by 'capitalist' farmers who will alienate small peasants from their land.⁷²

Gebru refers to the pre-1975 Ethiopia where even "limited penetration of capital in the central and southern parts of the country caused massive misery to small peasants and tenants; [adding] should the same thing be allowed to happen again because capital covets to swallow their plots of land?"⁷³ Hussein qualifies his prediction as 'strong fear' while Gebru is definitive about the undesirable consequences which would ensue from land privatization in the country.⁷⁴ Besides, Yigremew Adal also gives support for the probability of significant distress sale on account of chronic poverty based on an empirical evidence about land transactions from rural Ethiopia. To Yigremew, severe rural poverty overrides peasants' sentimental and emotional attachment to their land; thus, they could be compelled to alienate it.⁷⁵

⁷¹ Hussein Jemma (2001), "The Debate over Rural Land Tenure Policy Options in Ethiopia: Review of the Post-1991 Contending Views", *Ethiopian Journal of Development Studies*, 23:2, pp. 93 & 102.

⁷² Gebru Mersha (1998), "Privatization of Rural Land: To Protect Whose Security?" Paper Presented at the Inaugural Workshop of the Forum for Social Studies, Addis Ababa p. 9.

⁷³ *Id.*, p. 10.

⁷⁴ Fantu Cheru joins Gebru in making a definitive assertion about the effects of the reintroduction of the privatization model:

Given the country's meager industrial base and limited opportunities for non-agricultural pursuits, land is the only productive asset available to the majority of the rural population...the commoditization of land would turn the clock back to the situation before the 1974 revolution. It would bring back the former landlords, open up the possibility of large-scale peasant evictions and thus create a massive influx of pauperized and destitute migrants into the towns. Fantu Cheru (1994), "Designing Structural Adjustment Program: Reconstruction, Rehabilitation, and Long-term Transformation" in *Ethiopia in Change*, Abebe Zegeye and Siegfried Pausewang (eds.), pp. 128-151 & pp. 139-40.

⁷⁵ Yigremew Adal says:

...proponents of state ownership argue that peasants will be deprived of their plots by those urban-based and unscrupulous people with money to buy land. It seems that there are reasons to believe so. ...The argument that historically Ethiopian peasants retain an affection and emotional tie to land which remains the source of their social identity and the abode of their ancestors and do not intend to sell it may not hold strong in a serious poverty situation in which the Ethiopian peasants are currently found. The Ethiopian peasants are found in a situation [of] "deprivation trap": poverty (lack of necessary assets), physical weakness, vulnerability, isolation, and powerlessness. Fieldworks in rural villages indicate that peasants are selling and mortgaging their plots although

Land alienation equals loss of collective self-governance: People's ownership of land depends on an important but less frequently raised argument, which is the idea that land concentration brought about by massive distress sales would run contrary to the constitutionally recognized self-governance right of ethnic groups.⁷⁶ This means private ownership of land would create a distinctive possibility of transfer of significant or all of the cultivable land of minority groups to outsiders. In other words, private ownership of land or allowing peasants to alienate their use rights would lead to eviction of not only individual peasants but also minority groups or it would render them politically and economically powerless in their own territory. Or it might end up with uprooting a community that occupies a piece of the Ethiopian territory.

This massive uprooting of members of an ethnic group through land transfers might result in loss of their culture, tradition and identity; it would ultimately constitute an assault on their collective identity. As Chapter 2 showed, loss of self-governance attributable to massive land grab in fact occurred in the pre-revolutionary Ethiopia in the Southern parts. The self-governance right up to secession of ethnic groups that is recognized in the Constitution would not get concrete expression unless one at the same time makes such ethnic groups owners of their respective territories⁷⁷ because privatization of land would enable outsiders to dominate the economies of territories inhabited by minorities, ultimately leading to the political disenfranchisement of such minority populations.

This analysis is embodied in the Constitution that ties land policy to the self-determination of ethnic groups named therein as nations, nationalities and peoples. Analogous to the social contract theory depicting man in a state of nature, the narrative of the Constitution seems to go like this: in pre-constitutional era, each ethnic group, as a sovereign, used to be the exclusive owner of their territory. In joining the federation, at the time of the making of the Constitution, each ethnic group consented to merge its territory with the territories of other ethnic groups forming the entire territory of the 'new Ethiopia', which is to become common property of all the partner ethnic groups. The idea of each ethnic group as a co-owner of land in

it is not legally allowed. This means if peasants are alienating their lands even without a policy of land sale, there is a good reason to believe that massive land sales would occur if Ethiopia were to shift to land privatization path. See Yigremew Adal (2004), "Some Queries about the Debate on Land Tenure in Ethiopia", Institute of Development Research, Addis Ababa University), pp. 11-12.

⁷⁶ See note 37.

⁷⁷ See note 58.

Ethiopia is reflected in specific provisions of the Constitution regarding sovereignty, property and self-determination.

Hence, as a solution, people`s ownership of land is encapsulated in Articles 39 and 40 of the Constitution which vests the right to ownership of land exclusively in nations, nationalities and peoples of Ethiopia, making land ownership inalienable through any form and tying land ownership to the self-determination up to secession right of nations, nationalities and peoples of Ethiopia.⁷⁸

e. Conceptual underpinning of peasant security and egalitarianism

In seeing land as serving the central purpose of subsistence, the social dimension of land depicted above disaggregates property rights in land. This is perhaps following the tradition of the functionalist approach to property whose fundament is that one does not need to possess the full spectrum of land rights for one to become secure or meet their subsistence requirement. For the purpose of livelihood, possessing and securing just one of the land rights disaggregated and deemed to be central for people`s survival is good enough. In the Ethiopia context, for instance, the rights in land so tied to people economic subsistence are land use rights and do not extend to marketability of such rights.

It seems germane to shortly highlight the functionalist approach to property, which rejects a unitary conception of property that claims property has an essential core meaning.⁷⁹ The functionalists rather understand property as a bundle of rights over an object. They say the other competing conception of property, namely the exclusivist (essentialist) approach that is anchored on “...a complete set of timeless, natural, or a proper property rule is absurd.”⁸⁰ In particular, functionalists view property as the sum total of rights crucially including the right to use, the right to own fruits and right to disposition. Functionalism in a post-modernist fashion decomposes property into its component elements and seeks to attach a particular function to a

⁷⁸ Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange... Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.... Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments. The Constitution, Article 39 & 40.

⁷⁹ Robert Ellickson (2011), “Two Cheers for the Bundle-of-Sticks Metaphor, Three Cheers for Merrill and Smith”, *Econ Journal Watch*, 8:3, p. 219.

⁸⁰ Edwin Baker (1985-1986), “Property and its Relation to Constitutionally Protected Liberty”, *Pal. L. Rev.*, vol., 134, p. 743.

strand of the right in the property so decomposed. To the functionalist, “a person’s property is not a single thing, not a single type of right.”⁸¹ It is rather an aggregate of many rights. Each right in the aggregate can serve different functions. They use the ‘bundle of firewood’ metaphor with the political agenda of “dethroning the sanctity of private property and the private ordering it enables in order to enhance levels of ‘collective control and redistribution.’”⁸² Edwin Baker sees a specific property right as amounting to,

...decision-making authority of the holder of that right. The standards used to determine the content and extent of decision making authority, and to determine who holds this authority, are what I mean by property rules. Property rules determine various relevant factors, including the behavior and status of people, to the evaluation of a person’s claim to possess some specific decision-making authority.⁸³

Baker thinks that property which he conceives as ‘a decision-making authority’ fulfils six functions: an allocative function that “serves to structure the societal allocation of resources to productive or otherwise desired uses;”⁸⁴ a sovereign function which “provides the owner a means of exercising power over other people;”⁸⁵ a protective function that “provides some limited protection from invidious, arbitrary treatment;”⁸⁶ use function which means “people’s use of property in their everyday life without any orientation towards eventual market exchanges;”⁸⁷ personhood function which is the case where people “intertwine their identity or personhood in certain property;”⁸⁸ and welfare function, meaning people’s use of property to provide “at least minimal levels of those goods or opportunities that a person’s society identifies as basic to meaningful life and full membership within that society.”⁸⁹

For Baker, a person to whom a certain property such as a farmland is allocated for their living may not need to have the power to alienate that property. What those persons need is secure right to make use of the land as a subsistence asset. In this regard, Baker states “...Society can plausibly conclude that the reasons to allocate property to a person for purposes of use do not necessarily require allowing the person to employ the property as a means to

⁸¹ Edwin Baker (1993), “Disaggregating the Concept of Property in Constitutional Law in Genesis of the Ethiopian Constitution of 1994” (InterAfrica Group, Addis Ababa, Ethiopia), p. 345.

⁸² Robert Ellickson, note 79, p. 216 and pp. 217-218.

⁸³ Edwin Baker, note 80, p. 743.

⁸⁴ Edwin Baker, note 81, p. 337.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Id.*, p. 338.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

exercise power” through a system of market allocation.⁹⁰ Baker privileges the welfare role of property over the other five functions:

A major measure of the legitimacy of a society is how well its property rules serve this welfare function ... all democratic societies guarantee their members those goods or opportunities that the particular society considers basic for meaningful membership - although the precise content of these goods and opportunities varies from society to society...Conceivably, guarantees to possess the land that a person uses to provide for subsistence adequately serve this welfare function in some societies — for example, if livelihood can be gained almost entirely from the land *and* if land is readily available to anyone who works it.⁹¹

Baker further states that “...respect for people’s dignity, liberty, and equality, explain why claims to satisfaction of basic needs, that is, welfare rights, merit constitutional protection.”⁹² In relation to the welfare function of property, an explanation which Baker finds compelling is “...society must accord an individual this respect before it may justifiably request that she obey its rules.”⁹³ Baker further says, “An allocation system might even dispense with market exchanges entirely by allocating property to people only as they are prepared to use it. Unlike rules that prohibit a person’s valued use of her property, such an allocation system would not abridge formal liberty.”⁹⁴ Alexander Gregory, who argues along the Baker line, writes:

...the institution of property has multiple potential purposes and that the level of constitutional protection accorded to property, indeed, the basic question whether to constitutionally protect property at all, depends on what purpose (s) the legal system involved has historically assigned to property. Property rights are epiphenomenal. They are not ends in themselves but rather an instrument designed to instantiate and serve deeper substantive values, such as wealth maximization, personal privacy, and individual self-realization. In this sense property rights are never ‘fundamental.’ Only the substantive interests they serve can be.⁹⁵

To Gregory, the German legal system distinguishes,

property interests whose function is primarily or even exclusively economic, especially wealth-creating, and those that primarily serve a non-economic interest relating to the owner’s status as a moral and/or political agent. Only the latter are protected as fundamental constitutional interests...Property is a fundamental right accorded the highest degree of protection, in German constitutional law only to the extent that the affected interest immediately at stake implicates the owner’s ability to act as an autonomous moral and political agent... It [German constitutional law] strongly protects a particular property interest only to the extent the interest immediately serves, other primary constitutional values, in particular, human dignity and self-governance.⁹⁶

⁹⁰ *Id.*, p. 347.

⁹¹ *Id.*, pp. 343-344.

⁹² *Id.*, p. 349.

⁹³ Edwin Baker, note 80, p. 760.

⁹⁴ *Id.*, pp. 809-810.

⁹⁵ Alexander Gregory (2003), “Property as a Fundamental Constitutional Right? The German Example”, Cornell Law Faculty Working Papers, Paper 4, <http://scholarship.law.cornell.edu/clsops_papers/4>, p. 7 (accessed July, 2011)

⁹⁶ *Id.*, pp. 8-9.

It appears that Baker's functionalism has inspired land rights as embodied in the Ethiopian Constitution.⁹⁷ Ethiopian rural land policy seems to be underlined by the idea that peasants need only to have some strands in a bundle of land rights, for example, use for welfare purpose, ownership of fruits and part of the disposition right mainly leasing so that they could fulfill their basic survival needs- survival as a free moral agent. This objective could be said to be intrinsically tied to the right to life recognized in the Constitution as a human right.⁹⁸ That is, in order for peasants to earn their livelihood, they do not need to have all the six land rights that Baker refers to. Use rights for welfare purpose appear to suffice. In the Ethiopian context, as mentioned earlier, such use rights are *ex-commercium* and shall return to the common land fund if and when a peasant to whom land is given starts obtaining sufficient income for themselves and their family in a permanent fashion from non-agricultural sources pretty much like the case where unemployment benefits cease to apply when a beneficiary gets other means that earns them adequate income.

f. Political voice of the rural masses and Constitutional interpretation

The social aspect of rural land in Ethiopia is apparently buttressed by the existing formal political arrangement. A little background of the origin of the incumbents, the EPRDF, might put this point in context. The TPLF, one of the core members of the EPRDF, raised arms against the Derg in 1970s arguing that the key demands of the revolution including the land question was not fully met and such demands could not be raised in a peaceful political platform due to the totalitarian nature of the Derg. This resulted in going to the bushes as a rebel group in rural parts of Northern Ethiopia as mentioned previously. After seventeen years of guerrilla fighting, the TPLF together with other nationalist groups that formed the EPRDF toppled down the Derg in 1991 and assumed State power. Due to its rural origin and the rural-urban proportion of the Ethiopian population, this party claims the peasantry to be its main social and political power base. In the main, it considers itself as the party of the rural population. Formal political arrangements both at the federal and regional level reflect this. The two houses at the federal level and state councils are dominated by representatives of peasants and pastoralists. So are the executive branches as the country follows a parliamentary

⁹⁷ This is so because Edwin Baker was one of the expatriate scholars consulted by the Constitutional Assembly, the body responsible for designing the Constitution.

⁹⁸ The Constitution, Articles 14 & 15 - deal with the right to life that can arguably be construed to link with small farmers' the right to land.

system whereby those who assume top executive positions predominately come from the parliament.

Given this political ordering, in theory, it is not expected that legislation and policies that undermine the land interests of the small farmers would be passed nor would one expect practices that undermine their tenure security emerge. It seems that in place is a typical case of rule by the rural population for the rural population. Furthermore, the main constitutional provision dealing with land, Article 40, is subject to a rigid amendment system. This article like other similar articles in the Constitution can be amended only where the proposed amendment is approved by a majority vote of all the nine State Councils, a two-thirds majority vote of separate sessions of the Federal parliaments, the House of Peoples` Representatives, and of the House of the Federation.⁹⁹

Finally, Articles 83 (1) and 61 (1) stipulate that “all constitutional disputes shall be decided by the House of Federation” (HOF), a non-legislative lower house of the parliament whose members are elected by state legislatures and as the practice shows members of the HOF have so far been drawn from top regional executives, presidents of the nine regional states invariably included.¹⁰⁰ The laws enacted to elaborate on the powers and responsibilities of the HOF have taken the phrase “all constitutional disputes” to its logical conclusion by rendering it a meaning that leaves “no room for the judiciary.”¹⁰¹ This means such laws define the term ‘law’ to be interpreted by the HOF rather broadly as proclamations issued by the federal or state legislative organs and regulations and directives issued by the Federal and State Government institutions including international agreements ratified by Ethiopia.¹⁰² They also encompass decisions given by any Federal and Regional Government organs or officials as well as customary law or practices; this should be seen in light of the legislative tendency to

⁹⁹ Article 105 (1) of the Constitution and see Article 105 (2) for sections of the Constitution which can be easily amended; Article 104 of the same as to who may initiate a constitutional amendment.

¹⁰⁰ Article 83 (2) and Articles 84 and 61-68 of the Constitution; members of the House of Federation may also be elected directly by the people even that has not happened so far. For the composition of the HoF, see Assefa Fiseha note 9 and Assefa Fiseha note 101

¹⁰¹ Assefa Fiseha (2007), “Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HOF)”, *Mizan Law Review*, 1:1, p. 32 where he argues that “it was not the intention of the framers of the Constitution to rule out the jurisdiction of the judiciary from all constitutional matters” and suggesting the need to challenge the constitutionality of the laws that confer an all encompassing power to the House of Federation.

¹⁰² Article 2 (2) of Definition of Powers and Responsibilities of the House of Federation Proclamation No 251, 2001 and Article 3(1) of Council of Constitutional Inquiry Proclamation No 798, 2013.

take judicial power away from the regular courts¹⁰³ Given this extensive rendering, a commentator concludes, “the courts have neither the power to give an exposition of the provisions of the Constitution nor the power to exercise constitutional review. The line among academics that attempt to endow courts with the power to interpret the Constitution can only be a pious wish.”¹⁰⁴ Thus, textual interpretation of the Constitution and review of constitutionality are both the domains of the HOF, the former referring to “cases in which interpreting the provisions of the Constitution becomes necessary to a certain dispute” whereas the latter relates to “cases in which the constitutionality of a law enacted at the Federal or State level, or decisions of Federal or State organ or official are challenged.”¹⁰⁵ This bestowal of far reaching power to the HOF, its independence from the executive and its trustworthiness as an adjudicator of “sensitive political matters involving the Constitution in an unbiased manner” has been questioned.¹⁰⁶

One source of skepticism about the HOF’s independence is perhaps its rejection of a petition by a group of peasants in the Amhara Regional State in 1997. The peasants claimed that farmland reallocation by local authorities on the basis of a rural land law passed by the Amhara Region State Council was unconstitutional on ground of violating the equality clause of the Constitution since the authorities redistributed land based on a classification founded on their political link with the previous government; i.e., peasants who assumed local political leadership during the Derg were made to lose land in favor of those with current political

¹⁰³ *Ibid.*

¹⁰⁴ Yonatan Tesfaye (2008), “Whose Power Is It Anyway: The Courts and Constitutional Interpretation in Ethiopia”, *Journal of Ethiopian Law*, vol. 22:1, p. 144.

¹⁰⁵ Getachew Assefa (2010), “All about Words: Discovering the Intention of the makers of the Ethiopian Constitution on the Scope and Meaning of Constitutional Interpretation”, *Journal of Ethiopian Law*, 24:2 p. 160.

¹⁰⁶ For a discussion of the statutory tendency to fragment the powers of the judiciary and the independence of the HOF, see Chi Mgbako *et al* (2008), “Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights”, *Fordham International Law Journal* 1, 32:1 p. 258 and pp. 284-293. See *CUD v. Prime Minister Meles Zenawi* (CCI/2005) (unpublished). This case often cited to illustrate the HOF’s inability to check executive power is a two month ban on public meeting and demonstration imposed by the order of the late Zenawi immediately after the pools were closed in May 2005. The order was given without following state of emergency procedures set forth in the Constitution. This executive order was challenged in a court of law that referred it to the HOF for the court believed that the case raised an issue of constitutionality. But the body which screens applications for the HOF dismissed the case for the order was within the mandate of the Prime Minister and was meant to preserve the constitutional order. Tsegaye Regassa (2010), “The Making and Legitimacy of the Ethiopian Constitution: Towards Bridging the Gap between Constitutional Desing and Constitutional Practice”, *Afrika Focus*, 23:1, p. 109.

position and based on that ground alone; and their argument was regarded by commentators as founded.¹⁰⁷

B. Post-2000 shift in agricultural development policy and its implications for land policy

The Government still postures their emphasis on small holder agriculture with the accompanying policy of non-tradability of land. Some academics also buy this claim – the country`s land policy is still privileging small farmers to the detriment of economic growth. Thus, these scholars suggest that if economic growth is the ultimate desire of Ethiopia, the question of land policy should be addressed to ensure both output growth and welfare of the people, not just the latter.¹⁰⁸ Similarly, it has been claimed that even if Government strategies and plans have of late come to clearly privilege economic growth, land policy and law have patently failed to go on par with these changes by allowing, for example, free transferability of land rights.¹⁰⁹

However, these scholars are unable to capture the nature of the shift in rural development strategies in the aftermath of the intra-EPRDF political crisis in 2001 and of the 2005 national and regional elections. Further, contrary to their claim, land policy has perceptibly begun to shift along the change in development priorities. Therefore, the claim in this part of the chapter is that after 2000, another objective has been grafted on to the pre-2000 development vision of Ethiopia as documented in ADLI. Yet, it is not a complete shift since another objective-economic growth-

¹⁰⁷ Molla Mengistu (2008), “Rural Land Tenure System in Ethiopia: Legal Rights and Its Implementation in Amhara National Regional State” (in Amharic), *Eth. J.L.*, 22:2; Getahun Kassa (2007), “Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian Constitution”, *Afrika Focus*, 20:1-2 p. 86. For the background of the land redistribution program which triggered this case see, Svein Ege (2002), “Peasant Participation in Land Reform: The Amhara Land Redistribution of 1997”, in Bahru Zewde (ed.), *Ethiopia: the Challenges of Democracy from Below*, (Uppsala: Nordiska Afrikainstitutet) p.71ff and Yohannes Beirhanu, “The Socio-economic Implications of Land Distribution: A Case Study in Six Rural Communities in North Gondar, Ethiopia” in Workneh Negatu and Yigremwe Adal (2004) (eds.), *Some Aspects of Rural Land Tenure in Ethiopia: Access, Use and Transfer*, (Addis Ababa: Institute of Development Research) p. 119ff.

¹⁰⁸ Dustin Miller & Eyob Tekalign Tolina (2008), “Land to the Tiller Redux: Unlocking Ethiopia's Land Potential”, *Drake J. Agric. L.*, vol., 13, p. 359.

¹⁰⁹ Abebe Mulatu (2009), “Compatibility between Rural Land Tenure and Administration Policies and Implementing Laws in Ethiopia” in *Land Law and Policy in Ethiopia since 1991: Continuities and Changes* (Muradu Abdo, ed.), *Ethiopian Business Law Series* vol. 3 (Addis Ababa: Addis Ababa University, Faculty of Law).

has been grafted onto the earlier objective of equitable development, with its welfare oriented land policy.¹¹⁰

i. Hedasse period

After the 4th EPRDF Congress in 2001 and especially since the 2005 third national and regional parliamentary elections, the agriculture strategy of the Government showed a marked shift towards commercial farming in order to attain accelerated economic growth despite the fact that the Government is still posturing the continuation of the subsistence farming strategy. Driven by factors to be explained below, this shift is signaled by issuance of key government-party documents which have articulated the primacy of the market economy.

a. Putting a premium on economic growth and poverty reduction papers

Privileging economic growth: “What matters...in development contexts is to be clear about the primary goal...”¹¹¹ According to the State, *pre-hedasse* period lacked clarity of development objective whereas that has been attained in the renaissance period because since then everything has been made “subservient to fast economic growth and structural change attendant thereto.”¹¹² After 2000, “our Government took a clear stance against ‘government subsidies of various kind.’”¹¹³ “Rapid economic development is a key to democracy.”¹¹⁴ The late Zenawi said, “There is no direct relationship between economic growth and democracy, historically or theoretically. I do not believe in bedtime stories, contrived arguments; linking growth with democracy.”¹¹⁵

This appears to link Ethiopia’s approach to those countries which give primacy to output as opposed to input legitimacy, which means privileging economic records.¹¹⁶ Ethiopia appears

¹¹⁰ The Tigray National Regional State Rural Land Use and Administration Proclamation, 2008, under Article 3 stipulates, that a peasant who starts to earn 1,000 Birr per month from off-farm source shall choose either farming or pursue the off-farm employment and Article 17 provides those descendants of a deceased who live in urban areas cannot inherit his/her farmland. Similarly, the Benishangul-Gumuz National Regional State Rural Land Administration and Use Proclamation, 2010, prohibits those with permanent income from non-agricultural sources to obtain rural land.

¹¹¹ Bryan Tamanaha (2009), “The Primacy of Society and the Failures of Law and Development”, Legal Studies Research Paper Series Paper # 09-0172, <<http://ssrn.com/abstract=1406999>> (accessed November 2012) p. 39.

¹¹² See note 21, p.72.

¹¹³ *Id.*, p. 78.

¹¹⁴ *Id.*, p. 114.

¹¹⁵ He spoke this at the Panel on African Leadership during the 22nd World Economic Forum, Addis Ababa, from 9 to 11 May, 2012.

¹¹⁶ Bertelsmann Stiftung's Transformation Index 2012 (hereafter BIT 2012 Ethiopia) Ethiopia Country Report, <www.bti-project.org/reports/country-reports/esa/eth> (last accessed July 7, 2014).

to emulate what Yuchao Zhu calls ‘performance legitimacy’ in the Chinese context¹¹⁷ to be contrasted with Michael Bratton and Robert Mattes who have argued that comparative survey of attitudes of citizens in Ghana, Zambia and South Africa shows that citizens support democracy for its own intrinsic worth and do not give a pride of place to economic performance at the expense of advancement of democracy.¹¹⁸

The key means of attaining the goal of Ethiopia`s new orientation is export, which has been written into laws, strategies and plans of the Government with their apparent implication for land allocation: the state - as a custodian of land - shall deploy land to the service of those actors that in their view significantly contribute to this national goal. The Rural Development Policies and Strategies referred to previously was revised in 2001 by the Government whose central tenet is to embrace market economy in the agricultural sector as reflected in its permission of rural land lease, emphasis on production of cash crops and its disdain for agricultural subsidies. Peasants are to produce diverse and quality surplus products for the market by purchasing inputs in the market. This policy paper served as a stepping stone for Ethiopia`s three poverty reduction papers briefly discussed below.

The Sustainable Development and Poverty Reduction Program (2002-2005), SDPRP, the first generation of Ethiopia`s poverty reduction paper, proposed that its fundamental objective was to develop the economy to ensure food security and make poor people beneficiaries. The main thrust of this plan was to emphasize agriculture as a sector which would produce high value commercial crops for export.¹¹⁹ The main strategy to attain accelerated national economic

¹¹⁷ Yuchao Zhu (2011), ‘Performance Legitimacy’ and China’s Political Adaptation Strategy’, *Journal of Chinese Political Science*, vol. 16.

¹¹⁸ Michael Bratton and Robert Mattes (2001), ‘Support for Democracy in Africa: Intrinsic or Instrumental?’, *British Journal of Political Science*, 31:3; see also Larry Jay Diamond (1990), ‘Three Paradoxes of Democracy’, *Journal of Democracy*, 1:3, for the argument that democracies do not inherently perform economically worse than dictatorships. According to, BIT 2012 Ethiopia note 116, the motivation of the regime in Ethiopia is towards output rather than input legitimacy, which means over privileging economic records. Ethiopia appears to emulate what Zhu calls ‘performance legitimacy’ in the Chinese context, in Yuchao Zhu note 117; Cf. Michael Bratton and Robert Mattes (2001), ‘Support for Democracy in Africa: Intrinsic or Instrumental?’, *British Journal of Political Science*, 31:3. See also Larry Jay Diamond (1990), ‘Three Paradoxes of Democracy’, *Journal of Democracy*, 1:3, for the argument that democracies do not inherently perform economically worse than dictatorships.

¹¹⁹ Government of Ethiopia (2002), ‘Ethiopia: Sustainable Development and Poverty Reduction Program, 2002-2005’, (hereafter SDPRP) (Addis Ababa: Ministry of Finance and Economic Development) p. 12. The SDPRP nevertheless did not fully detach itself from the equity oriented strategy which was the centre piece in ADLI; the SDPRP aimed at rapid national economic growth that would benefit the poor; it explicitly rejects ‘‘growth is sufficient approach in favor of distribution of the gains from growth as ... the optimal strategy for Ethiopia’’. *Id.*, p. 12 & 46.

growth, with trickling effect, would be to use labor extensively, and utilize land intensively with the possibility of extending the cultivable area of land and leasing out farmlands to investors.¹²⁰

A Plan for Accelerated and Sustained Development to End Poverty (2005/06-2009/10), PASDEP, which replaced SDPRP, states the need to make serviced land available for commercial farmers.¹²¹ PASDEP aimed at a massive push to accelerated and sustained economic growth to be achieved, in the agriculture sector, through commercialization of agriculture, which in turn would be pursued through expansion of large and medium scale private and state commercial farms as well as supporting farmers to produce for the market, emphasizing export oriented agriculture.¹²² Abebe says, unlike SDPRP, PASDEP made the strategy of economic

Furthermore, this poverty reduction paper stated that “guaranteeing the availability of land for people who are able and willing to make a living out of farming is fundamental and is a step in the right direction for proper use of natural resources.” *Id.*, p. 51. The SDPRP states that the county lacked capital but did have abundant rural labor and, in relative terms, cultivable land too.

¹²⁰ The problem of Ethiopia’s agriculture as a sector was absence of capital accumulation caused, not by absence of land tenure security but by lack of agricultural land productivity which would be enhanced through a broad array of support systems. *Id.*, p. 14 & 24. Such support systems consist of “further developing the drive, preparedness and industriousness of the labor force, upgrading agricultural skills, improving the health status of the population and supply, replication and duplication of technology”, and supply of group credit without collaterals. *Id.*, p. 72 & 73. The SDPRP pledged to facilitate conditions for commercial farming by leasing out land to commercial farmers, making infrastructure available or enabling such investors to obtain land from peasants in the form of rent in such a manner that would protect the interests of investors and peasants. *Ibid.*

¹²¹ PASDEP, vol. i note 48.

¹²² PASDEP stated,

Elements of the strategy include the shift to higher-valued crops, promoting niche high-value export crops, a focus on selected high-potential areas, facilitating the commercialization of agriculture, supporting the development of large-scale commercial agriculture where it is feasible, and better integrating farmers with markets-both locally and globally. See note 48.

The instruments to achieve this under PASDEP included:

the development of national business plans and tailored packages for specialized export crops (such as spices, cut flowers, fruits and vegetables); ...measures to improve land tenure security, and to make land available ...for large-scale commercial farming; reforms to improve the availability of fertilizer and seeds; and, better-functioning agricultural markets for both inputs and outputs, and institutions, including improved value chains... *Id.*, pp. 57-58.

PASDEP merely touched upon the idea of social justice, inclining towards increase in per capita income. It was an economic growth oriented program. It declared:

It will also continue to pursue on the ADLI strategy, but with important enhancement to capture the private initiative of farmers and support the shifts to diversification and commercialization of agriculture. But there is now a consensus that growth is of the essence, and an accelerated growth strategy is at the core of the PASDEP. *Id.*, p. 57.

PASDEP made this clear in its key objectives of the economic sector namely:

building an economy which has a modern and productive agricultural sector with enhanced technology and an industrial sector that plays a leading role in the economy, to sustain economic development and secure social justice; and increase per capita income of citizens so that it reaches at the level of those in middle income countries. PASDEP, vol. i. note 48, p. 44; In this period, Ethiopia embraced the Comprehensive Africa Agricultural Development Program (CAADP) as a national plan of action for furthering economic growth; the CAADP, that preaches pro-poor agriculture led accelerated economic growth in Africa, was officially

growth “the essence and core of the policy objective of the government while poverty reduction was to be achieved through economic growth.”¹²³

Growth and Transformation Plan (2010-2015) (the GTP), focuses upon rapid economic growth by dealing with natural resource management and utilization and raising agricultural productivity. It has capitalized upon production for the international market.¹²⁴ The GTP makes a distinction between highland and lowland Ethiopia in respect of commercial agriculture.¹²⁵ In the highlands areas, “the private investment activities will be centered on high value horticulture products that can be produced on limited land, using abundant labor, thus generating large employment as well as supply for export.”¹²⁶ In lowland areas,

...where abundant and extensive land exists, large-scale commercial agriculture is possible, assessment will be made to identify suitable land and keeping the same in organized land bank; and promoting such lands for investment by facilitating for local and external investors to develop it using lease system. While keeping the support for private investment in large-scale farms, focus will be made to ensure that the products produced from such farms to be primarily for exports. In this regard, emphasis will be accorded for cotton, date palm, tea, rubber tree and the like...In the coming five years, over 3 million hectares of land will be identified, prepared and, used for the desired development purpose by transferring it to investors and in so doing tangible support will also be given to private investors to enhance their investment in commercial agriculture.¹²⁷

The source of poverty reduction papers: researchers suggest that such papers were result of the strategies of the IMF and the WB since there is evidence to the effect that they ultimately reflected the interests of the donors even if the papers were ‘developed by the countries

approved by African Heads of State in July 2003 in Maputo African Union Summit; Ethiopia signed the CAADP Compact and the Country Compact, respectively in 2008 and 2009, as part of the PASDEP; for this, see Kassahun Berhanu, note 8.

PASDEP made its commercial orientation patent when it hinted the existence of a tension and the need for balance: “The Government has a difficult balancing act to manage, since improvement of pro-poor subsistence farming still needs to take place in parallel with this shift to commercialization of agriculture.” PASDEP note 48, p. 58.

¹²³ Abebe Mulatu, note 109, p. 20.

¹²⁴ Government of Ethiopia (2010) “Ethiopia: Growth and Transformation Plan (2010/11-2014/15)”, (hereafter GTP) vol. i, (Addis Ababa: the Ministry of Finance and Economic Development), p. 18. The whole tone of the GTP is agricultural production for the market: In the private sector, the investment to develop agriculture will be directed as situations of various land permits. This will include investment in areas where extensive land and labor scarcity prevails as well as, those areas which have limited land, but abundant labor where high value agricultural products can be produced. *Id.*, p. 23.

¹²⁵ Refer to Chapters 7 and 8 that suggest the unconvincing nature of this distinction.

¹²⁶ GTP note 124, pp. 23 and 24.

¹²⁷ *Id.*, pp. 23-24. Emphasized in the GTP is commercialization of inputs and outputs of peasant agriculture: the government strategy for accessing agricultural inputs by small famers is market-based without any notion of subsidies. The same is the policy of the state for agricultural outputs by small holder farmers. Peasants are expected, even at times required, to produce for the market using productivity enhancing inputs such as fertilizers and select seeds.

concerned’; the critical literature presents the documents at best as result of alliance between national elites and these international institutions.¹²⁸ This is captured by an informant as,

we appear to take back seats in major meetings where internationally initiated and articulated strategies for poor countries are discussed and finalized, leaving the front seats to officials of host countries. We fund them to materialize or leave them unfunded.¹²⁹

However, Chapter 9, by focusing on the degree of influence of the WB and the USAID in the context of land law and policy, argues that their policy intervention is not determinative due, *inter alia*, to Ethiopia’s adherence to the ideology of developmental state even if some traces of international influence cannot be denied.

b. Economic actors

The above successive plans and other sources state that Ethiopia cannot afford to ignore the free market system in this era of globalization and this is applicable in particular to agriculture. The doctrine of the survival of the fittest is the rule: Ethiopian farmers must produce for the market or perish. The late Zenawi’s declaration alluded to earlier that inscribed in the Constitution is ‘capitalism in black and white’ has nevertheless been qualified by the notion of *limatawi mengist* (developmental state), which means beyond classic functions, the State shall engage in selected investment activities which ‘are unlikely to be carried out by the private sector’ including control of the commanding heights of the economy.¹³⁰ This, in the condition of ‘apprentice capitalism’, should lead to the continuation of the state’s exclusive monopoly over the utilities sector, dominance over the banking, insurance and micro-finance services, and expansion of its hitherto involvements in new economic sectors through enterprises owned by the state and by member organizations of the EPRDF.¹³¹ This is on top of state control over “all public services, from education to fertiliser, from health care to loans...up to and including

¹²⁸ Paul Cammack (2003), “What the World Bank Means by Poverty Reduction”, <www.chronicpoverty.org/uploads/publication_files/CP_2003_Cammack.pdf> and Walter Eberlei (2007), “Accountability in Poverty Reduction Strategies: The Role of Empowerment and Participation”, Social Development Papers, Institute for Development and Peace, University of Duisburg-Essen, Paper No. 104.

¹²⁹ Interview 44 with a land law specialist working for the USAID, August 20, 2012.

¹³⁰ Meles Zenawi (2012), “States and Markets Neoliberal Limitations and a Case for a Developmental State” in *Good Growth and Governance in Africa* (Akbar Noman *et al* eds.) (Oxford University Press). For a critique of Meles’s developmental state paradigm, see Tsehai Alemayehu (2009), “The Ethiopian Developmental State: Requirements And Perquisites”, *Journal of Business and Economic Research*, 7:8.

¹³¹ Four coalition members of the EPRDF own businesses which go under the name endowments; Tim Kelsall (2011), “Developmental Patrimonialism? Rethinking Business and Politics in Africa”, Policy Brief No. 2

access to the peasant farmer's only means of production – land.”¹³² This all round economic hegemony of the developmental state path was intended to put the country in a ‘virtuous cycle of development.’¹³³ Engagement by the Ethiopian State in wide ranging investment and trade activities which are not necessarily green field investments has earned it the description “the world's third biggest state-investor” in 2013.¹³⁴

Developmental investors: The Government divides up investors into two, namely *limatawi bale habt* (a developmental investor) and rent seeking investor.¹³⁵ A developmental investor uses their capital to create job opportunities and produces competitive goods and services whereas an investor who is a rent seeker uses improper methods including nepotism, cronyism and corruption to get rich in the shortest possible time; he is an investor who seeks to put the state apparatus in his pocket. He in general would like to build a rent seeking political economy. He, for instance, takes land for speculative purposes. The role of the developmental state is to assist the developmental investor through all means including the supply of investment incentives and serviced land. An EPRDF document says,

We have avoided our *pre-hedasse* conspicuous tendency to be indiscriminately suspicious about private investors; now devised a direction to provide a strong, committed, integrated and comprehensive government support to developmental investors so that they could be competitive in the global market.¹³⁶

The State, on the other hand, should first ‘advise’ and ‘educate’ rent seeking investors to refrain from their behavior and should they fail to correct their misbehavior the result would be application of the full force of punishment.

Model farmers: With regard to peasants, the state declares that “Peasants are the section of the Ethiopian population that determines both democracy and development” but

¹³² Ren`e Lefort (2010), “Ethiopia's Election: All Losers”, <<http://www.opendemocracy.net>> (accessed 21 August 2013)

¹³³ See Note 21, p. 124 & 130.

¹³⁴ The World Bank has recently found that “Ethiopia has the third highest public investment rate in the world.” See The World Bank (2013), “Ethiopia - Second Economic Update II: Laying the Foundation for Achieving Middle Income Status” <http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/12/03/000442464_20131203113831/Rendered/PDF/785010Revised00Box0379884B00PUBLIC0.pdf> p. 14 (accessed December 21, 2014).

¹³⁵ Another sector which has gained prominence especially since the 2005 elections is attracting unemployed youth (who the EPRDF thinks played a critical part in helping the opposition contest their hegemony in such elections) especially in major cities and towns to the state organized small and micro enterprises. The state has and is directing resources including serviced land, soft loans, training, and priority in relation to public procurements. For this, see note 21.

¹³⁶ *Id.*, p. 74.

differentiation among them is indispensable for the development of the country.¹³⁷ Following this, peasants are categorized into model peasants and *acha* (literally peer in Amharic) peasants. While, in theory, “improvement of pro-poor subsistence farming still needs to take place”, this mass of ‘poor farmers’ is in reality left to its fate, or more accurately to market forces. “Those who take advantage will prosper, and the rest will lose mercilessly.”¹³⁸ *Acha* peasants who constitute the overwhelming majority of peasants were throughout the 1990s considered as the surest and quickest agents for Ethiopia’s social and economic recovery. Now even if both classes of peasants are expected to produce for the market emphasis is given to model peasants.

“While agriculture may remain ‘the engine of growth’, the key actors in the sector’s development will not be the semi subsistence small farmers”.¹³⁹ The priority is now “to capture the private initiative of farmers” so as “to intensify marketable farm products.”¹⁴⁰ These are “the meager elite of farmers, who have to be recruited as ‘model farmers’, and as vanguard party members or *ginbar kedem* [i.e., peasants who are at the forefront]. The support of the public authorities focuses on them.”¹⁴¹

The criteria Government authorities use to take a peasant as a model farmer are those who are “the most dynamic, qualified and yearning for improvements, therefore often the best educated, those whom the general population usually qualifies as ‘strong farmers.’”¹⁴² They are those with “a lot of followers and ...those who ‘produce for the market.’”¹⁴³ “These virtues are generally shared by the richest social group, which largely coincides with the *birokrasi* [i. e., those peasants who assumed political leadership positions during the Derg era], plus a few young farmers who made the best use of [their] plots...”¹⁴⁴ Once recruited their responsibilities are to be a member of the EPRDF, payment of party fee, attendance of meetings and training sessions, “to behave properly in their personal life, to be fully involved in social mobilization, aimed for example at sending all children to school or fighting HIV, and to recruit new members. But

¹³⁷ *Id.*, p. 86.

¹³⁸ Ren’e Lefort (2012), ‘Free Market Economy, ‘Developmental State’ and Party State Hegemony in Ethiopia: The Case of the ‘Model Farmers’’, *Journal of Modern African Studies*, 50:4, pp. 682-683.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Ren’e Lefort (2010), ‘Powers – *mengist* – and Peasants in Rural Ethiopia: the Post 2005 Interlude’, *Journal of Modern African Studies*, 48:3, p. 442.

above all they are expected to ‘develop their plots;’ and ‘gaining wealth’ by ‘developing well his land’ by ‘working hard’ and by ‘learning new technologies’ and ‘putting them into practice’.¹⁴⁵ This involves being “in the forefront in the adaptation of farming innovations’ with the aim of increasing production of ‘market oriented crops’”, to generate cash that can be saved in ‘rural banks’.¹⁴⁶

Model farmers must set an example socially, in the widest sense, in terms of moral rectitude (starting with sobriety), sending all their children to school, keeping an orderly house, and following rules of hygiene. Just as important, they must display leadership in community life, whether by taking part in traditional self-help organizations, or, for older members, by helping to resolve everyday disputes. In other words, priority should be given to those who are both ‘strong farmers’ and ‘opinion leaders’....The second criterion is exclusively political. The model farmer must above all be a dedicated militant of the ruling party. He has to carry out his duties ‘as a vanguard’, keen ‘to improve his political efficiency’, active and at ease in the ‘political institutions’, committed ‘to change the farmers around him’, notably because he is willing ‘to administer [them] politically’, by organising their participation in ‘revolutionary activities of communal works’.¹⁴⁷

Model peasants are relatively well off peasants measured in terms of the size of land they cultivate, of the degree of receptiveness of agricultural technologies, of the amount of fertilizer and select seed they use, and of the volume of crops they supply to domestic and international market and of amount of assets they possess. As key engine of agricultural modernization, the State is to offer them the necessary support including agricultural inputs which include loans, seeds and fertilizers. Ways and means shall be sought including use of communal lands, *kontract*, and expropriation to give access to additional agricultural land to those who are more enterprising and productive. This support scheme shall be buttressed by periodic training by development agents (agricultural extension workers). The State will ensure ‘the movers’ (model farmers) graduate from their status as commercial farmers into full-fledged investors. In return for this State support, model farmers, among others, are expected to set an example for the other peasants assisting in the scaling up of their success.

¹⁴⁵ *Id.*, p. 449.

¹⁴⁶ *Ibid.*

¹⁴⁷ René Lefort, note 136, pp. 688-689.

An internal EPRDF document boasts that success in attaining economic growth is attributed to this new development orientation. Due to the introduction and expansion of commercial agriculture,

fast economic development is registered; model peasants have emerged. They are becoming members of our party in millions. The condition for laying strong foundation for developmental democracy and revolutionary democracy in rural Ethiopia is created. This is the main and principal success registered since the start of renewal path.¹⁴⁸

There are, however, doubts about whether their accumulation of wealth is due to agriculture or due to their earlier wealth or where agriculture is the source of such wealth, if it is linked to the support rendered to them by the government after the shift and in fact these model farmers are really farmers with rural roots as presented by the government.¹⁴⁹

In summary, “All these facts support a highly plausible hypothesis that the EPRDF was looking to shift from its former constituency to a new one.”¹⁵⁰ In the decade before the *hedasse*, these model farmers were called *birokrasi* and as part of the old order and thus were,

...harshly and deliberately targeting the *birokrasi* for years by reducing its economic strength and denying it any representative or leading position, the Front [EPRDF] suddenly brought it to the forefront again, promoting it to become the driving force of rural development and by far the most numerous component of the ruling party branch, from which it was previously excluded.¹⁵¹

And it has been rightly observed that,

...the hard core of the EPRDF which once focused on the “toiling masses,” is now formulating its new political basis on an emerging middle class by promoting its advancement and by enrolling its members at the Party’s periphery. As a result, these former opponents have either actually been rallied round or at least politically neutralised.¹⁵²

ii. Explaining the shift

Some factors explain the shift towards privileging export-oriented commercial farming as opposed to the earlier accent upon intensive subsistence farming as basis for transformation of Ethiopia’s agriculture. The first is clarification of economic policy. It arose out of the 2001 power struggle within the TPLF - one of the four coalition political parties making up the EPRDF - that led to a split from within and reverberated quickly to the other three coalition

¹⁴⁸ See note 21, p. 127.

¹⁴⁹ Ren`e Lefort, note 136; Ren`e Lefort (2007), “Powers – mengist – and Peasants in Rural Ethiopia: the May 2005 Elections”, *Journal of Modern African Studies*, 45:2, pp. 253–73 and Abeje Berhanu & Ezana Amdework (2010) “Peasant Entrepreneurship and Rural Poverty Reduction: The Case of Model Farmers in Bure Woreda, West Gojjam Zone,” (Addis Ababa: Forum for Social Studies).

¹⁵⁰ Ren`e Lefort, note 144, p. 453.

¹⁵¹ *Id.*, p. 442.

¹⁵² Ren`e Lefort, note 132.

parties.¹⁵³ The power struggle was formally articulated, among others, in terms of the 'purity' of the party's economic path. The vanquished dissident group argued that they thought their party was pursuing a socialist economy while the other group led by Zenawi said they understood the party's economic direction was 'white capitalism' that evolved out of the dictates of national and international realities of post-1991. Soon after the struggle played out in favor of Zenawi's group, the party proceeded to make its development policies and strategies explicit in successive documents as reflected in SDPRP, PASDEP and GTP discussed above. The shift has had the twin objectives of fast economic growth and creating an alternative basis of political power.

The second is a search for a new political base. This factor which consolidated the shift that already commenced was the 2005 third national and regional parliamentary elections. These elections were open and allowed the opposition unprecedented freedom to campaign in all parts of the country through the use of state media.¹⁵⁴ It seemed that the EPRDF relying upon its agricultural policies and strategies, which favored by then for more than one solid decade the overwhelming majority of the rural population, assumed a comfortable win as it had been the case in previous two similar elections. Given that the peasantry constituted, still constitutes, the predominant majority of the population, given they served as the spring board for guerrilla fighting leading eventually to the overthrow of the Derg and given they were relieved of the multi-faceted burdens imposed on them by the Derg, the EPRDF had had reasons to make that assumption. The unprecedented rate of economic growth in 2004 and the projected repeat of the same in 2005 also gave them confidence with the effect of not even conducting serious election campaign. The opposition clearly won significant seats and by the EPRDF's own admission almost all the seats in the Addis Ababa City council. In post-election contestation over who won the elections, the country witnessed a sad ending: killing of protesters and security personnel, and reversal of the fragile democratic trend in the aftermath.¹⁵⁵

The EPRDF, shaken to their foundation by the 2001 intra-party power struggle referred to above and the 2005 elections, redefined their twin objectives of rapid economic growth and

¹⁵³ They are the Amhara National Democratic Movement (ANDM), the Oromo People's Democratic Organization (OPDO), and the Southern Ethiopian Peoples' Democratic Movement (SEPDM).

¹⁵⁴ Jon Abbink (2006), "Discomfiture of Democracy? The 2005 Election Crisis in Ethiopia and Its Aftermath", *African Affairs*, (hereafter Discomfiture of Democracy) 105/419, pp. 173–199; and Jon Abbink (2009), "The Ethiopian Second Republic and the Fragile "Social Contract"", (hereafter The Ethiopian Second Republic) *Africa Spectrum*, 44:2, pp. 3-28.

¹⁵⁵ Jon Abbink, Discomfiture of Democracy note 154.

political control. In this, as mentioned above, it articulated the notion of developmental investors as opposed to rent seeking investors privileging the former. It also enhanced its policy of absorbing into the party and into the economy the jobless youth in the form of small and micro enterprises. In the rural setting, it introduced the notion of model farmers. As mentioned earlier, one way of implementing this in rural Ethiopia was to prevent rural elites called *birokrasi* from assuming political leadership in rural Local Government and party structures especially at kebele level due to their affiliation with the Derg regime in favor of young and inexperienced cadres to take over this leadership position. This alienation of the rural elites from the political position caused discontent.

The opposition, even if they did not have significant organized presence in the countryside, mobilized these disgruntled rural elites. The EPRDF increased the size of their membership from one million to four millions by absorbing into the party some of the new beneficiaries - developmental investors, the youth organized in small and micro enterprises and model peasants. This signaled its commencement of a shift in its power base, from a predominant reliance upon the peasantry into the upper top sections of the population. As alluded to earlier, the incumbent government passed key statutes widely perceived as having the effect of narrowing the democratic space.

The third factor leading to a change in the political economy of the country is realization by the Government of “the limitations of smallholder agricultural growth.”¹⁵⁶ Ten years of experimentation with ADLI, anchored on small holder agriculture to achieve national economic prosperity without losing a grip on power, seemed to have evaporated. They noticed that economic transformation was not attained while the Party’s political hegemony was seriously contested in the 2005 elections even in their political bastion - rural areas - thus, forcing them to gravitate towards export based economic growth driven by new actors - model farmers and developmental investors.

It seems that peasant inadequacy which underlies this reorientation to new objectives and players is steeped in Ethiopia’s past. As shown in Chapter 2, the Imperial government alternated commercial farming and small-scale farmers, but pinned their hope on the former for a rapid economic growth. The Derg acted similarly, as indicated in Chapter 3, when they gave primacy

¹⁵⁶ Kassahun Berhanu, note 8, p. 2.

to socialist agriculture founded upon cooperatives and state farms, large and medium farming, as opposed to small holder farming.

Finally, some of the post-2005 economic reforms have been appropriated (and their translation into reality ensured by the regime) from international sources. The late Zenawi tallied his Government`s economic policy with international development agenda manifested through poverty reduction papers suggesting an accent on the economic side of land but subtly modifying it to suit the imperative of maintaining a handle on political power. Donors` technical and financial supports continued unabated even if they were displeased with and expressed serious concerns over the democratic deficit following the 2005 elections.¹⁵⁷ As mentioned in Chapter 9, many factors might explain this: the donors` strategic alliance with the government as a stabilizer of the conflict-ridden Horn of Africa and in particular the government`s determination to fight against terrorism as concretized in their fruitful military campaign against Somalia`s Islamic Courts Union in 2007-2008 and effective use of aid as expressed, *inter alia*, in the country`s registration of successive high economic growth and its prospect for meeting some of the MDGs.¹⁵⁸

iii. Implications of the shift for land policy

This shift has been reflected in rural land and expropriation laws passed since mid-2005 at the federal level. These laws have put emphasis on availing land to developers: “land shall be given to a developmental investor if he uses it and the extent he uses it to development. This is to be done in developmental, legally transparent and accountable manner.”¹⁵⁹ That is to the extent he contributes to rapid economic growth to which everything else is directed and be subservient. As discussed above, developmental investors include those who possesses capital including model farmers and urban entrepreneurs who have been organized into micro and small enterprises. The Government`s land policy envisions depeasantization in the long run,

peasants will either turn themselves into commercial farmers or seek off farm opportunities in urban centers. The land released by those peasants who get off farm opportunities would create opportunity for commercial farmers to acquire more land, thus ultimately leading to the consolidation of the present small and fragmented farm plots. People`s ownership of land as managed by the state hastens this consolidation process.¹⁶⁰

¹⁵⁷ BTI 2012 Ethiopia note 116; and National Bank of Ethiopia (2013), Data Base on Ethiopian Economy.

¹⁵⁸ Dereje Feyissa (2011), “Aid Negotiation: the Uneasy “Partnership” between EPRDF and the Donors”, *Journal of Eastern African Studies*, 5:4, pp. 788-817.

¹⁵⁹ See note 21, pp. 116-117.

¹⁶⁰ See note 37, p. 93.

Land shall be availed to those with insufficient land including those who - after putting their land to commercial farming industriously – are still after more land. “Putting land under state ownership is a potent instrument to encourage investment ... investors should be able to get land in the shortest possible time and for a reasonable price.”¹⁶¹ State ownership of land has enabled Ethiopia to accelerate growth by supplying land to developers and by building infrastructure in time and cheaply because land is owned by the people if they want it for development they can take it away from holders after paying them compensation for the property on the land, not for the land; there are no holdup issues.¹⁶² The GTP pays special attention to putting in place an up-to-date and comprehensive modern system of property registration and more particularly a scheme for land registration in rural and urban areas to determine who has what rights over a certain plot of land and further facilitate the use of land for better developmental purposes.¹⁶³

This period has also witnessed, as opposed to the constitutionally sanctioned self-governance of regional states that includes the power over land administration,¹⁶⁴ re-centralization of land, that is, upward delegation of land administration reflected in land laws, expropriation laws and land allocation.¹⁶⁵ Such developments have also been reflected in new institutional arrangements in particular in regard to land allocations for agricultural investment purposes.

Allowing transfer of regulated land use rights: One specific implication of the above for land rights is expansion of land rights in a way that allows regulated land use rights alienation. Expansion of land rights means that land laws are being formulated so that land would increasingly enter the market. For instance, the 2005 Rural Land Proclamation assumes that specification of the rights and obligations of peasants will enhance their tenure security, which in

¹⁶¹ *Id.*, p. 164 & 166.

¹⁶² EPRDF (2013), “Our Land Policy and the Revised Lease Proclamation”, *Addis Raey*, 3:8, pp. 4-32.

¹⁶³ GTP note 124, p. 56.

¹⁶⁴ Fasil Alemayehu (2013), “Right to Self Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession”, *Law, Social Justice and Global Development Journal*, 17:1.

¹⁶⁵ For example, the Ministry of Agriculture possesses administration of agricultural investment lands entrusted to the federal government on the basis of powers of delegation obtained from regional states as provided under Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, 2010, Article 19 (1(o)); for this upward delegation, see Assefa Fiseha, note 9; Dessalegn Rahmato (2011), “Land to Investors: Large Scale Land Transfers in Ethiopia” (Addis Ababa: Forum for Social Studies); and Imeru Tamrat (2010), “Governance of Large Scale Agricultural Investments in Africa: The Case of Ethiopia”, <<http://siteresources.worldbank.org/EXTARD/Resources/336681-1236436879081/5893311-1271205116054/tamrat.pdf>> (accessed June 2011).

turn drives them to “take the necessary conservation measures...”¹⁶⁶ On this assumption, the law lists and defines various rights of peasants.¹⁶⁷ Peasants are entitled to use land under their possession for agriculture or natural resource development purposes for unlimited period of time; rent out part of their land to fellow farmers or investors for a limited duration and engage in joint development projects such as out grower arrangement with investors; and make arrangements to merge or exchange their fragmented plots with other farmers with the view to creating large and contiguous farmland.

As a category, investors come next to peasants to get access to land within the sachem of people`s ownership of land. Investors can acquire agricultural land from the State in the form of lease and from peasants either in the form of an out grower or joint investment arrangement. The State can fulfill its objective of giving land to investors either through expropriation of existing possession of peasants or appropriation of communal lands which have always been considered by the State as falling within its domain.¹⁶⁸ Once investors have obtained land for commercial farming, they can collateralize or contribute it to a business venture or transfer it to another user and receive market value of their property upon expropriation. In addition to the state`s commitment to construe the concept of public purpose narrowly when it comes to expropriating the property of investors, it has promised large-scale commercial farmers a host of incentives including tax holidays and importation of duty free machinery.¹⁶⁹

The 2005 Rural Land Proclamation is followed by enactment of regional land laws which under the Constitution are supposed to deal with matters of ‘land administration’, the former`s ambit being restricted to ‘land utilization’ issues.¹⁷⁰ Thus, rural land laws were enacted by Tigray Regional State in 2006, Amhara Regional State in 2007, Southern Regional State in 2007, Oromia Regional State in 2007, Afar Regional State in 2009 and Beni-Shangul Gumz Regional

¹⁶⁶ Rural Land Administration and Use Proclamation, Preamble.

¹⁶⁷ In order to make this right certain, the state has pledged to measure their lands, identify the type of use, register and issue certificate of holding to them; see critique on this, Parliamentary Public Hearing organized by the Standing Committee for Rural Development and Pastoral Affairs, Deliberations on Draft Federal Land Administration and Use Proclamation Minutes, (Unpublished, on file with the author, March, 2005), p. 6.

¹⁶⁸ The Minutes of the Parliamentary Standing Committee for Rural Development and Pastoral Affairs, Deliberations on Draft Federal Land Administration and Use Proclamation, (Unpublished, on file with the author, March, 2005) p. 3.

¹⁶⁹ Investment Proclamation, 2011 (as revised in 2014).

¹⁷⁰ But the content of the 2005 Rural Land Administration and Use Proclamation that is issued by the Federal Government covers both land use and administration matters, hence, taking away some power over land from the regions.

State in 2010. For example, the Southern Regional State Rural Land Proclamation expands land rights given to peasants in the federal legislation by envisaging share cropping arrangement, leasing out their land to fellow-peasants for five years and for investors for 25years both with a possibility of renewal, possibly by collateralizing land use rights as the state legislature is considering legalization of land use collateralization by small farmers,¹⁷¹ by bequeathing such use rights to “...members of his family or other lawful heirs...” and entering into a partnership arrangement with investors in the form of contribution of their use rights to a business in agriculture and have multiple farm plots in different sub-districts, which exempts from the earlier requirement of permanent residence in a given place as a precondition to maintain their land possession.¹⁷²

It is true that the Constitution gives primacy to peasants and pastoralists when it comes to access to land for settled agriculture and pasturing.¹⁷³ The Constitution provides that these categories of people do have a kind of use rights over land and are entitled not to be evicted from the same. But the use rights over their land are a general one, unrelated to any specific plot of land. To this effect, a land tenure reform project document submitted to the USAID correctly states: “...although the Ethiopian constitution grants households usufruct rights to land, it does not grant a specific plot of land...”¹⁷⁴ Even in case where the right to usufruct of peasants and pastoralists gets concrete expression in an allocation of specific resource to them, their continued use of such assigned resource is contingent upon investing labor or capital on it that leads to permanent improvement.¹⁷⁵

The expansion of rights over rural land has become quite vivid in urban land laws (passed by the Federal Government), which have taken lease the only way of accessing land and land use

¹⁷¹ FGD 09 with regional land administration experts, September 21, 2012.

¹⁷² See the Southern Regional State Rural Land Administration and Utilization Proclamation, Articles 2 (6 & 8), for the following: emphasis on absence of residency requirement where the law has permitted peasants to lease out, under some conditions, their entire farm land to commercial farmers; but in principle, peasants cannot lease out their entire land in such a way that evicts themselves and renders their family without livelihood but they can lease out their entire farmland provided they can secure their livelihood from other sources and provided that the land rental deal is approved by sub-district officials. It has also provided that peasants would not lose their lands when they leave their locality.

¹⁷³ The Constitution, Article 40 (4-6).

¹⁷⁴ Ethiopia: Strengthening Ethiopian Land Tenure and Administration Program (LTAP): (RAISE: May 9, 2005) pp. 3-4.

¹⁷⁵ The Constitution, Article 40 (7).

transfer rights are allowed with fewer restrictions than those imposed on land use rights transfer in connection with rural land.¹⁷⁶

Land alienation devices: The other implication of the shift in agricultural development policy of Ethiopia for land law is state-controlled land transfers through loose rural land expropriation laws (discussed in the next chapter), judicial and administrative validation of land alienation in the form of *kontract* (treated in Chapter 6) and nonrecognition of communal rural lands and their appropriation (considered in Chapters 7 and 8). Key features of regulated land transfers together with these three mechanisms of land alienation driven by the State are provided by way of advance summary in Table 12.

Table 12: Mechanisms of land alienation by the State in Ethiopia

Land transfer mechanisms	Nature
Regulated land transfers	Legislative expansion of land rights that privileges peasant-investor land deals.
Expropriation	Land taking by the State through use of loose public purpose with paltry compensation and limited judicial scrutiny
<i>Kontract</i>	Informal land deals chiefly in favor of developers which begin as a private deal but end up being validated by the State in a way contrary to the key tenet of land for all principle behind people's ownership of land
Appropriation of rural communal lands	a designation of rural lands held in common by villagers as government land and giving them out to agricultural developers through the invocation of underutilization and empty land narratives

Source: own analysis

C. Reiteration

In the pre-2000 period, the current Government of Ethiopia emphasized a narrative of land policy which was anchored upon the mechanism of protection of peasants in consonance with the 'land to the tiller' motto manifested through prohibition of land use right alienation and the rhetoric of enabling peasants to enhance the productivity of their land. This meant a bottom-up vision of rural development led by small farmers.

¹⁷⁶ The distinction between urban land and rural land is artificial, as increasingly the former is engulfing the latter as a result of expansion of towns in nearly 1,000 cities in the country. It is good to note that this initial reluctance to leave urban land to market forces is now abandoned, i.e., one can get urban land exclusively through state controlled lease system and virtually only from city administrations. This urban land lease holding law is straightforward in this regard: '...no person may acquire urban land other than the lease holding system provided under this Proclamation.' This has a tremendous implication for some of the best peasant farm holdings located in the environs of cities which are growing both demographically and spatially in unprecedented manner. See Urban Lands Lease Holding Proclamation, 2011, Article 5.1 and the Urban Lands Lease Holding Proclamation, 2002. As per the latest Urban Lands Lease Holding Proclamation No. 721, 2011, in urban areas the only legal means of acquiring land has become lease and sun set provisions are put for urban land acquisition schemes outside of the lease system. One can also mention the Urban Landholding Registration Proclamation No. 818, 2014 that envisages De Soto type thinking about land, i.e., land use rights shall enter the world of market by putting in place cadastral and registration system cities and towns throughout Ethiopia.

In the post-2000 period, however, one finds increasing trend towards erosion of the ethos of land to the tiller evidenced by the ease with which land could be taken from peasants for various investment purposes, the expansion of commercial farms, emphasis on market as the ultimate decider of agricultural inputs and the State's apparent loss of faith in ordinary peasants as a key candidate for transformation of the Ethiopian economy.

With a mistaken assumption that the land policy of the country still remains faithful to the social aspect of land, scholars attack the logic of peasant security and of egalitarianism behind the state land policy arguing that an ever growing rural population has already led to 'agricultural involution' as a result of a progressive leveling down of the size of landholding due to frequent land redistributions. Much scholarship continues to contend that state over-emphasis on the social side of land has bred general land tenure insecurity - creating a sense of short-termism and equalizing rural people in poverty by eliminating the possibility of rural economic differentiations. Hence, it has been remarked, "Under the EPRDF, economic development has been hindered by policies aimed to preserve the existing mode of production of the peasantry and prevent the emergence of capitalist agriculture..."¹⁷⁷ This assessment, as examined in Chapter 1, calls for either lifting legal restrictions attached to transferability of land use rights or fully privatizing land with the belief that "Transfer rights are unambiguously investment-enhancing."¹⁷⁸

Admittedly, some commentators have detected changes in the direction of commodification of land, implicitly undermining the argument that Ethiopia's current land policy underrates the economic aspect of land. For instance, it has been observed that "Land

¹⁷⁷ Tom Lavers (2009), "Competing Visions of Social Policy in Ethiopia", (Masters Thesis, University of Bath, Department of Social and Policy Sciences), <www.academia.edu/1045321>, pp. 80-81 (accessed June 2013); and K.C. Serbeh-Yiadom *et al* (2008), "Land Administration: Law, Policy Practice" in Dijk, M.P. van and Franssen, J. (eds.), *Managing Ethiopian Cities in an Era of Rapid Urbanisation*, (Delft, Eburon); and Stephen Devereux *et al* (2005), "Too Much Inequality or Too Little, Inequality and Stagnation in Ethiopian Agriculture", *IDS Bulletin*, 36:2. Dessalegn Rahmato note 59, Chapter 1, where he raises issues of the practicality of giving land to all who want to engage in agriculture for a living given limited off farm opportunities, arable land being at best constant and at worst shrinking due to climate change and land degradations) and ever growing high rate demography. Furthermore, the perspectives discussed assume that there is 'little change' between the land policy of the Derg and that which is in operation in post-socialist Ethiopia and warn that Ethiopia is missing out on labor intensive industrialization as the window of opportunity for cheap labor is predicted to last only until 2035 and yet the bulk of the nation's workforce is locked in rural areas due to inappropriate land policy. Tsegaye Tegenu (2014), "Is Ethiopia Missing the Opportunity of Labor-intensive Industrialization?" <www.aigaforum.com/.../Ethiopia-opportunity-of-Rapid-Industrialization.pdf> (last accessed May 21, 2014) where it is argued that the size of the productive labor force of the country will diminish after this year.

¹⁷⁸ Klaus Deininger & Songqing Jin (2006), "Tenure Security and Land-related Investment: Evidence from Ethiopia", *European Economic Review*, vol., 50, p. 1245.

...is still state owned but the lease system has led to the *de facto* sale and purchase of (urban) lands, and recently to the leasing out of huge tracts of rural land to foreign investors.’’¹⁷⁹ Yet, these observers have not articulated the emerging developments properly by pointing out the forms in which this shift is manifested. What underlies the current chapter is that a bricolage has emerged, i.e., while some renditions of the land law and policy are still tied to peasant security, some other aspects of them and the implementation thereof imply a focus on the economic side of land. In particular, examination of expropriation, of the practice of *kontract* and of rural commons as an investment site makes the latter objective patent.

This emerging post-2000 period trend in Ethiopia is in line with land law reforms in sub-Saharan Africa which embody the economic model as their dominant theme.¹⁸⁰ However, there is the important difference that the commoditization of land in current Ethiopia is made through state rather than market directed transfer of land to improvers. State controlled marketization means the market is not given the chance to select a land improver; it is the State that selects and allocates land to a developer in the form of lease.¹⁸¹

Emphasizing the economic side of land as opposed to the supposed social protection notion of the Government as the guiding principle behind their land policy is evidenced (in addition to regulated land transfer provisions discussed in the present chapter) by other land alienation mechanisms. As explained in Chapter 5, land expropriation for public purpose is another subtle device designed to make land available for economic activities to improvers of agricultural land. This is being pursued via a rather loose construction of public purpose, low compensation and withdrawal of key expropriation matters from judicial scrutiny. As Chapter 6 shows, the state is tacitly encouraging agricultural land alienation through *kontract*. As that chapter reveals, *kontract* is a device through which the state is administratively and judicially encouraging the transferability of agricultural land in a manner contrary to the prescription of the Constitution. *Kontract* starts out as party-to-party transaction but it ends up with getting the sanctity of land transfer in favor of the transferee who is regarded as improver.

¹⁷⁹ René Lefort, Free Market Economy note 138, pp. 583-584; and Tobias Hagmann and Jon Abbink, note 5.

¹⁸⁰ In Ghana and Uganda, for instance, land formalization project has been underway with intent to remedy land tenure insecurity by making land tradable; see Franklin Obeng-Odoom (2012), ‘‘Land Reforms in Africa: Theory, Practice, and Outcome’’, *Habitat International*, vol., 36, p.166.

¹⁸¹ This raises the issue of the meaning of development the State subscribes to and as to how the Government's notion of peasant security in the sense of allocating secure and non-transferable piece of farmland tallies with its actions of allocating land to improvers and of the issue of whether allocation of land as a subsistence asset is meant to be replaced by income from secure job generated by land improvers.

A third mode of increasing commercialization of land is considered in Chapters 7 and 8 – a designation of rural lands held in common by villagers as government land and giving them out to agricultural developers through the invocation of underutilization and empty narratives.

* * *

Rural Land Expropriation

Ethiopia's economic growth has generated demands for land for urban expansion, infrastructure, corporate farming and mining. The State is trying to meet these demands first by securing land through the invocation of the 'empty or underutilized' land narrative which entails, as examined in Chapter 7 and Chapter 8, designation of communal lands as government owned land that renders use of expropriation unnecessary. The second method is to obtain land primarily from peasants through the use of the power of expropriation. The latter is the focus of the current chapter.

In the Ethiopian context, lack of data on how frequently and extensively, for what purposes as well as with what social impact the state is actually using its power of expropriation hampers an empirically grounded study of expropriation.¹ Lack of adequate researches that analyze even the letter of expropriation laws of the country exacerbates the problem. However, analysis of Ethiopian law of expropriation, fieldwork and consideration of available research reveal a trend that raises concern. The trend implies a reordering of the land tenure system of Ethiopia increasingly in favor of capital.² This implies a remaking of the extant land tenure system which is dominated by smallholder agriculture by expropriating land from such smallholders for 'public purpose' to lease it out to capital.

¹ This is true in other jurisdictions as documented by Antonio Azuela and Carlos Herrera-Martin (2009), "Taking Land around the World: International Trends in Expropriation for Urban and Infrastructure Projects" <DOI 10.1007/978-1-4030-8862-9_13>, pp. 337, 342 & 359 (accessed March 13, 2011).

² A rise in the use of expropriation by the Ethiopian state is contrary to what has been asserted as a decline in some other jurisdictions. For example, Antonio Azuela and Carlos Herrera-Martin, note 1, pp 337, 344, 347, 350-351 & 358, have stated that the power of eminent domain has generally declined globally in the sense that states are facing difficulties in expropriating private property because of structural adjustment programs, social resistance (motivated by opposition to the very idea behind certain mega projects, contesting public purpose or for cultural reasons, general anti-expropriation public sentiment, and a strong tradition of an independent and assertive judiciary, rising expropriation costs to the state due to improved compensation or question of post-expropriation rehabilitation and strict legal restrictions and pro-investor international commitment of the concerned country). Such decline is reflected legislatively by demanding governments to pay market value of the property they take, and subjecting them to more stringent procedures, even if such trends do not include the definition of public purpose. Contrary to these developments elsewhere, expropriation in the Ethiopian context and broadly in the context of the so called emergent economies is well alive and in fact on the rise generally without significant constraints.

While the transfer of land from smallholders to investors is envisaged to occur via expropriation the land rights of investors would be made more secure by putting in place comparatively more stringent legal rules against the state's use of expropriation. This suggests the beginning of a shift from a land tenure system dominated by subsistence farm holdings to a system whereby land is increasingly deployed to the service of commercial farmers and industrialists with a declared purpose of enhancing agricultural development and hence economic development. This shift contradicts with state laws and policies that at the same time pledge to enhance the tenure security of small landholders through the land for all rhetoric.

The overall argument of this chapter is that current expropriation laws are inadequate to protect small landholders because they over privilege economic development projects as the Ethiopian state is not legally obliged during expropriation to pay compensation for land use right nor is it obligated to give a substitute land; compensation for property on the land is inadequate and rehabilitative schemes are not built into such expropriation laws.

The first section considers the present state of Ethiopian expropriation law and practice in relation to public purpose, compensation and legal recourse. The second and third sections, respectively, provide a brief discussion of some incompatibilities between federal and regional expropriation laws, and between bilateral investment treaties Ethiopia signed with other countries and the expropriation law of the country. The next section presents the manner in which the state explains its expropriation law including the underlying thinking behind these expropriation laws. The last section is about lessons Ethiopia can draw from comparative experience.

The chapter finds that there are insufficient legal mechanisms to restrain the government in exercising its power of expropriation. This finding brings Ethiopia close to countries with “high economic growth rates in which strong states, with corresponding weak rule of law, make extensive use of the power of eminent domain...”³

A. Public purpose, compensation and procedural safeguards

The power of expropriation in Ethiopia is vested in the state by virtue of Article 40 (8) of the Constitution which provides “the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the

³ *Id.*, p. 334.

property.’⁴ This has been amplified, in addition to bilateral investment treaties, by the following statutes:

- Expropriation of Landholdings for Public Purpose and Payment of Compensation Proclamation (the Expropriation Proclamation), 2005,
- Payment of Compensation for Property Situated on Landholding Expropriated for Public Purposes Regulations, 2007,
- The Civil Code of Ethiopia, 1960, Articles 1460-1488,
- Urban Lands Lease Holding Proclamation, 2011, Articles 26-31,
- Investment Proclamation, 2012, Article 25, and
- Regional rural land use and administration laws.

Among these enactments, the Expropriation Proclamation is the principal one and whose central objective is to take land for investment purposes.⁵ This law has three main aspects: provisions relating to public purpose, compensable property and procedural recourses. If properly formulated and implemented, the requirements of public purpose, of compensability and of procedural recourses would have the effect of disciplining government authorities since such procedures would force the state to carefully re-examine its projects, thereby serving as a buffer zone for property holders and preventing overtaking without necessarily handcuffing such authorities.⁶ Upon examination of the Expropriation Proclamation from the perspective of peasants, one observes that the law is deficient in these three counts. This part of the chapter considers these three aspects of Ethiopia’s expropriation law in the sense of permanent physical takeover of farmland by documenting the state of expropriation law in Ethiopia and the practice thereof with a focus on farmland expropriation.⁷

⁴ The Constitution, Article 40 (8).

⁵ Deliberations of Public Hearing Organized by the Standing Committee for Legal and Administrative Affairs of the House of Peoples` Representatives on the Expropriation Proclamation, May 2005 (hereafter May 2005 Deliberations) (Unpublished, on file with the author) p. 2.

⁶ Chenglin Liu (2008), “The Chinese Takings Law from a Comparative Perspective”, *Journal of Law and Policy*, vol. 26, pp. 302-3, it is stated that there are at least four administrative costs associated with expropriation: costs relating to procedural guarantees including public hearing to determine the existence of public purpose, costs of appraising the amount of compensation, the compensation itself and costs of litigation, and these four costs would hinder governments from rampantly engaging in takings.

⁷ This chapter does not consider issues of regulatory taking, which is the case where the state ‘excessively’ interferes with property rights in such a way that it is seen as good as physical takeover of the property itself. For this, refer to John A. Kupiec (2008), *Returning to Principles of “Fairness and Justice”: The Role of Investment-Backed*

i. Public purpose

The principal objective of public purpose is supposed to limit the discretionary power of government authorities in respect of expropriation. It may be articulated variously but, broadly speaking, one finds two conceptions - the minimalist and maximalist views of public purpose.⁸

The minimalist view would prohibit state authorities from undertaking expropriation to transfer the property of one person in order to enrich the patrimony of another. The test of public purpose under this view concerns: what is done with the expropriated property. If the property taken is used to benefit one or few persons then the expropriation cannot be said to have been done for a public purpose. Hence in this view, public purpose shall be construed to mean: “private property taken through eminent domain must provide its intended use to the public. The public must be entitled, as of right, to use and enjoy the property.”⁹ The maximalist thinks that public purpose includes:

...anything which tends to enlarge the resources, increase the industrial energies and promote the productivity of any considerable number of inhabitants or a section of the state, or which leads to the growth of towns and creation of new resources for the employment of capital and labor, contributes to the general welfare and prosperity of the whole community.¹⁰

In this broad view, public purpose is conceived to include not only “uses directly beneficial to the public, such as roads, but also uses that promote the general welfare and prosperity of the whole community.”¹¹

The Expropriation Proclamation adopts both minimalist and maximalist approaches but for different purposes. Some provisions of this expropriation legislation have reflected the

Expectations in Total Regulatory Taking Claims, B.C. L. Rev., vol. 49; Michael C. Blumm (2005), “Lucas’s Unlikely Legacy: The Rise of Background Principles as Categorical Takings Defenses”, *Harv. Envtl. L. Rev.*, vol. 29; James Gordley (2008), “Takings”, *Tul. L. Rev.* vol. 82; and Joseph L. Sax (1964-1965), “Takings and the Police Power”, *Yale L. J.*, vol. 74.

⁸ Antonio Azuela and Carlos Herrera-Martin, note 1, pp. 353-354, describe the various levels and forms of notion of public purpose might be treated. They state that public purpose might be addressed at constitutional level confining its application to matters of public use only (e.g., many common law countries); or the constitutions might come up with a detailed list of things which are deemed to constitute public purpose or leave the matter for legislative action, in the latter category legislation might be issued that come up with a limitative precise list of matters that constitute public purpose (e.g., Japan) or the definition of public purpose might be left to the judiciary (e.g., USA). Or as the present chapter shows, the concept of public purpose can be left for the discretionary of the executive branch without the possibility of judicial review (e.g., Ethiopia and China).

⁹ Chenglin Liu, note 6, p. 326; see also Jarrett Nobel (2009-2010), “Land Seizures in the People’s Republic of China: Protecting Property while Encouraging Economic Development”, *Pac. McGeorge Global Business & Dev. L. J.*, vol. 22, p. 368.

¹⁰ Bin Cheng (1958), “The Rationale of Compensation for Expropriation”, *Transactions of the Grotius Society*, vol. 44, p. 292.

¹¹ Chenglin Liu, note 6, p. 326.

maximalist perspective especially when the authorities seek to expropriate land from non-investors chiefly from peasants. For instance, Article 2 (5) of this law defines public purpose as:

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

Article 3(1) of the same stipulates that the relevant federal or regional or local authority has the power to expropriate rural or urban land for the public purpose:

...where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose.

Informants regard such legal description as good as having none because the authorities can attach the public purpose label to virtually any project of their liking.

The definition given to public interest in rural and urban land laws is extremely broad and vague. Its meaning permits to take property from one person and give it to another. What is public interest: when a road is to be built or a factory is to be established or a restaurant to be opened, a residential villa to be constructed in place of another residential house, etc? It is not a constraining factor at all.¹²

Besides, this expansive approach to public purpose is followed as a trend in respect of expropriation of urban land which includes peasants` farm lands in peri-urban areas.¹³

However, when the state takes land from investors, the concept of public purpose is understood in the minimalist sense to mean taking property including land held by investors under lease only for the purpose of undertaking publicly used projects, making it more difficult to expropriate leased land held by an investor than that held by a private person. Thus, Article 3(2) of Expropriation Proclamation states:

...no land lease holding may be expropriated unless the lessee has failed to honor the obligations he assumed under the Lease Proclamation and Regulations or the land is required for development works to be undertaken by government.

What is stated in this provision was documented during its enactment:

¹² Focus Group Discussion 13 with land law specialists, judges and land administrators, July 13, 2013.

¹³ The Urban Land Lease Holding Proclamation, 1993, reflected this view in stating that the public interest would not be violated by the state expropriating property solely to generate money. According to the preamble, urban areas must be permitted to lease lands so that they can obtain sufficient revenues to provide much needed social facilities and infrastructure. See also Misganaw Kifelew (2009), "The Current Urban Land Tenure System of Ethiopia", in *Land Law and Policy in Ethiopia since 1991: Continuities and Changes*, Muradu Abdo, (ed.) *Ethiopian Business Law Series* vol. 3, pp.187-8. Its successor is even more explicit about this broad notion of public purpose: the Urban Lands Lease Holding Proclamation, 2002, under Article 2.7, defines public interest as: "...that which an appropriate body determines as a public interest in conformity with Master Plan or development plan in order to continuously ensure the direct or indirect usability of land by peoples, and to progressively enhance urban development." The Urban Planning Proclamation, 2008, describes public purpose in Article 2.5 as that which "continuously ensures direct or indirect utilization of land by people and thereby enhances urban development."

... in case where land under lease contract is to be expropriated, public purpose would be construed narrowly to mean when government needs the land or where the investor could not honor his obligations under the lease contract because land is inextricably linked to investment.¹⁴

This differentiated appreciation of public purpose is a departure from the past because previous expropriation legislation of the country understood public purpose narrowly and in a uniform manner without distinguishing peasants from investors.¹⁵ For example, the predecessor of the Expropriation Proclamation, that is, the expropriation law issued in 2004, was legislated exclusively with intent to obtain land for government projects. Accordingly, this expropriation statute came up with a restrictive interpretation of public purpose for it conceived public purpose in terms of land taking for public works. This term ‘public works’ was defined as:

the construction or installation, as appropriate for public use, of highway, power generating plant, building, airport, dam railway, fuel depot, water and sewerage telephone and electrical works and the carrying out of maintenance and improvement of these and related works and comprises civil, mechanical and electrical works.¹⁶

This suggests that the public purpose of expropriation as envisaged in this 2004 expropriation legislation was meant to enlarge land in the public domain of the state, not to expand property in the private domain of the government and private persons as is the case in the current Expropriation Proclamation. Additionally, this restrictive interpretation of public purpose is in line with the tradition of the Ethiopian Civil Code of 1960 (the Code) and post-revolutionary laws enacted by the Derg.¹⁷ Some regional rural land laws tend to gravitate towards the more restrictive appreciation of public purpose, for example, using the words ‘public uses’ and describing such words as “public common service obtained from infrastructure such as school,

¹⁴ May 2005 Deliberations note 5, p. 3.

¹⁵ Daniel Weldegbriel (2013), “The History of Expropriation in Ethiopian Law”, *Mizan Law Review*, 7:2.

¹⁶ The Appropriation of Land for Government Works and Payment of Compensation for Property Proclamation, 2004.

¹⁷ The Code, Article 1464, reflects this view in providing that a competent authority cannot initiate expropriation for the exclusive aim of obtaining money: ‘(1) Expropriation proceedings may not be used for the purpose solely of obtaining financial benefits. (2) They may be used to enable the public to benefit by the increase in the value of land arising from works done in the public interest.’ Expropriation may ultimately bring money to the treasury but that must not be its sole purpose. The Amharic version of the title of that section of the Code which deals with expropriation reads: *le hizbe agelgelot ymitqemu nebrtoch sele maseleqeqe*, which means the state authority is supposed to construct facilities accessible to the public in place of the property it expropriates. The Public Ownership of Rural Lands Proclamation, 1975, under Article 17(1), provides that: “The Government may use land belonging to peasant associations for public purposes such as schools, hospitals, roads, offices, military bases and agricultural projects.”

health, road, water, etc’’ and further prescribing that land users shall be evicted from their possessions only for public use understood in this narrow sense.¹⁸

Further, the Expropriation Proclamation appears to implicitly say that the expropriated cannot challenge the decision of administrative bodies regarding the existence of public purpose either before administrative tribunals or regular courts. The law conveys this message by restricting appeals only to matters pertaining to the denial or amount of compensation.¹⁹ The law takes the decision of the concerned executive authority on the existence or otherwise of public purpose in a given project as a final one. And in making the issue of determination of public purpose non-justiciable, the Expropriation Proclamation has followed the path taken by the Code.²⁰

Some rightly classify expropriation into two categories on the basis of the link the property subject to expropriation has with one`s livelihood.²¹ This is expropriation of asset versus that of subsistence asset. In specific terms when land is taken from an investor, the government is depriving them of a mere asset, but not the foundation of their livelihood; when property such as land is taken from small landholders the government is depriving them of a livelihood asset.²² Those who support the centrality of this dichotomy call for more stringent protection when expropriation is invoked with regard to subsistence asset than when it is used to expropriate asset. However, what is reflected in the expropriation law of Ethiopia is the opposite; making it legally easier for the state to deprive a livelihood asset than a mere asset.

ii. Compensation

The answer to the question what are compensable interests is in theory simple and straightforward. In the Ethiopian context, the loss of any property right including that of land use right should be compensable upon expropriation.²³

¹⁸ The Southern Nations, Nationalities and Peoples` Region Rural Land Administration and Use Proclamation, 2007, Articles 2(23), 7(3) and 13(11); the Oromia Rural Land Use and Administration Proclamation, 2007, Article 6(10 &11).

¹⁹ The Expropriation Proclamation, Article 11.

²⁰ The Code, Articles 1473-1479.

²¹ Antonio Azuela and Carlos Herrera-Martin, note 1, p. 339.

²² *Ibid.*

²³ Payment of Compensation for Property Situated on Landholding Expropriated for Public Purposes Regulations (hereafter the Regulations), 2007 in Article 19 states that there shall be no payment of compensation with respect to any construction or improvement of a building, any crops sown, perennial crops planted or any permanent improvement on land, where such activity is done after the possessor of the land is served with the expropriation order.

The Constitution is both broad and narrow when it comes to the determination of compensable property. It is broad because the combined reading of sub-articles 2 and 8 of Article 40 of the Constitution sends a clear message that the expropriation of any sort of private property is compensable, regardless of whether it is movable or immovable or tangible or intangible. Conversely the Constitution seems to narrow the scope of compensable property interests by adopting the labor theory in the sense that individuals are entitled to have private property in property on land that is linked to their labor or capital or enterprise. The attitude reflected in this Constitution appears to be this: you will only be compensated for the labor or capital value you have added to lawfully possessed land that has been expropriated but not for the economic value of use rights over the land.²⁴

The Expropriation Proclamation has predictably followed the path of the Constitution in providing for the manner in which people affected by land taking might get compensated for the property on the land, not for the land itself. Thus, under this law, compensable interests are: utility lines,²⁵ permanent improvements to land,²⁶ property situated on the land which can be removed and relocated, property which can be removed for consumption (e.g. standing crops) and property which cannot be relocated (e.g., a house).²⁷ This expropriation law takes the clear stand that loss of land use right due to expropriation is not compensable unless the administration is able and willing to give land in the form of displacement compensation to the affected person. In other words, the law in question does not view the taking of land from a landholder as an expropriation.²⁸ Thus, if, for example, the state requires land held by a landholder, and there is no property on or improvements to such land then no compensation is payable because no expropriation has been undertaken in respect of such land. The expropriation law in question assumes that the state is merely retaking public land in this case, not taking private property, which is conceived as taking labor-related tangible immovable property belonging to the landholder situated on the land. Even in cases where there is property on land subject to taking, compensation relates to the property, not to the land *per se*. Hence, the lost right to use and enjoy the land is not compensable under the Expropriation Proclamation.

²⁴ The Constitution, Article 40 (2, 3 & 7).

²⁵ The Expropriation Proclamation, Article 2 (7).

²⁶ *Id.*, Article 7(1).

²⁷ *Ibid.*

²⁸ See the use of the phrase, “shall be given compensation proportionate to the *development he has made on the land and the property acquired...*” in the Expropriation Proclamation, Article 7(3) (emphasis supplied).

The rule that there shall be no monetary compensation where there is no property to be removed from the land at the time of taking triggered objection and criticism during the adoption of the present rural land law of Ethiopia, in connection with which it was stated that:

The right to use rural land would be made secure not by merely issuing land certificate but by fully protecting the rights of peasants as provided for in the Constitution. Complaints among peasants indicate that like what happened during the Derg period, there is an increasing tendency to evict farmers from their lands in the name of promoting the interest of the people without payment of commensurate compensation.²⁹

It was further suggested that:

the law envisages the possibility of providing a substitute land to peasants who lost their land under expropriation where there is land available. But due to acute land scarcity in highland areas where most land expropriations would take place, a comparable substitute land is not feasible, which means resort to payment of meager amount of compensation, which would not support the future livelihood of the victim of government taking.³⁰

Unfortunately, the idea of not treating use rights over land as having economic value upon expropriation has found its way into the current rural land law of Ethiopia. Courts have also subscribed to it as the Federal Supreme Court has decided that:

...the earth and rock related materials are natural resources and as natural resources are owned by the people and state, the people and state may use these resources without any payment. Therefore, even if the respondent has been granted by the relevant regional authority lease right to extract sand and gravel, as sand is a natural resource,... the respondent cannot have ownership over sand, and ... the respondent is entitled to claim for the price of extracting the sand but not for the price of the sand itself since such claim has no legal basis. The decision of the lower court that awards the price of the sand in the form of compensation is hereby reversed.³¹

This decision is in line with the Supreme Court's other series of rulings essentially upholding that land use rights of a landholder do not have a transferrable economic value in the

²⁹ The Deliberations of the Parliamentary Public Hearing Organized by the Standing Committee for Rural Development and Pastoral Affairs of the House of Peoples' Representatives on Draft Federal Land Administration and Use Proclamation, March 2005 (hereafter March 2005 Deliberations), pp. 6-7.

³⁰ See the Minutes of the Deliberations of the Parliamentary Standing Committee for Rural Development and Pastoral Affairs of the House of Peoples' Representatives on Draft Federal Land Administration and Use Proclamation, March, 2005 pp.19 & 25; see March 2005 Deliberations note 29, p. 4 and May 2005 Deliberations note 5, pp. 4, 7, 8 and 12.

³¹ *The Ethiopian Roads Authority v. Issa Mohammed*, Fed. Sup. Ct. (Cassation File No. 30461, 2007), *Mizan Law Review*, 3:2 (2009), p. 379.

There are also two similar cases, though disposed on different grounds. In *the Ethiopian Roads Authority vs. Kebede Tadesse* (Fed. Sup. Ct., Cassation File 34313, March, 2008, Unpublished, on file with the author), the respondent (the latter) alleged that the applicant took away 10,859 cubic meter sand and occupied the quarry land leased by him from a regional government, causing an interruption of current and of future income therefrom. The Cassation Division disposed of the case on procedural grounds. Also in the *Ethiopian Roads Authority vs. Genene W/Yohannes* (Oromia Supreme Ct. File No. 57593, 2008, (Unpublished, on file with the author), the respondent claimed that he had a license to extract sand and gravel; that the applicant took the quarry land from him for the purpose of a road project. He sought compensation for the expenses incurred in connection with making the quarry land ready for extraction of materials as well as for a certain quantity of sand, mined and readied for sale, taken by the applicant from him. The Oromia State Supreme Court decided partly in favor of the respondent and partly rejected his claim on the ground of lack of evidence.

context of people`s ownership of land in today`s Ethiopia.³² And it should be noted that these rulings of the Federal Supreme Court are legally binding on all levels of federal and regional courts in the country.³³

Thus, on the question of compensability, as the law stands, those affected by expropriation are entitled to be compensated for the labor or capital-borne fruits over the land but not for the user rights over land. This position of the law on compensability coupled with criterion adopted to determine compensation during expropriation, that is, a replacement approach for non-investors, (as opposed to ‘the prevailing market value’³⁴ criterion in case of takings from investors)³⁵ and the less than full compensation approach reflected in the country`s legislative past would result, and in fact, results in, under-compensation possibly jeopardizing the livelihood of the peasantry affected by expropriation as well as undermining the constitutional provision which provides every peasant and herder with access to land.³⁶

Recent research reports have problematized the adequacy of compensation being paid to affected peasants.³⁷ Fieldwork confirms it. A peasant who lost a farmland due to expropriation recounts,

³² *GebreEgziabher v. Selamawit*, Federal Supreme Court Cassation Division Cassation, File No. 26130, 2008; for comments on this case, see Alem Asmelash (2010), “Comments on Some Land Rights Related Decisions of the Federal Supreme Court Cassation Division”, *Journal of Ethiopian Legal Education*, 3:2, pp. 153-160; see also Filipos Aynalem (2009), “the Interpretation of Rights over Urban Land”, *Journal of Ethiopian Law*, 22:1.

³³ Federal Courts Amendment Proclamation, 2005, Article 2, provides “Interpretation of a law (sic) by the Federal Supreme Court rendered by the cassation division with not less than five judges shall be binding on federal as well as regional council at all levels.”

³⁴ The Investment Proclamation, 2002, Article 21 (2).

³⁵ The Expropriation Proclamation and the Regulations, mainly adopt the cost replacement approach. Article 7 (2) of the former stipulates that the “amount of compensation for property situated on the expropriated land shall be determined on the basis of replacement cost of the property.” Article 6 (2), states that ‘the owner of utility lines shall determine a fair compensation required to replace the lines to be removed.’ These two sub-articles of the proclamation are fleshed out in the Regulations, Articles 3-13.

³⁶ George Krzeczunowicz (1977), *The Ethiopian Law of Compensation for Damage* (Addis Ababa University, Faculty of Law) pp.172-174, where he analyzes the provisions of the Civil Code of Ethiopia that have adopted less than full compensation approach and said that there are aspects of these provisions which “...constitutes a serious curtailment of the right to compensation” and that a person whose property is taken by the state through expropriation would be entitled to recover less compensation than if the loss was sustained otherwise.

³⁷ Dustin Miller & Eyob Tekalign (2008), “Land to The Tiller Redux: Unlocking Ethiopia's Land Potential” *Drake J. Agric. L.*, vol., 13, p. 363; Imeru Tamrat (2010), “Governance of Large Scale Agricultural Investments in Africa: The Case of Ethiopia” <<http://siteresources.worldbank.org/EXTARD/Resources/336681-1236436879081/5893311-1271205116054/tamrat.pdf>> (visited January 11, 2012) pp. 11-14; see Daniel W/Gebriel (2009), “Compensation During Expropriation” in *Land Law and Policy in Ethiopia Since 1991: Continuities and Changes* (Muradu Abdo, ed.) *Ethiopian Business Law Series*, vol. 3. (Addis Ababa: Addis Ababa University Faculty of Law), pp. 232-233; see also Girma Kassa (2011), “Issues of Expropriation: the Law and the Practice in Oromia”, (LL.M Thesis, Addis Ababa University, unpublished, Graduate School Library).

I was paid 120,000 Birr, calculated 6 Birr per 1meter square land. I spent some of this money to celebrate the wedding of my two daughters. I spent the remaining money for food and other daily basic needs. Now I am left with nothing while my family is displaced. My sons have migrated to Addis Ababa and work on their labor while my daughters have dropped out of school and work as housemaids.³⁸

Similarly, another informant said:

I lost my two hectares of land in 2004 for private investors. My land was valued for only 90 cents per meter square and 9,000 Birr per hectare. The government took my land without paying me adequate compensation. I used to harvest 18 quintals of *teff* per hectare every year before my land was taken and 36 quintals on the two hectares of land expropriated. I was paid only 18,000 Birr for the two hectares of land. This money was insignificant and I could not buy food for three years with this money. My family has been displaced and we are now leading a devastated life.³⁹

As a focus group discussion revealed,

Compensation is low for both urban and rural land expropriation. Compensation is not equal to loss; the amount being paid worsens your existing situation instead of making it up for the losses you incurred due to the expropriation. The law on the amount of compensation is unclear. It says an expropriated person is entitled to get a replacement cost. But what does replacement cost mean? Does it exclude depreciation? Does it mean the amount paid to a person whose house is taken must enable him to construct a similar type of house, for example? But authorities require a person who lost a house made of mud to build a house out of steel and stone even if the amount paid to him by way of compensation is not enough to do that. In this case who shall cover this additional cost entailed by the construction of the latter type of house, if ever the person is able financially to do so?⁴⁰

Further, it was said,

Compensation is given only to fixtures on land and land has no economic value to the holder upon expropriation. Land's value is zero. Land's economic value is fully captured by the state. The Constitution says land is the joint property of the state and the people. If land is really a joint property, it means your right as a landholder is short of ownership including the right to reap the economic value of your land use rights. But the expropriation law does not permit you to capture enhanced value of land. Yet, the individual shall be allowed to share the enhanced value of the land instead of being diverted to state treasury as a whole because compensation in expropriation is expected to put the person in his previous position. Compensation is low because location value is counted out, there is a requirement of developing the land (e.g., building something on the land), current market value is not taken into account; indirect losses such as distance and trade losses are not counted in. Regions do not have detailed law on expropriation; there is variation. Where there is gap, the regions act arbitrarily. For example, Amhara region pays compensation for naturally standing trees on land subject to compensation but Oromia state does not pay compensation in this case as they think that the property on the land must be the result of capital or labor. The property taker and evaluator are the same body; there is no difference between the two.⁴¹

A report by the USAID puts the situation as follows,

The federal laws on rural land expropriation and compensation...disfavor those that are losing the land...regional agencies, mainly municipalities...are facing cash flow problems. This is leading to undervaluing...land and property to match the available funds which is unfair to those losing their lands and have to establish new livelihoods...households who are evicted are farmers who face difficulty in starting a new livelihood if they do not get another piece of land to farm because this is the only skill they have. Mechanisms are not in place to train them in new skills and provide them with social, financial and management advice in starting new livelihoods.⁴²

³⁸ As quoted in Girma Kassa, note 37, p. 107.

³⁹ *Ibid.*

⁴⁰ Focus Group Discussion note 13.

⁴¹ Interview 46 with a land law specialist, July 13, 2013.

⁴² Solomon Bekure *et al* (2006), "Removing Limitations of Current Ethiopian Rural Land Policy and Land Administration," Workshop on Land Policies & Legal Empowerment of the Poor, November 2-3, 2006, World Bank Washington D.C.

A good indication of the insufficient nature of compensation award during expropriation is the government's own recent admission by putting in place a bill which is expected to review compensation rules to be applied in Addis Ababa.⁴³

Some blame lack of implementation of some aspects of the Expropriation Proclamation and the regulations issued thereunder for paltry compensation.

There is lack of implementation of an aspect of the expropriation. For example, the law says the property shall be valued probably by private experts. In the meantime, property shall be valued by a committee. But there are no expert valuers nor are institutions that give license to expert valuers. Thus, property continues to be valued by a committee. The law also provides that the Ministry of Federal Affairs shall ensure capacity building in this regard; but its power seems to be now transferred to another ministry, the Ministry of Urban Development, even before the former tried to implement this provision. Frequent change of the authority in charge of capacity building responsibility makes it difficult to clearly identify the public authority in charge of ensuring the implementation of provisions regarding expert evaluators.⁴⁴

The law addresses the issue of who might be entitled to receive compensation during expropriation in a non-inclusive manner, i.e., in such a manner that would deprive certain individuals who could rightly be regarded as enjoying property interest in land subject to expropriation. Both under Article 5(2) and Article 13(1) of the Expropriation Proclamation, compensation shall be paid to "holders of expropriated land". It defines a holder in Article 2(3) as "an individual...and [who] has lawful possession over the land to be expropriated..." The concept of landholder is further amplified by subsequent laws defining it to mean he who produces "proof of legitimate possession of the expropriated landholding..."⁴⁵ By incorporating an individualistic notion of landholding, this formulation of the law excludes secondary land users from demanding compensation. The law instead should in principle⁴⁶ have been formulated broadly along the line of the Code, that is, in such a manner that any person who establishes the

⁴³ Focus Group Discussion note 13.

⁴⁴ *Ibid.*

⁴⁵ The Regulations, Article 22.

⁴⁶ Exceptions might be provided as is stated in the Regulations, Article 19, in respect of any construction or improvement of a building, any crops sown, perennial crops planted or any permanent improvement on land, where such activity is done after the possessor of the land is served with the expropriation order. Further exceptions may be supplied in relation to what has been provided for in the French version of Article 1414 as translated by Bilillign states: "(1) The promise of sale, and the contractual right of pre-emption lapse where the thing to which the relate is expropriated for the purpose of public utility, or is requisitioned. (2) No indemnity is due to the beneficiary for the loss of these rights." For this, see Bilillign Mandefro (1973-1975), "Revised Unauthorized Unofficial Translation of Arts. 1126-1674 of Book III of the Ethiopian Civil Code (1960) From the French Original Draft" (Addis Ababa University, Law Library Archive). However, under the law, the answer may not that clear. The expropriation provisions of the Code do not speak to the expropriation of movable property and incorporeal property. The Code explicitly denies any compensation for some interests.

existence of a property right in their favor, in the land expropriated is given the opportunity to demand compensation.⁴⁷ In relation to this non-inclusive approach, it is asserted that:

...the use of the power of eminent domain is depriving people not recognized as owners of the land of their means of subsistence. Tenants, herders, and agricultural laborers are among those paying the highest social cost of expropriation because they are not recognized as holding any property rights.⁴⁸

It appears that the lawmaker realizes that the compensation approach alone is not adequate to restore the livelihood of those affected by expropriation even where compensation is adequate because the law provides that local authorities undertaking expropriation shall, to the extent possible, rehabilitate the expropriated on the top of payment of compensation for property on the land as well as displacement compensation.⁴⁹ Assisting expropriated peasants to start generating regular income from non-farming sources would be more sensible in cases where the state could not provide them with ‘‘a substitute land which can easily be ploughed and generate income,’’⁵⁰ which despite being favored equally both by the expropriator and the expropriated is becoming difficult, if not impossible, in peri-urban areas where land is scarce. One might surmise that the use of the concept of rehabilitation suggests helping the expropriated resume their normal farming life or helping them change their calling entirely in cases where a substitute farmland is unavailable. But the notion of rehabilitation is not elaborated in the law in the sense that the nature of the rehabilitation strategy is not worked out nor is the source of the rehabilitation fund indicated.⁵¹

iii. Procedural safeguards

Procedural safeguards in regard to expropriation suggests observance of the due process of law whose nature has been put as: ‘‘...being deprived of land rights or lacking access to legal

⁴⁷ The Code, Articles 1461, 1466 (2), 1468 (1) and 1471, read together suggest that any interest in an immovable might be compensable, even though the emphasis in those provisions appears to be on ownership, servitude and usufruct.

⁴⁸ Antonio Azuela and Carlos Herrera-Martin, note 1, p. 358.

⁴⁹ The Regulations, Article 13 (1); see also the preamble of the same, which stipulates that the purpose of expropriation law is ‘not only paying compensation but also to assist displaced persons to restore their livelihood.’ It is a mistake to consider, as some writers have already done, displacement compensation as compensation for the land rights peasants have lost as a result of expropriation because the law gives displacement compensation, though a reduced one, even to those peasants who have received a substitute farmland. See, for example, Daniel W/Gebriel, note 37, pp. 215-219.

⁵⁰ The Expropriation Proclamation, Article 8 (3).

⁵¹ The Regulations, the Preamble and the Expropriation Proclamation, Article 13(1); see also May 2005 Deliberations note 5, pp. 8-10.

remedy to defend them is the ultimate state of vulnerability in tenure...⁵² Proper and effective procedural safeguards are therefore anticipated to contribute to the enhancement of land tenure.

The expropriation law in force in Ethiopia manifests a deficiency in this regard. The Constitution, in its draft stage, included a clause providing for a public forum at which the concerned public authorities would be required to prove that expropriation was the only available option under the circumstances. The draft also required the authorities to establish a genuine case of public interest and compelled them to give an opportunity for potential land losers to explain their own version of the intended project.⁵³ However, this did not appear in the final version of the Constitution. Thus, as the law stands, there is no requirement of public consultation showing a regression in this regard from the Code which half a century ago required the relevant authorities to undertake a public inquiry under certain conditions.⁵⁴

Under the Expropriation Proclamation, expropriation is a simple matter of administrative decision and notification of the same to the affected people. Among the series of administrative decisions (e.g., decision on public purpose, determining whether the land has been lawfully acquired, fixing compensation, and notifying the expropriated the time within which the land has to be cleared and taking over the land⁵⁵), only matters of compensation can be contested in the regular courts by way of review.⁵⁶ Those affected by expropriation cannot challenge the decisions of the authorities, for example, in relation to the need for a specific project or whether the project advances public interest neither in administrative nor judicial forum. Hence, the determination of whether the intended project would benefit the public, legality of the land possession and the appropriateness of the timing of dispossession are left entirely to the discretion of the authority undertaking the expropriation. In such matters the administration reigns unchecked. The Expropriation Proclamation's removal of crucial matters from the purview of regular courts relies on the Code's tradition, in respect of expropriation, of limiting the jurisdiction of regular courts solely to matters of compensation and this is taking place in the

⁵² *Id.*, p. 340.

⁵³ Dustin Miller & Eyob Tekalign, note 37, p. 363.

⁵⁴ The Code, Article 1465.

⁵⁵ The Expropriation Proclamation, Article 4 cum Articles 5, 6 & 10.

⁵⁶ The 2005 Expropriation Proclamation, Article 11, and May 2005 Deliberations note 5, p. 9 and the Urban Land Lease Holding Proclamation, 2002, Article 18(4), which, as revised in 2011, has also retained the position that courts may entrain appeal from the expropriated only in respect of compensation issues.

context where regular courts are not mandated to review the Constitution as discussed in Chapter 4.⁵⁷

A judge described the restrictive nature of the expropriation law as follows.

There are restrictive provisions in the expropriation law. People can appeal to regular courts only on compensation issue. The law prevents them from coming to court where they want to raise legal issues not related to compensation. Affected persons are required to adduce evidence showing that they have handed over the property to the authorities as a condition for appeal in regular courts; but almost 90 percent of petitioners do not meet this requirement because they do not know this requirement of the law. As a result those affected by expropriation file cases to the regular court before handing their land over to the authorities. We are constrained by the law. We reject their case telling them that the law does not allow them to go to the court to challenge expropriation before they hand over the property in question to the authorities. It narrows judicial remedies.⁵⁸

A property law expert says,

Courts should be empowered in regard to property. Their involvement shall be enhanced. Property disputes which do not entail the involvement of courts shall be reduced. Currently power in regard to expropriation, for instance, gravitates towards the administration.⁵⁹

It has been stated,

I do not believe that property is secure. The Constitution says people have full private ownership over property attributed to their capital and labor. But authorities change directives regarding land and immovable property frequently. The law says people shall be given 90 days to clear their property after receiving expropriation order. But occasionally people are ordered to remove their property in less than 90 days. The authorities in charge of land matters possess wide discretionary power. They can revoke land certificates without judicial scrutiny and they can do so easily. The decision of the Supreme Court prohibits courts from reviewing this kind of decision. The availability of non-judicial remedy in this case is not clear either. There shall be detailed laws to issue land certificates and detailed laws as to how and why to revoke those certificates. There shall be laws which allow review of decisions of administrative authorities in regard to revocation of land certificates.⁶⁰

An administrative tribunal judge handling expropriation related issues says,

The law says the decision of the Land Clearance Appeals Commission [an administrative body in charge of handling expropriation matters] in connection with expropriation can be appealed to courts on compensation matters. But the law does not say anything about cassation. It is not prohibited either. We in the Commission expressly reserve the right to seek review by way of cassation to a party which believes that a basic error of law has been committed.⁶¹

An informant related,

My farmland was taken by the local government administration to build a school. I had permanent crops such as *enset* on the land. I was allowed to prematurely consume such crops as they were constructing the school. They promised me a substitute land. They did not give it to me yet. Nor did they pay me compensation. Now I vacated the land. It became two years since they took possession of my land. I repeatedly went to the administration pleading for compensation and a substitute land. There seemed to me there is no hope of getting it.⁶²

⁵⁷ The Code, Articles 1472, 1473, 1477, 1478, 1479 & 1482.

⁵⁸ Focus Group Discussion summary note 13.

⁵⁹ Interview note 41.

⁶⁰ Focus Group Discussion summary note 13.

⁶¹ *Ibid.*

⁶² Interview 26 with a Member of Land Use and Administration Committee, September 19, 2012.

Another informant says,

In relation to expropriation carried out by local government administration, the officials pressurize those who demand compensation before handing over the land by saying land belongs to the state and such demand is not proper. If they do not budge, they are likely to be tagged as ‘obstructor of development or anti-development element.’ This is a serious offense that can entail locking them up in prison. Local governments tend to carry out projects such as health clinics and schools which require land expropriation without any budget for compensation.⁶³

And it was said,

In case where expropriation is carried out for federal projects, compensation is paid if there is a total taking; but due to corruption, the amount of compensation paid to the person whose land is taken is low because evaluators and local officials take a good amount of it. The state pays it but the money goes to the wrong pocket. The state even complains about payment of exorbitant compensation discouraging initiation of projects. But even federal projects do not compensate for quarry land and indirect expropriation brought about by particles from quarry sites causing damage to adjacent farmlands and crops.⁶⁴

In summary, review of the law and the available field research⁶⁵ shows that: there is a broader definition of public purpose; there are no public hearings and consultations in the course of expropriation of land; there is the requirement of adducing landholding certificate to be eligible to receive compensation implying the exclusion of some affected people from payment of compensation; and the compensation paid to those who lose their land is widely regarded as insufficient and that there is no clear institutional rehabilitation scheme to help those who have lost their livelihood to secure alternative means.⁶⁶

⁶³ Interview 40 with a Supreme Court Judge, Southern Regional State, September 25, 2012.

⁶⁴ Interview 42 with a practicing lawyer, Southern Regional State, September 25, 2012.

⁶⁵ Daniel Woldegbriel (2013), ‘‘Land Rights and Expropriation in Ethiopia’’, PhD thesis, School of Architecture and the Built Environment, Sweden, Royal Institute of Technology); Imeru Tamrat, Governance of Large Scale Agricultural Investments note 37, pp. 11-14; Ethiopian Land Tenure and Administration Program: Study on the Assessment of Rural Land Valuation and Compensation Practices in Ethiopia, Final Main Report (unpublished, on file with the author, 2007); Dustin Miller & Eyob Tekalign, note 37, pp. 362-363. See also the Proceedings of a Consultative Meeting on Rural Land Transactions and Agricultural Investment, (hereafter the Proceedings) (Gizachew Abegaz and Solomon Bekure (eds.), (Addis Ababa: Ethiopia-Strengthening Land Administration Program, 2009). Also see Irit Equavoen and Weyni Tesafi (2011), ‘‘Rebuilding Livelihoods after Dam-Induced Relocation in Koga, Blue Nile Basin in Ethiopia’’, Working Paper Series No. 83 (Bon: Center for Development Research, University of Bon) pp. 7-9 & 13-15, that documents irregularities in compensation payment including low amount of compensation in relation to people displaced as a result of irrigation project.

⁶⁶ The researches further indicate that people affected by expropriation proceedings lack knowledge of their rights to judicially challenge the decisions of the authorities even regarding compensation or even when they know about their rights they think it is either impossible or futile to bring the authorities to justice or when people are right conscious and daring enough to challenge those decisions in regular courts, the regular court judges lack knowledge of the relevant expropriation laws. An affected farmer said, ‘‘The government has all the powers, i.e., the court, the police, the prosecutor all belong to the government. We fear that there might be revenge from the authorities. We have no recourse to appeal against the decision of the authorities. Even if we are able to do it there is no probability of winning the case. It is like struggling with a mountain to demolish it.’’ As cited in Girma Kassa, note 37, p. 115.

B. Conflict between Federal and regional expropriation laws

There is a conflict between federal and regional laws in regard to public purpose and compensation approach. Three regional land laws appear to have adopted a narrow interpretation of the term ‘public purpose’ while one regional land law uses the term ‘actual compensation’, and pre-expropriation public hearing is required in another regional land law.⁶⁷ Thus, despite an apparent upward delegation by regional states of their power to pass expropriation laws to the Federal Government, regions still tend to assert some legislative power over expropriation.⁶⁸ These differences are not tested in practice, though.

C. Expropriation under bilateral investment treaties

There is a differentiated treatment of investors (domestic and foreign) and other persons in relation to public purpose and compensation. This emanates from bilateral investment treaties Ethiopia signed with 29 countries as of the end of June 2012.⁶⁹ The bilateral investment treaties have become incompatible with the Expropriation Proclamation as the former as opposed to the latter embody market value approach to compensation in the tradition of liberal property rights notion pushed by developed nations in international arena.⁷⁰ The treaties also appear to envisage

⁶⁷ This tension arises due to a reluctance on the part of regions to discontinue legislating on expropriation matters even if they have apparently delegated their power to legislate on this to the federal government; for the narrow interpretation of public purpose, see the Southern Regional State’s Rural Land Administration and Use Proclamation and the Oromia Rural Land Use and Administration Proclamation; The Benishangul Gummuz Region rural law defines public purpose seemingly in narrower sense compared to the federal legislation as: ‘a service given to the public directly or indirectly, such as government office, school, health service, market service, road, religious institutions, military camps, and the likes, and includes activities assumed important to the development of people by the Regional Government and to be implemented on the rural land.’ Benishangul Gummuz Region Rural Land Administration and Use Proclamation, 2010, Article 2.24.

The Tigray Regional State Revised Rural Land Use and Administration Proclamation No. 136, 2007, Article 25 for use of the word ‘actual compensation’.

The Amhara state’s legislation demands public hearing of the *kebele* residents where it is found that the purpose of land expropriation is directly interrelated with development of local community or where the community itself is being a payer of compensation thereof: “Where a landholder or user who may concern the matter has legal ground of rejecting the request of land expropriation, he may submit his complaints to the government office next to the body that has given the decision within 15 days from the date of his communication of the notice in writing.” Amhara Rural Land Regulations, 2007, Article 29 (2).

⁶⁸ See May 2005 Deliberations note 5 where it was stated that regions agreed to surrender their power to pass expropriation law to the national government.

⁶⁹ UNCTAD (2013), “World Investment Report 2013: Global Value Chains: Investment and Trade for Development”, (United Nations Publication, Switzerland) p 101; and for a discussion on the incompatibilities between domestic expropriation laws and the BITs Ethiopia signed, see Martha Belete (2013), “Standard of Compensation for Expropriation and Nationalization of Foreign Investment in Ethiopia”, *Journal of Ethiopian Law*, 27:2.

⁷⁰ For instance, Alec R. Johnson (2010), “Rethinking Bilateral Investment Treaties in Sub-Saharan Africa”, *Emory Law Journal*, vol. 59, p. 922, has argued that BITs have failed to adapt themselves to ‘each country’s individual

a broad right to judicial review. For example, the bilateral investment treaty Ethiopia has signed with the United Kingdom of Great Britain and Northern Ireland requires payment of, “prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated...”⁷¹ In terms of recourse to the courts, it provides “The national or company affected shall have a right ... to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment...”⁷²

Therefore, a joint reading of the Expropriation Proclamation and the BITs implies three hierarchies (i.e., investors protected under BITs, investors without BITs and other persons); the most legislative protection being given to those investors who come from a home country which has signed a BIT with Ethiopia.

D. Government narrative about expropriation

As suggested above, the loose expropriation legal framework tilts towards the state. This lopsided expropriation legal arrangement is reflected in the construction of public purpose, the removal of land use right from compensable items, payment of insignificant amount of compensation, and above all, making virtually all administrative decisions pertaining to expropriation immune from judicial review. As a result checks and balances have been removed, clearing the road for the government to transfer land to the private sector.

Once the land expropriated from peasants is transferred to investors, legally speaking, it becomes harder for the state to expropriate such land from the latter. This comes from its own legislative commitments as embodied in bilateral investment treaties and the Expropriation Proclamation. The land use right of peasants, after it is transferred to the investor through the instrumentality of eminent domain, becomes part of the domain of more secure long term lease right. This seems to be a bid to offer the necessary legal security to the property of investors in a country that is trying to change its previous anti-private property impulse. This in turn is thought

and changing circumstances’ and they instead, for example, strictly adhere to stringent expropriation standards derived from economic liberalism and also See Luke Eric Peterson and Ross Garland (2010), “Bilateral Investment Treaties and Land Reform in Southern Africa”, (International Center for Human Rights and Democratic Development), for the disparity in compensation between what is provided in BITs and national legislation.

⁷¹ Article 5 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Federal Democratic Republic of Ethiopia for the Promotion and Protection of Investments (unpublished, on file with the author).

⁷² *Ibid*; Article 4 of The Agreement between the Republic of Turkey and The Federal Democratic Republic of Ethiopia Concerning The Reciprocal Promotion and Protection of Investments (unpublished, on file with the author) is worded in a similar fashion.

to attract more investments leading to the creation of more tax revenues, more jobs, acceleration and increase in the volume of capital inflow and transfer of technology and ultimately bringing about economic development. As one of the poorest countries on Earth, Ethiopia puts a premium on economic growth and consequently aspires to raise the income level of its poverty-stricken population. With this in mind, the state decidedly favors the transfer of land from peasants to investors through takings. In so doing, the state aspires to fundamentally alter the existing structure of the Ethiopian economy, which is dominated by subsistent agriculture where land is held in the hands of the majority.

The state thinks that such land tenure transforming mandate comes from the idea that land is the ‘common property’ in the sense that every Ethiopian has an indivisible ownership claim over every piece of land located within the bounds of the Ethiopian territory.⁷³ Yet each Ethiopian citizen may not necessarily realize this ownership right in the sense of giving to them a plot of land. Hence, it is incumbent upon the state, as a holder and manger of this common resource in the form of trusteeship, to ensure that all citizens would at least indirectly benefit from the use of such common asset. This line of analysis views expropriation as a beneficial measure in the sense that land would be taken from the multitude who are using it for subsistence purposes and be transferred to investors who are supposed to invest on it to benefit the majority through the creation of jobs and the development of economic and social infrastructure. In this policy context, land would be given swiftly and cheaply to what the state calls *lematawi bale habte* (‘developmental investors’) and such developmental investors in return are required to use the land so given for the intended project within the agreed time-frame. Failing this would entail, land retaking coupled with monetary sanctions. This seems to be a sound rendition of expropriation in the context of the state’s economic policy which is anchored on the idea of rapid ‘inclusive economic growth’.⁷⁴

This vision of land expropriation will not bear these anticipated fruits automatically, though.⁷⁵ Its fruitfulness is contingent upon the monitoring and follow-up capacity of the state

⁷³ Article 40.3 of the Constitution, which provides “Land is a *common property of the Nations, Nationalities and Peoples of Ethiopia...*” (Emphasis supplied).

⁷⁴ Government of Ethiopia (2001), “Rural Development Policies and Strategies of Ethiopia”, (Addis Ababa, The Ministry of Information).

⁷⁵ Jill Zimmerman (2005), “Property on the Line: Is An Expropriation Centered Land Reform Constitutionally Permissible”, *S. African L. J.*, vol., 122, pp. 416ff. The Ethiopian state’s articulation of expropriation appears to be similar to what Zimmerman calls transformative expropriation arguing in the South African context that “the state should invoke expropriation to obtain land for redistribution purposes but compensation with significantly

authorities, the integrity of the process of land expropriation, the officials in charge as well as the soundness of investment projects. It also rests on the willingness of officials to take effective measure against those investors who take land for speculative purposes. The vision of transformative land takings also hinges on the capacity of investors to put the land they take to use for productive activities. Nevertheless, empirical studies suggest that expropriated lands are often taken for speculative purposes or the purposes for which projects are approved are unilaterally changed; the researchers also indicate lack of effective sanctions against those investors who leave such land unused for several years.⁷⁶ These failings have readily and frequently been admitted by the authorities themselves.⁷⁷

At the heart of this beneficial expropriation in Ethiopia is an increasing trend for redefining the notion of property rights in land. The country is retaking land that it expropriated from landlords and redistributed it to peasants during the 1975 revolution. As discussed in Chapter 3, in 1975, it took the issuance of a single legislation to wipe out the system of exploitative absentee landlordism and to transfer land to poor tenants and farm workers in the Ethiopian countryside. Now it might take a series of acts of expropriation to undermine the effects of such redistributive action. The state that sided with poor peasants is now tending to ally with capital on the assumption that such an alliance would advance the interests of the general public. And finally at the heart of the beneficial expropriation is an economic notion of land rights, i.e., “an ethic that regards economic development and monetary return as evidence of the land’s highest and best use.”⁷⁸ Put another way, the scheme of beneficial expropriation of land upheld by the Ethiopian state is apparently conceived as simply one of the factors of

below market value, which course of action has support in the constitution; market value should not be the central or even predominant factor in this kind of expropriation.” See also A J Van Der Walt (2006), “In Reconciling the State’s Duties to Promote Land Reform and to Pay ‘Just and Equitable’ Compensation for Expropriation”, *S. African L. J.*, vol. 123, pp. 23ff for the critique of this position of Zimmerman.

⁷⁶ The field researches also reveal that investors, with limited capital and experience acquire land, which lead to leaving the land so taken idle for many years while some investors with financial capabilities and as well as the requisite experience are finding it difficult to obtain agricultural investment land, in particular in the southern state. For this, see Dereje Seyoum, Access to Rural Land and Compensation Payment Schemes for Agricultural Investment in Amhara Regional State in the Proceedings note 65, pp. 33-35 & 45. And also see Letta Abebe and Dejen Chaka, Access to Rural Land and Compensation Payment Schemes for Agricultural Investment in Oromia Regional State in the Proceedings note 65, pp. 42 & 93-94. Nigusse Abebe, Perspectives on Access to Rural Land and Compensation Payment Schemes for Agricultural Investment in the Proceedings note 65, pp. 21-22.

⁷⁷ See the Proceedings note 65.

⁷⁸ Lynton Kieth Caldwell (1986), “Land and the Law: Problems in Legal Philosophy”, *U. Ill. L. Rev.*, vol. 19, p. 329.

production to change hands through the intermediary of the state from peasants to investors to advance economic development.

E. Comparative experience

Ghana and Kenya are chosen for comparison because the former has initiated a constitution review process while the latter has completed revising its constitution. Law reforms in both cases involve in significant component of land matters including issues of eminent domain emphasizing the need for adequate compensation and effective access to regular courts.⁷⁹

Ghana: Land in Ghana is owned predominantly by customary authorities who in aggregate own “about 78% of all lands, the State owns 20% and the remaining 2% is owned by the state and customary authorities.”⁸⁰ The power of eminent domain has been exercised in Ghana since colonial times in “the name of advancing socio-economic development for the public good, which has resulted in the compulsory acquisition of about 20% of the lands in the country for the state.”⁸¹ The Constitution of the Republic of Ghana (1992), in Article 18 (1), provides that,

any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired and that where the property is not used for such purposes, the pre-acquisition owner shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him...⁸²

Article 20 (1) provides that compulsory acquisition of property shall be carried out “in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit...”⁸³ This suggests a wider ambit under which public interest can be

⁷⁹ In the case of Ghana, the Report of the Constitution Review Commission of Inquiry (2011), <www.ghana.gov.gh/images/documents/crc_report.pdf> (accessed 12 August, 2014) has devoted one chapter to land and natural resources, where the issue of adequate compensation is raised and got accepted by the Government of Ghana in its White Paper on the Report the Constitution Review Commission of Inquiry (2012), <ghanaoliwatch.org/images/Articles/crc_white_paper_report.pdf> (accessed 12 August, 2014) that also set up a Constitution Review Implementation Committee. Kenya in fact has gone ahead of Ghana in commissioning land matters, land policy formulation and adoption in 2009, setting up a constitution review commission, followed by an adoption of a revised constitution in 2010 and then enactment of three land acts in 2012.

⁸⁰ Wordsworth Odame Larbi (2008), “Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies”, FIG/FAO/CNG International Seminar on State and Public Sector Land Management Verona, Italy) p. 2 and the Constitution, 1992.

⁸¹ *Id.*, p. 1.

⁸² *Id.*, pp. 4-5.

⁸³ Acquisition in the public interest could mean acquisition by government for public bodies and statutory corporations, but also for private companies and individuals for purposes which although they may contribute to public welfare, confer a direct benefit, including profit, on the user. Hotels, private houses, real estate

considered to be “any right or advantage which enures or is intended to enure to the benefit generally of the whole people of Ghana. This provides a wide array of situations for which compulsory acquisition can be undertaken and is prone to abuse.”⁸⁴ It envisages “prompt payment of fair and adequate compensation”. Article 20 (3) provides for resettlement of “displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values.”⁸⁵

Article 20 (2) of the Constitution states that compulsory acquisition of property by the State shall “only be made under a law which makes provision for a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority, for the determination of his interest or right and the amount of compensation to which he is entitled. The various claims for which an expropriated owner may be compensated are: market value of the land taken; or replacement value of the land taken; and cost of disturbance; and other damage (severance and injurious affection); or grant land of equivalent value”.⁸⁶

These constitutional provisions have been amplified by several enactments, the principal of which is the State Lands Act, which regulates the matter in detail.⁸⁷ In addition to wide construction of public interest mentioned above, the problems in the implementation of the law of compulsory acquisition of land rights in Ghana have been summarized as:

... the acquisition of lands far in excess of actual requirements, unpaid compensation in respect of some of the acquisitions, change of use of compulsorily acquired land as against the purpose of the acquisition, lands occupied by the state without any acquisition, depriving the land owners the opportunity to demand compensation. The result is loss of public confidence in the state machinery for the management of land, leading to tension between

development, banks, filling stations etc. fall into this category. Wordsworth Odame Larbi *et al* (2003), “Land Valorization Processes and State Intervention in Land Management in Peri-urban Accra, Ghana”, *International Development Planning Review*, 25:4, pp. 355-371.

⁸⁴ Wordsworth Odame Larbi, note 80.

⁸⁵ The Constitution further provides that,

any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired. Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition.

⁸⁶ *Ibid.*

⁸⁷ The State Lands Act, 1962 (Act 125) as amended, the Land (Statutory Wayleaves) Act, 1963, (Act 186), State Property and Contracts, Act, 1960 (CA 6), the Administration of Lands Act, 1962 (Act 123) and the Public Conveyancing Act, 1965 (Act 302).

the state and customary land owners, massive deliberate encroachment of state lands, and challenging the state's legitimacy to claim control over compulsorily acquired lands.⁸⁸

And a paltry compensation, failure to take the value of land into account during compensation, narrow interpretation of the term 'landholder or landowner' in a way that excludes some legitimate property right holders and lack of representation of affected persons in the process of determination of compensation are issues of concern in Ghana's expropriation regime.⁸⁹

A lesson to take from Ghana's eminent domain law and practice is that even fairly elaborate constitutional provisions supported by long established subsidiary expropriation laws could lead to a wide interpretation of public purpose, a paltry compensation and frequently breached legal procedures. But the overall lesson to take is that the problem is not just of rights but of their justiciability and of proper access to courts to prevent arbitrary or corrupt behavior.⁹⁰

Kenya: The basic principles enshrined in the 2009 National Land Policy of Kenya have been reflected in the 2010 Revised Constitution of that country and several subsequent enactments.⁹¹ Section 40 of the Constitution provides,

the State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation: results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, or is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that requires prompt payment in full of just compensation to the person; and allows any person who has an interest in, or right over, that property a right of access to a court of law. And provision may be made for compensation to be paid to occupants in good faith of land acquired but who may not hold title to the land.

The Constitution is followed by the Land Acquisition Act that expresses public interest in a broad and vague manner.⁹² The Act also outlines as to who may be interested parties to

⁸⁸ Wordsworth Odame Larbi, note 80, p. 1.

⁸⁹ Wilfred K. Anim-Odame (2011), "Compulsory Acquisition and Compensation in Ghana: Principles & Practice", Paper presented at the American Real Estate Society Conference in Seattle-Washington, USA <http://www.afrer.org/docs/pdf/DrWilfredAnim-Odame_Paper.pdf> (accessed November 13, 2013); P. K. Asamoah (2012), "Government's Compulsory Land Acquisition and The Right to Property: the Case of Mining Communities in Ghana", (Masters Thesis, University of Oslo) pp. 48-50 <<https://www.duo.uio.no/bitstream/handle/10852/34056/ASAMOA-xMASTER.xpdf.pdf?sequence=2>> (accessed November 11, 2013); Albert Adu-Gyamfi (2012), "An Overview of Compulsory Land Acquisition in Ghana: Examining Its Applicability and Effects", *Environmental Management and Sustainable Development*, 1:2. pp. 187, 188 & 201.

⁹⁰ Abdulhusein Paliwala, supervision feed-back, July 2014.

⁹¹ The Constitution declares "All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals." The Revised Constitution of Kenya, 2010, Section 61(1). Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable in accordance with fairness in access to land and security of land rights. *Id.*, Section 60 (1) Land is classified into public land, community land (which is vested in and held by communities identified on the basis of ethnicity, culture or similar community of interest) and private land. *Id.*, Sections 62 (1) & 63 (1).

expropriation proceedings and possible harm for which compensation might be due.⁹³ It envisages possibility of challenging expropriation issues in the High Court.⁹⁴ But it seems that the issue of the existence or otherwise of public interest cannot be contested in the regular courts as it seems to exclusively put it in the hands of administrative bodies effecting expropriation.

Review of Kenya's law of compulsory land acquisition shows that sufficient guidance is included at the level of the Constitution, stipulating for prompt and fair compensation; providing leeway to compensate occupants in good faith who may not hold title to the land and land administration and hence decentralization of expropriation to county level.⁹⁵ The question of public interest is as vague and as broad as the case of Ethiopia and it appears to be removed from judicial scrutiny. The implementation of it is rife with corruption since property surveyors and lawyers and government officials reduce the amount of compensation that would reach rightful parties.⁹⁶ There is lack of knowledge on the part of affected about their rights in the process.⁹⁷

⁹² Section 24 (1), states that,

Where the Minister is satisfied that the possession of any land is required for a particular period not exceeding five years by a public body, and that — the possession of the land is necessary in the interests of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property, and so certifies in writing to the Commissioner, he may direct the Commissioner to take possession of the land.

⁹³ The Act deals with “market value of the land; damage sustained or likely to be sustained by persons interested at the time of the Commissioner’s taking possession of the land by reason of severing the land from his other land; damage sustained or likely to be sustained by persons interested at the time of the Commissioner’s taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings; if, in consequence of the acquisition, any of the persons interested is or will be compelled to change his residence or place of business, reasonable expenses incidental to the change; damage genuinely resulting from diminution of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commissioner takes possession of the land.”

⁹⁴ Section 28 (1) of the same Act permits “reference to the Court matters relating to the construction, validity or effect of any instrument; the persons who are interested in the land concerned; the extent or nature of their interest; the persons to whom compensation is payable; the shares in which compensation is to be paid to tenants in common. Decisions of the Commission on compensation matters can be challenged in the High Court including the determination by the Commissioner of the interest or right of the appellant in or over the land the subject of proceedings under the Act, the award by the Commissioner of compensation and the payment of compensation or the offer of compensation.”

⁹⁵ Nelson Awori (2012), “Review of the Land Bill (2012) and the Land Registration Bill (2012)”, Land Development and Governance Institute, (accessed November 19, 2013).

⁹⁶ Wafula L. Nabutola (2009), “Compulsory Purchase and Land Acquisition in Kenya”, (7th FIG Regional Conference Spatial Data Serving People: Land Governance and the Environment – Building the Capacity, Hanoi, Vietnam) p. 20.

⁹⁷ “In my opinion, the laws of compulsory acquisition and land purchase in Kenya were conceived in utmost good faith, adopted, as they were, from India and United Kingdom, where they had been ‘tested and debugged.’ They have served our economy well. The biggest challenge is how so few Kenyans have been empowered to read,

F. Reiteration

Decades ago, Harrison Dunning argued for the abolition of the public purpose limitation because even a steadily widening notion of public purpose was:

unsuited to a modern, development oriented African state. Such a state is expected to engage in all fronts of development-planning, initiating, and often producing. In these circumstances, every development project, even one managed by private persons for their own profit directly serves the public interest...The power of eminent domain must be viewed positively and even the most broadly worded public purpose limitation encourages a negative, restrictive approach. Moreover, if the definition is expanded to include any conceivable project, the limitation is being simply retained for ornamental or sentimental reasons and is misleading.⁹⁸

Dunning characterized the concept of public purpose as ‘alien or obsolete legal doctrines inhibiting development’ in African countries.⁹⁹ He argued that the requirement of payment of compensation should however be retained but linked directly to development, for example, by ‘denying compensation for undeveloped property...’¹⁰⁰ And he said there had to be simplified procedures to expedite the taking of property by the state at an early stage in the process.¹⁰¹

Dunning’s schema is well taken: the state would be allowed to exercise its eminent domain power unshackled by conditions. In his scheme, the costs of economic development projects would be cheaper and the implementation of the projects in poor African countries swifter; the land so taken would be put to economic development conceived in its broader sense; people would benefit from the jobs created by the developmental state by raising their level of income; and perhaps, the state would exercise its power of eminent domain judiciously in spite of lack of legal constraints.

However, the idea of unhindered expropriation was advanced at the time when development was equated with economic growth through a robust state, which assumes that if the nation grows, then there is development. Experience has taught mankind to the contrary. Eminent domain has been exercised in the name of development to dis-empower the poor. And the view which would like to see lax expropriation requirements appears to interpret land rights

write and most important, to understand these laws. ‘The reverse order of government taking away land from its land banks and forests reserves ostensibly to settle the landless and most of it ends up going to the already haves, is not only politically immoral but outright theft of public assets... Wafula L. Nabutola (2009), ‘‘Compulsory Purchase and Land Acquisition in Kenya’’, (7th FIG Regional Conference Spatial Data Serving People: Land Governance and the Environment – Building the Capacity, Hanoi, Vietnam) p. 20.

⁹⁸ Harrison Dunning (1968), ‘‘Law and Economic Development in Africa: The Law of Eminent Domain’’, *Colum. L. Rev.*, vol., 68, p. 1313.

⁹⁹ *Id.*, p. 1315.

¹⁰⁰ *Id.*, p. 1314.

¹⁰¹ *Id.*, pp. 1311-1312.

merely in economic terms to be compensated directly with the payment of lower amount of compensation and indirectly through the creation of jobs and availability of infrastructure. Yet it has been amply settled in land tenure literature that to the poor land is more than an economic asset; land gives them a place in a community. It is a means through which they voice their concerns in a given locality. Expropriation, when invoked inappropriately, detaches the poor from that locality.

One can easily subscribe to Dunning's suggestion that speed, simplicity and fairness ought to mark a system of good eminent domain.¹⁰² Yet his argument for even removal of key restraints against the state's expropriation power unjustifiably favors the efficiency side of the matter at the expense of justice and fairness. One but agree with Sue Farran's assertion that:

The truth is, however, that often economic development is taking place so rapidly that the victims of it are left behind and long-term consequences are conveniently ignored in favor of short-term gain. Moreover, inequalities of wealth combined with inequalities of political power can result in a self-perpetuating system of human rights denial, especially where those who most benefit seek to preserve the unequal status quo.¹⁰³

To argue for controlling the power of the executive by subjecting it to political and legal process in its exercise of the power of expropriation is not to argue for paralyzing the state. It is rather to argue for subjecting the state to the rule of law. At stake in expropriation proceedings are both loss of livelihoods and weakness of the rule of law.¹⁰⁴

Finally, the following points require emphasis in regard to Ethiopia's present expropriation regime. First, there is differentiated treatment of investors (domestic and foreign) and other subjects in relation to the construction of public purpose and compensation that emanates from bilateral investment treaties. The bilateral investment treaties have become incompatible with the Expropriation Proclamation as the former as opposed to the latter embody narrow interpretation of public purpose and market value approach to compensation in the tradition of liberal property rights notion pushed by developed nations in international arena. There also exists contradiction between federal and regional laws in regard to public purpose and compensation approach. Second, expropriation laws of Ethiopia are meant to apply uniformly

¹⁰² *Id.*, pp. 1313-1314.

¹⁰³ Sue Farran (2009), "Land as A Fundamental Right: A Cautionary Tale", *Victoria U. Wellington L. Rev.*, vol., 40, p. 402.

¹⁰⁴ For an account of the development of the rule of law in Ethiopia, see Assefa Fiseha (2013), "Customary Dispute Resolution Mechanisms and the Rule of Law: Areas of Convergence, Divergence and Implications", in *Law and Development, and Legal Pluralism* (Elias N. Stebek and Muradu Abdo, eds.), *Law and Development Series No. 1*, (Addis Ababa: Justice and Legal Systems Research Institute).

across the country without factoring in property notion prevalent in the pastoral areas; rejection of customary land rights is readable from the definition of property in terms of things attached to the land which is a product of labor and/or capital.

* * *

6

Kontract among the Sidama

This chapter presents another land alienation device focusing on a case study of *kontract* (i.e., state sanctioned informal land deal) among the Sidama of Southern Ethiopia. The land tenure system among the Sidama has shifted from the past policy of compulsory deprivation of the fruits of the land from peasants to that of state sanctioned land deals which allow those with political and financial clout to undertake what may be called small-scale land grabs. The chapter profiles the Sidama, followed by a description of the meaning and nature of *kontract* as a land alienation device. The status of *kontract* under state law and custom of the Sidama is dealt together with its treatment by state courts and land administration authorities. This is followed by some comparative lessons drawn from elsewhere in the country and some other sub-Saharan African countries.

Kontract in the sense articulated in the present chapter is based on original material and information which has been collected as a result of fieldwork. But as indicated in Section B (i) below, some have researched *kontract* but misconceived it as a simple land rental arrangement while others have erroneously depicted it as an ordinary agreement expressing local people's demand for land privatization.¹ The area's long standing interface with the national government's land tenure policies and the high economic value of agricultural land there have led the present author to choose this as a research site to study the practice of *kontract*.

¹ Sandra Joireman (1996), "Contracting for Land: Lessons from Litigation in a Communal Tenure Area of Ethiopia", *CJAS*, 30:3; Sandra Joireman (2000), *Property Rights and Political Development in Ethiopia and Eritrea (1941-74)* (Oxford: James Currey Ltd); and BT Costantinos (1999), "Natural Resource Competition, Conflicts and Their Managements: Case Study from Wondo Genet, South-central Ethiopia", <www.costantinos.net/NRM based Conflict - South Ethiopia.pdf>, (accessed December 7, 2013). These two researchers especially Sandra Joireman researched the Sidama area and presented *kontract* as an example of application of evolutionary theory of land tenure.

A. About the Sidama

The Sidama are Cushitic-speaking people who live in the Sidama Zone (SZ) which is located in the Southern Regional State,² in south central plateaus of Ethiopia, about 265 kilometers south of Addis Ababa.



Map 1: Map of Southern Regional State and Sidama Zone, source: <joshuaproject.net>

The SZ has a total of 6,972.1 square kilometers populated with about 3 million people of which 90 percent is rural; it is one of the most populous areas in southern Ethiopia, with³ a density of 425 people per kilo meter.⁴ Good climatic conditions, land fertility, high economic value of land and production of cash crops make the SZ a symbol of productive Ethiopia. In terms of climatic conditions, 90 percent of this land surface lies in different agro-ecologies and is suitable for human habitation while the rest is arid and semi-arid inhabited by pastoralists.

The Sidama practice sedentary agriculture, producing a drought-resistant staple food crop known as *enset* (aka false banana) augmented by cereals and legumes side by side with livestock rearing. Small farmers in Sidama are also known for growing garden type organic coffee Arabica on about 70,000 hectares of good agricultural land which contributes to Ethiopia`s export coffee.⁵ The area also contributes skin and hide and *khat* (a stimulant plant) to Ethiopia`s foreign

² The Southern Regional State is one of the nine regional states recognized by the Constitution. Administratively, the region is broken down into 13 zones and each zone in turn is divided up into numerous woredas (districts) and the districts are each split up into kebeles (sub-districts or neighbourhoods).

³ Population and Housing Census Report-Country – 2007, Central Statistical Agency, 2010-07, <Doc/Reports/National Statistical.pdf>.

⁴ *Laalcho*: A Publication of the SZ Trade and Industry Office (2012), p. 8.

⁵ ‘About Southern Regional State’, <[www.snnprs.gov.et/Regional Statistical Abstract.pdf](http://www.snnprs.gov.et/Regional%20Statistical%20Abstract.pdf)> (Accessed November 7, 2013).

currency.⁶ The average landholding of the area at present is 0.3 hectare per household.⁷ There are a number of cities and towns in the SZ but they absorb not more than 10 percent of the population.⁸ The Sidama were inserted into greater Ethiopia in the second half of the 19th century, were formally linked to the global economy thereafter through their coffee production, became part of the evangelical movement, and occupied by Italy together with the rest of the country in the 20th century.⁹

B. Land tenure in Sidama since 1991: the practice of *kontract*

As discussed in Chapter 3, the pursuit of socialist modernity during the Derg period entailed skewed resource allocation towards cooperatives and state farms, leading to the neglect of small farmers in regard to provision of agricultural support. This has been carried over to post-2000 Ethiopia, as considered in Chapter 4, due to implementation of a modified version of ADLI which is centered on agricultural production by peasants for the market and based on market principles. Perhaps a major post-1991 development in connection with rural land tenure is the cessation of the direct appropriation of the fruits of the agrarian population in the SZ, as is the case elsewhere in the country. Since 1991 peasants in the study area can no longer blame the prying eyes of state actors for their predicaments; they might complain instead about lack of physical infrastructure and market volatility for not getting fair prices for their produce and escalating input prices.

In sharp contrast to the rural land laws of the Derg, rural land laws passed particularly in the 2000s have allowed land rental markets under certain restrictions. And such land laws, the SZ's experience with land commercialization dating back to imperial times and post-1991 economic liberalization policies in the country appear to contribute to the emergence of a distinct layer of land tenure practice under the name *kontract*, a device that straddles modernity and tradition. This is in the face of a clause in the Constitution which, as analyzed in Chapter 4, provides that land cannot be subject to sale or other means of exchange.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Population and Housing Census Report note 3.

⁹ Seyoum Hameso (2006), 'The Sidama Nation', in *Arrested Development in Ethiopia: Essays on Underdevelopment, Democracy and Self-determination* (Seyoum Hameso and Mohammed Hassen, eds.) (Red Sea Press).

i. *Kontract*: a trend towards land alienation

Sidama peasants got their farmland through administrative allocation pursuant to the 1975 Rural Lands Proclamation, which in the main enabled the peasantry to retain their pre-existing holdings under *gabar* and/or tenancy arrangements, abolishing their lower personal status as well as dues to the landlords. At present, administrative allocation of land is not a significant mode of land acquisition. People in the SZ get access to land through social transfer mechanisms (i.e., donation and inheritance) and market transfer mechanisms (i.e., *kontract*, rental and sharecropping). These formal and informal land acquisition methods are derivative transfers of land by those who were allowed to retain their existing land holdings during the Derg period and those who have obtained from them via social transfer schemes. At present, among these modes of land acquisitions in the SZ, *kontract* is probably the dominant mode of farmland transfer next to donation and inheritance.

Among the Sidama, *kontract* is concluded between *akonatari* (transferor) and *tekonatari* (transferee). It comes under different disguised nomenclatures such as *kontract* for the sale of “coffee or *khat* or fruit trees” (i.e., mango and avocado).¹⁰ It also comes under the rubric of: *kontract* for land used to ‘process coffee beans’ or for use of land for life or for use by the transferee (*tekonatari*), his children and their descendants forever and *kontract* concerning sale of land for residential house construction.¹¹ During imperial times, the nomenclature of the practice of land deal was not disguised at all for land deals were legally permissible and they used to come under the appellation “*kontract* for the sale of farmland” in a straight forward manner. This change in nomenclature to disguise the substance of what actually happens has occurred as of middle of 1990s when the parties and land deal facilitators such as agricultural extension workers and lawyers have realized that the law prohibits land sale, avoiding use of the term ‘sale’ and resorting to the use of other terms such as, sharecropping, contract and rental apparently as envisaged by the law.¹² These different appellations have been coined to send an erroneous message that land is not being traded; instead, it is the immovable property on the land or the land use rights that is being transferred, which are lawful at present.

¹⁰ Sales and rental contract formats (on file with the author) collected during fieldwork in September 2012.

¹¹ *Ibid.*

¹² FGD 12 with Sidama intellectuals, 22 December, 2012.

A *kontract* is derived from contract proper. As put by a farmer, “It is a twisted form of the ordinary transaction you and I know.”¹³ It literally means land rental, i.e., transfer of land use right to another for a definite period of time for consideration. This plain understanding of the land deal in the area might in fact imply superior-inferior (or landlord-tenant) relationship between the contracting parties. But in reality that is not the case. Even if *kontract* comes under different designations, ultimately, it involves land alienation. *Kontract* does not relate to the sale of property on the land but it purely involves in a transfer of bare farmland; if some assets such as crops, fruit trees, incomplete foundation and a hut on the land are transferred with the land, they are merely incidental to the transfer of the land. “*Kontract* is a contract but it relates to land not things attached thereto nor is it an agreement concerning anything else.”¹⁴ An informant has said that he “has never seen such land being returned to the landholder. Things said to be sold with the land such as trees or a house may or may not be there; but the intent is not to alienate them but the land.”¹⁵ He put such kind of deal as “a black market for the sale of a farmland”.¹⁶ A *kontract* is land sale in its classic sense or it at least constitutes a permanent alienation of land use rights. A focus group discussion described *kontract* as:

Land contracting is sale of farmland. It is unlawful. It is a crime. The practice is out right land sale. Land cannot be sold or exchanged. This is the law. But they sell land; they say the land is rented out from 40 to 50 years or for life or even for 99 years. According to the law in force, the maximum period for which a peasant can rent out his land is for 25 years when dealing with an investor and it is 10 years when the deal is between peasants among themselves. They do it between those who trust each other. It is a deal based on trust. We cannot do anything about informal land deals. The seller is not benefiting out of it. It is a puzzle for us. The peasant is selling land by using the language of the state land law, which permits land rentals, but for completely different nature and purpose.¹⁷

The *akonatari*, often the head of a household, enters into a land deal with the *tekonatari* without securing the consent of his family members, which is contrary to what is required by federal and state land laws.¹⁸ And the *kontract* is not submitted for registration and approved at the initial stage by the concerned authorities who are shunned for they might hamper the transfer process. Yet, informally, the local authorities know about it simply because the land is being traded under their nose or with their informal cooperation. As we shall see below, should one of the family members of the *akonatari* or himself seek restitution of the land, he cannot cover the

¹³ Interview 15 with a community leader, 18September, 2012.

¹⁴ Sales and rental contract formats note 10.

¹⁵ Interview 20 with a community leader/model farmer, 14 September 2012.

¹⁶ *Ibid.*

¹⁷ FGD 02 with land administration experts, 14September 2012.

¹⁸ FGD 04 with female headed households, 16September, 2012.

costs of recovery through court litigation nor can he obtain land certificate in his name since costs associated with such as land survey, registration and certification may be way beyond his means. In addition, there is land related corruption in the area favoring the transferee. One informant in this connection said: “Corruption used to be both immoral and illegal in this locality. Now it has become not only lawful but also a culture; in fact, it has become a big culture.”¹⁹ Another informant said, “officials openly and unashamedly ask you: ‘have you come on your feet or with your hands’? When there is money, there is a way.”²⁰ A local court judge and a police officer said, “their house cannot be said to be clean.”²¹ In the context of Sidama, Stein Holden has recently reported:

... the courts favour the wealthy who can afford to pay for decisions in their favour. If people do not pay, the cases may take very long time... Contract cases are decided through mobile phones, meaning that the wealthy and influential have mobile phones and communicate easily with the court judges while the poor have to travel and wait for long time for their cases to be handled and for communicating their situation. Decisions may also be based on family ties.²²

The *tekonatari* is often a member of rural elite and traders with urban root termed model farmers by national and local politicians.²³ They are persons with a financial muscle capable of paying for the land, investing perennials on it; invoking tradition to mobilize shame against the *akonatari* should he demand the return of the land; litigating all the way from sub-district land administration committee right up to the Federal Supreme Court. And, as described below, the *tekonatari* makes use of a mix of some elements of the state law and that of Sidama traditional

¹⁹ Interview 09 with a community leader/model farmer, 16 September, 2012.

²⁰ Interview 10 with a local youth, 16 September 2012. For the prevalence of land related corruption and capture of land administration institutions, see also Transparency International (2014) “Ethiopia: An Overview of Corruption in Land Administration,” <www.transparency.org> (accessed December 22, 2014); and Janelle Plummer (ed.) (2012), “Diagnosing Corruption in Ethiopia: Perceptions, Realities and the Way forward for Key Sectors” (the World Bank, Washington, DC) p. 285ff documents the pervasive nature of corruption in land administration.

²¹ Interview 17 with a local court judge, 13 September, 2012 and Interview 23 with a local police officer, 19 September, 2012.

²² A blog by Stein Holden about the findings in the research project "Joint Certification and Household Land Allocation: -Towards Empowerment or Marginalization?" <<http://iloapp.steinholden.com/blog/ajoint?Home&category=0>> (accessed, March 19, 2012)

²³ Interview 14 with a farmer, 18 September 2013 and Interview 06 with a local court judge, 14 September 2012. See Stein Holden and Hailu Yohannes (2002), “Land Redistribution, Tenure Insecurity, and Intensity of Production: A Study of Farm Households in Southern Ethiopia”, *Land Economics*, 78:4, pp. 586-587 where it is argued that wealthy rural households (measured in terms of large per capital farm size) in some sites including a village in Sidama in the Southern Ethiopia tend to be less concerned with land redistribution due to their social and political power and they tend to plant perennials as a strategy to strengthen their land tenure security, which is contrary to the finding that per capita farmland size is positively correlative with land tenure insecurity by Alemu Tekie (1999), *Land tenure and soil conservation: Evidence from Ethiopia*. Ekonomiska Studier (92). Göteborgs Universitet (Kompendiet-Göteborg).

land tenure rules and processes to secure his land deal. The *tekonatari* uses his influence and connections to later register the land subject to the *kontract* in his name.²⁴

A good entry point for would be *tekonatari* to get land through *kontract* is the age-old *koota* (sharecropping)²⁵ practice of the Sidama. He first becomes a sharecropper and then in that status the potential *tekonatari* keeps on extending loan after loan to would be *akonatari*, ultimately leading to conclusion of a *kontract* with effect of permanent land takeover by the former.²⁶ A local elder says these people with urban connections have driven up the price of land to the effect that labor rich landless and land hungry people are unable to get land under the *koota* scheme due to the accumulation of land by these people.²⁷ *Koota*, an age-old custom of the Sidama, used to match land with labor serving as a social safety net mechanism for those with land but unable to work it due to ill-health or old age.²⁸

But *koota* is disappearing now; at present if *koota* exists in cash crop parts of the SZ, it serves as a prelude to *kontract*.²⁹ The sharecropper keeps on lending money to the landholder to the point where the latter becomes heavily indebted, which gives the former a bargaining chip to propose and enter into a *kontract*.³⁰ The sharecropper has every incentive to entice the landholder to transform their *koota* into *kontract* as he usually has permanent crops such as coffee, *khat* and sugar cane on the land. The pattern here is similar to Siegfried Pausewang's description of a

²⁴ FGD note 17 and Interview 16 with a public servant, 18 September 2012. As field observation and informal conversation with various sections of the local people in the course of the fieldwork suggest, peasants who have transferred their landholding as a whole via the *kontract* scheme lose their farming skills first during *koota* and then that of the long period of *kontract*. Incidentally, the increasing trend in *kontract* transactions with commercial intent is one of the reasons for a noticeable tendency to shift away from production of food crops to the production of cash crops which are mainly coffee, *khat* and sugar cane which may be explained in terms of growing acquisition of land by those with other means of livelihood and lack of agricultural support system to those who grow food crops. Sofia Karlsson (2006), "Reducing Farming Household Vulnerability in Connection to Khat Cultivation - A Case Study in Gotu Onoma, Ethiopia" (MA. Thesis, Swedish University of Agricultural Sciences), ex-epsilon.slu.se:8080/archive/00001104/01 (accessed December 7, 2013) for the tendency to convert food fields into *khat* farms.

²⁵ A fieldwork observation indicates, in the event of inability by a family member to till his land due to illness or old age, an elaborate family and tribal support mechanisms used to come into the picture to raise labor and the necessary agricultural inputs. *Koota* (sharecropping) was but one of such devices. In this sub-tribal land arrangement tenancy was almost unheard of. Markos Tekle *et al* (2011), *The Sidama Nation History and Culture*, (Hawassa: Sidama Zone Tourism and Communications Division).

²⁶ Interview 08 with a farmer, 16 September 2012 and interview 20 with a community leader/model farmer, 14 September 2012.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Interview note 13 and interview note 19.

³⁰ *Ibid.*

tactic traders used in pre-revolutionary Ethiopia to buy coffee land from small farmers in Kaffa province, located in Southwestern Ethiopia.

The well-flavored wild coffee grew only in the shades of big trees. And much of the land with shade trees was in the hands of small farmers. They knew its value and refused to sell. But traders offered them a loan, usually by buying them their unripe coffee on the tree. When the harvest came, the traders did not return to collect his coffee. So the farmer harvested it. Being short of money in any way, he sold it- and usually the money could not be put aside. When finally the trader came, the farmer was given a new loan-against a handsome interest rate. Customarily such loans were to be paid back after a year by twice the amount. The same procedure was repeated the year after-and then the peasant had no choice but to sell the land.³¹

The use of *kontract* by local public servants to obtain land was stated as:

The rural land law is clear. It seeks to ensure that the society gets benefits. It prohibits land acquisition by people who have other means for a living, be it through donation or inheritance or otherwise. But the social practice on the ground permits land acquisition by people with other means of living. They get it *inter vivo* inheritance. Parents pass their land to their sons who live in urban areas before their death. Land is now in the hands of public servants. Public servants get farmland through inheritance and donation as well as other devices such as grabbing of communal land in collaboration with agricultural investors. It is better if public servants are restricted from getting rural land. It is a crisis. If public servants are told to choose between their job and their farmland, it seems to me that they would prefer their land. They would quit their job for their farm. Should that happen the local administration would face crisis for want of public servants. The local government knows about this very well. They are semi-public servants and semi-peasants. Poor peasants are in danger as public servants and others such as traders from urban areas are devising mechanisms to get land.³²

A focus group discussion session reveals the fact that people are being driven away from *koota* into *kontract*,

There are a lot of landless people in this area. There are also some with excess land. But the latter are afraid of giving their land through *koota* system for fear of losing their land due to absence of the rule of law. They do not trust the sharecropper for fear of refusing to hand over the land upon the expiry of the rental arrangement. The preferred land transaction in this case is *kontract*. Nobody seems to be interested in giving their land to another person through sharecropping.³³

“There are many poor who have sold their land and forced to live off sharecropping. When they pass away, they have nothing to leave behind for their loved ones”³⁴

Land contracting is not a good thing. They contract their land from 20 to 50 years. No one knows if the person survives on the date of the expiry of the contract. They contract out 0.1 hectare of land for up to 80,000 Birr. Many people have become poor as a result of this type of deals. The money is spent immediately. It is a bad thing. State law has not reached this area. In this way, land is already concentrating in the hands of the rich.³⁵

There are several methods of accumulating land by the rich. There are some who are well off who pressurize the poor to sell their land to them. Those with money pressurize the poor to get their land, especially those who are not considered as native to this area are victimized in this process; the existence of ethnic tension between outsiders and indigenous people is used to their advantage. Land is acquired by the rich when they assume political position. They hold the land so acquired not in their name but in the name of their relatives or family

³¹ Siegfried Pausewang (2000), “The Need for a Third Alternative: The Amputated Debate on Land Tenure in Ethiopia”, <www.irsa-world.org/prior/XI/papers/4-8pdf> (accessed December 7, 2013) p. 3.

³² Interview 06 with a judge 14 September 2012.

³³ FGD 05 with farmers, 16September 2012.

³⁴ Interview note 26.

³⁵ Interview note 19.

members. Some also invade communal land. The absence of the rule of law in the area is fertile ground for those acting illegally; the beneficiaries are not those who act in accordance with the law; but those who live illegally. Officials ask if you come on your feet or with your hand when you are asking them to do their job. If the land is rented out in the form of sharecropping, the person refuses to hand it over to the true holder at the end of the rent. He never gives the land back. When the land is given in *kontract*, it is never returned. They go to the courts. It takes years. Eventually, the person with relatives and with money wins the case.³⁶

There are cases where rich farmers use criminal law to take an adjacent land held by a poor peasant. They ask him to give his land through *kontract*. If he refuses, they accuse him of trespassing or crop destruction or theft to throw him in jail.³⁷

A rich farmer enters into *koota* with a poor farmer to till the latter's land. Then he refuses to hand over the land at the end of the day. Or he keeps on giving him loan after loan, when he is unable to pay the debt, the land is given in *kontract*. Those who take land in *kontract* are not farmers; they are traders. A lot of land has already been accumulated in the hands of the few.³⁸

Originally there was not such a thing as *kontract* in relation to land. *Kontract* means land sale even if the name is twisted. Sidama used to give their land to their children through donation or inheritance but they did not know of alienating land. They used to rent out a portion of their land to those with little or no land when they faced problems. Now *tekonatari* accumulate land in the name of *kontract*; these are people with land of their own. They are investors. They come from urban areas. They have raised the value of land considerably. There was not any betrayal on the part of the *akonatari* initially because it used to be handled by elders; but now that is happening. Land certificate is being issued in the name of the *tekonatari*.³⁹

Kontract misconceived: There is a misconception about the true nature of *kontract* by some as a recent USAID sponsored research designates *kontract* as 'land rental' implying a contractual arrangement for a defined duration and thus the land involved is to be restituted to the transferee. This research report documents emerging land rentals in two high agricultural investment potential districts in the Southern Regional State and some other four regions of Ethiopia to recommend favorable regulatory regime for such land rental transactions using statistics presented in the table below. The interest of the USAID research is to show that a mechanism of transferring land from less efficient to more efficient user is actually taking place in rural Ethiopia in a significant way, that such transfers are encumbered with several legal

³⁶ Interview note 20.

³⁷ Interview 11 with a public prosecutor, 17 September 2012.

³⁸ Interview note 23.

³⁹ Interview note 13.

restrictions, that such restrictions should be removed and that the security of the transfers shall be ensured via formal and proper regulation for the purpose of enhancing agricultural investment.⁴⁰

Table 13: Households involved in land rental arrangements in neighborhoods in the SZ⁴¹

Total households	Households involved in rental arrangements		Households involved in both rental and sharecropping arrangements	
	No.	%	No.	%
9,331	570	6.1	435	4.7

But this study has not gotten the facts straight, which in turn has led to incorrect analyses and suggestions in classifying land transactions in SZ either rental or sharecropping taking out of the picture *kontract* in the sense understood in the present chapter. This research report either neglects or fails to understand the ongoing land sales or in its “rapid assessment of land transactions”, it has been misled by the nomenclatures under which *kontract* is taking place in the area. As intimated by an informant, “*Kontract* resembles contract. It used to be called land sale; but when land sale was prohibited it assumed a disguised form and called *kontract*. But it is all the same, sale. It is the law banning land sale which causes it to take this name.”⁴²

One important point the above table suggests is the growing importance of land deals in the significant agricultural potential of rural Sidama. The table also shows an estimate of households that take part in ‘land rentals’ and ‘sharecropping’ arrangements in eight neighborhoods of SZ. The research, in addition, documents the percentage of households in the same neighborhoods who engage in ‘sharecropping’ arrangements as about 29 percent.⁴³ An earlier research conducted in one locality of the SZ recognizes contracting as the most widely used method of acquiring land but presents it as a simple lease agreement.⁴⁴

But field research done for the present chapter shows that sharecropping arrangements dubbed among the Sidama as *koota* are now disappearing in cash crop growing parts of the SZ because, as indicated above, *koota* is more often than not a precursor for *kontract*. Further, in

⁴⁰ Proceedings of A Consultative Meeting on Rural Land Transactions and Agricultural Investment, (Gizachew Abegaz and Solomon Bekure (eds.), (Addis Ababa: Ethiopia-Strengthening Land Administration Program, 2009); Ethiopia: Strengthening Land Administration Program Annual Report (August 1, 2010 – September 30, 2011) (December 2011), p. 7, where it is stated the objective of the USAID project in Ethiopia is assisting the country to “strengthen and enhance rural land tenure security and administration by improving its legal framework and promoting domestic and foreign investment in land through improved land administration legislation, registration, and certification.”

⁴¹ *Id.*, p.76.

⁴² Interview 07 with a local public servant, 16September 2012.

⁴³ *Ibid.*

⁴⁴ BT Costantinos, note 1.

explaining the importance of *kontract* disputes, a judge says “There are four categories of disputes frequently litigated in this court, namely inheritance claims, possessory actions, *kontract*, and partition of common property... In all of these four types of litigation, rural land takes the center.”⁴⁵ In the estimation of this same judge, over eighty percent of cases in his court are land disputes; out of which he estimated that about 30 percent of the cases are *kontract* related.⁴⁶

The USAID’s characterization of rural land deals as land rental is an approach followed by many economists apparently unwary of the underpinnings of local land deals elsewhere in the country. These researches on land rental markets estimate that a quarter of the rural people are getting access to agricultural land via rental markets in Ethiopia and suggest easing the restrictions (i.e., in terms of land size, duration and land use collateralization) would contribute to agricultural development in the country.⁴⁷ What is problematic about these researches is their assumption that rural land deals are all about land rentals or sharecropping arrangements, which do not involve land alienation.

ii. Status of *kontract* under state land law

Kontract is an illegal transaction for it clearly seeks to do what is in crystal clear term forbidden by land law. The idea of making ownership over land *ex-commercium* is encapsulated under the Constitution which provides in Article 40 (3) that “Land...shall not be subject to sale or to other means of exchange.” Thus, legally speaking, any practice or decision which authorizes transfer of ownership over rural land shall be of no effect for it contradicts with one of the tenets of the Constitution. This conclusion is in line with the supremacy clause of the Constitution that stipulates that “Any ...practice or a decision...which contravenes this Constitution shall be of no effect.”⁴⁸ Article 1716 (1) of the Civil Code stipulates that “A contract shall be of no effect where the obligations of the parties or of one of them are unlawful...” It is unlawful for the *akonatari* to assume an obligation to deliver ownership or even use rights over rural land to the *tekonatari* for consideration. Similarly, it is illegal for the

⁴⁵ Interview 17 with a local court judge, 17September 2012.

⁴⁶ *Ibid*; interview note 32 where another local court judge also revealed a similar estimation; so was interview note 37.

⁴⁷ See Margi McClung (2012), “Making Land Rental Markets Work for Ethiopia’s Rural Poor”, <www.focusonland.com/download/51fa3aee39f84>, (accessed December 7, 2013)

⁴⁸ The Constitution, Article 9 (1).

latter to assume an obligation to pay for the transfer of ownership or use rights in regard to rural land. So one would expect that land alienation deals shall, should they be submitted to a court of law, be stricken down.

iii. Status of *kontract* under *utuwa* - Sidama custom

Kontract is also contrary to the traditional notion of Sidama land tenure, which does not allow land alienation. Even when land alienation occurs on rare occasions among these people, it must take place within a tribe and be preceded by collective deliberation and consultation among members of the tribe of the alienator, not just by his family members. There are two kinds of land tenure, namely *utuwa* (individual land) and *dannawa* (communal land), among the Sidama.⁴⁹ The underlying principle behind both *utuwa* and *dannawa* is that land is an inalienable common property of a *gosa* (tribe) but with individual access to and use over land based essentially on *gosa* membership.⁵⁰

Utowa means a tomb; it is ancestors' burial ground. It is also land, which you till, you drive your living from, passed onto you by your father who received it from his father, which you have to hand over to your descendants.

⁴⁹ As fieldwork done for this thesis reveals, the Sidama customary land tenure in relation to *utuwa* is not a thing of the past. This is so even if several decades of *utuwa*'s encounter with successive land tenures superimposed on it by the Imperial regime (1890-1974), then by the Derg (1975-1990) and now by the current regime (since 1991) have resulted in weakening of some aspects of it. During imperial times outsiders had been given access to land. And the current state land law, put in place since 1975, has given land to those excluded by the Sidama customary land tenure such as potters, smiths, tanners and descendants of slaves. State land tenure has also aspired to give women equal access to and control over agricultural land. Nevertheless, the concept of *utuwa* that empowers adult males is still alive. See also, Markos Tekle *et al*, note 25, p. 71.

⁵⁰ By virtue of Sidama custom, women, descendants of slaves and occupational minorities-potters, blacksmiths and tanners-were not entitled to get *utuwa*. They were historically expected to earn a living from their respective occupation. Denial of *utuwa* to women was accounted for by the patriarchal social arrangement firmly in place. *Utowa* was the exclusive domain of those male members who came of age. As a Sidama saying has it, a woman could not own property other than butter. The prohibition in regard to the other social groups was due to the concept of *anga* (purity). Those with *anga* claimed superiority over those who lack it. Hamer says,

The term (*anga*) may be translated literally as 'hand', but the idiomatic meaning is to avoid the hand of the impure. Elders receive *anga* when they are promoted to elder-hood, after which they may slaughter cattle and in turn eat meat slaughtered only by other elders possessing the trait...the possession of *anga* connotes the authority of elder-hood and a sense of superiority over those who lack it.

John H. Hamer (2002), "The Religious Conversion Process among the Sidama of North-east Africa", *Journal of the International African Institute*, 72:4, pp. 598-627; see also, Øyvind Aadland (2002), "Sera: Traditionalsim or Living Democratic Values: Case Study among the Sidama in Southern Ethiopia", in *The Challenges of Democracy from Below* (Bahru Zewde ed.) (Uppsala: Nordiska Afrikainstitutet), p. 37; for the treatment of occupational minority groups among the Sidama and southern Ethiopia in general, see Alula Pankhurst (1999), "'Caste' in Africa: The Evidence from South-Western Ethiopia Reconsidered", *Journal of the International African Institute*, 69:4, pp. 485-509.

Further, one cannot even claim that the customary land tenure system of Sidama made land open to all 'pure' adult male members of that ethnic group in egalitarian fashion. Chiefs of a sub-tribe and their families and descendents enjoyed large land possessions as opposed to the rest. Elaborate tribal customary practices and institutions governed the manner in which agricultural land was allocated, and rights and duties of members over *utuwa* determined.

It is a taboo to sell land; it is even prohibited to mention the word sale in regard to land. If you dare sale part of your land, you are he who is cursed by ancestors' spirit. There is a belief that you do not stop short of selling out your entire land, and then as cursed person you must disappear from the area as you did a shameful thing and not worthy member of your locality. But such view about land is changing and the reverence towards elders is weakening.⁵¹

Utuwa means land whose origin is attributed to inheritance from a distant ancestor who occupied and developed it and then passed it on to his descendants. *Utuwa* is strikingly similar to the Northern *rist* system considered in Chapter 2. The origin of *utuwa* is acquisition of use rights over land through the first occupancy and/or labor of a distant mythical ancestor. *Utuwa* is a privately held agricultural land expected to be passed on to one's male descendants as a matter of customary requirement. *Utuwa* is treated with sanctity as signified by the age-old Sidama saying "No one shall have the audacity to mess with another's *utuwa*."⁵² Every male member of a tribe would receive a plot of farmland land from their respective father's *utuwa* when they come of age, which invariably means getting married. A member would also get land if his *utuwa* is inadequate to meet the livelihood of his household, land for this latter purpose would come from *dannawa* as per the decision of tribal elders. A part of one's *utuwa* could be alienated to a member of another tribe provided such alienator gave first refusal right to his close family members and then to his sub-tribe and that this outsider was welcomed by the seller's tribe.⁵³ The entire process of this partial alienation of land use right is a collective decision of rare occurrence. It is like granting the person who acquired land in this manner membership of the concerned sub-tribe.

Dannawa, the second traditional land tenure form, is composed roughly of demarcated sub-tribal pasture lands and forests outside *utuwa* dedicated to the use of members of a concerned sub-tribe or of several sub-tribes in common for grazing, hunting, beekeeping and extraction of forest resources such as firewood and wild fruits, social and cultural sites and market places.⁵⁴ *Dannawa* can under exceptional situations be distributed to individual members of a sub-tribe, as mentioned above, when a household faces shortage of farmland due to change in demography or to accommodate outsiders. Otherwise no one would be allowed to privately appropriate *dannawa*. *Dannawa* is put under the administrative and judicial jurisdiction of the

⁵¹ Interview 43(a) with an intellectual, 12 October, 2012.

⁵² Interview note 15.

⁵³ Interviews 43(a) and 43(b) with an intellectual, 12 October 2012 and 8 June 2013.

⁵⁴ Markos Tekle *et al*, note 25, pp. 208-209.

highest tribal council (*songo*).⁵⁵ The manner of use of this communal land is decided and a dispute relating to *dannawa* is settled by the *songo*. Like *utuwa*, *dannawa* could not be subject to alienation. In the context of low population size, access to and use of the two land tenure typologies, *utuwa* and *dannawa*, combined together enabled Sidama households to drive adequate living out of the use of the two interconnected land tenure regimes.⁵⁶ Especially *dannawa* served as the foundation for tribal alliance and admission of an outsider into a tribal membership as well as forge alliance with adjacent ethnic groups.⁵⁷

Kontract seems an admixture of state land tenure and Sidama customary land tenure. Its use of the very notion of contract, use of written form signed by the parties and attested by witnesses, its attempt to deploy a semblance of validity via authentication and reference to the Civil Code especially in its penalty clause give it a modern face. Aspects of *kontract* borrowed from the Sidama customary land tenure includes the deployment of elders as witnesses, *fenter* (i.e., throwing feast marking the conclusion of *kontract*), imposition of a hefty fine should the parties break their word and the obligation of elders to reconcile the parties, to ostracize and even to administer curse against he who resorts to invalidation. Therefore, *kontract* embodies a rejection of a fundamental common tenet of both the present state and Sidama land tenure systems: inalienability of land.

iv. Treatment of *kontract* by state courts

In what follows considered are how *kontract* disputes land in regular courts and how the courts in the study area treat this practice in the context of constitutional provisions, subsidiary land laws and tradition which stand against it.

Tekonatari tries to cow the *akonatari* through the use of both practices and modern laws. To this end, the *kontract* is made in writing with the attestation of three to seven elders drawn from each side. The written *kontract* indicates, *inter alia*, hefty fines against a party who might opt to invalidate the *kontract*, stating therein that part of the fine would go to the state treasury and part of it to elders. Coupled with this is the obligation on the part of the *akonatari* to repay the entire sale price if he demands restitution. There are also tradition based sanctions read into the *kontract*. One unwritten sanction which comes to the surface when the *akonatari* moves to

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Interviews note 5.

attack the deal is to ostracize him, cut the individual off vital day-to-day social relations. As an informant put it, “a person who is excluded from the society in this way is regarded as a dead person.”⁵⁸ In the words of John Hamer, “To seek to escape normative pressure is to invite social isolation and ultimately destruction by the Creator.”⁵⁹ The elders who are indicated as a witness in the *kontract* first try to dissuade the *akonatari* from seeking the invalidation of the deal threatening him with potential exclusion from the society and ultimately with curse. The curse aspect of the sanction is especially the most feared.⁶⁰

In some cases the elders` effort to require reconciliation bears fruit; the transferor subscribes to their demands; in those cases, he is compelled to abandon his intention to file a lawsuit or withdraw it if he has already filed it and reconcile with the buyer. Even in this scenario, he may be ordered to pay the fine, usually slaughtering an animal to mark the end of the reconciliation. The hefty fine indicated in the *kontract* might be reduced or waived altogether depending on the circumstances of the case.

All these tactics especially the traditional practices tipping in favor of the *tekonatari* run counter with the fundamental tenets of *utuwa* as it does with those of state land laws; there seems to be new practices grafted upon the tradition to suit the interests of elites.⁶¹

Nevertheless, some *akonatari* are refusing to be cowed by tradition in this way, showing sign of breaking away with it; they venture into this through a family member who did not put his signature on the *kontract*.⁶² As mentioned above, usually finding a family member who was not part of a *kontract* is not a problem because land transfers in the locality are made more often than not unilaterally by the head of the family. Such family member is informally instigated to go for the invalidation of the *kontract* in a court of law while the instigator plays a good cop`s role, appearing to dissuade him from dragging the *tekonatari* to the courts.⁶³ In some cases, the person seeking to battle it out in a court is in a genuine opposition to the *akonatari`s* unilateral act. Currently cases end up in the regular courts in either way.

⁵⁸ FGD note 12.

⁵⁹ John H. Hamer (1998), “The Sidāma of Ethiopia and Rational Communication Action in Policy and Dispute Settlement”, *Anthropos*, Bd. 93, H. 1./3, p. 151.

⁶⁰ FGD note 12 and Seyoum Hameso, note 9, p. 96.

⁶¹ FGD note 12.

⁶² *Ibid.*

⁶³ Interview note 23 and also interviews note 32 and interview note 45.

The *akonatari* or his family members invoke the concept of contract invalidation on the ground of the unlawful nature of the land deal claiming that under this contract there is a promise to deliver land ownership or land use rights contrary to the law of the land. Their pleading is based on the constitutional provision which bans land alienation and Article 1808 (2) of the Civil Code which provides “A contract whose object is unlawful...may be invalidated at the request of *any contracting party or interested third party*” because “obligations to convey rights on things, if the latter are not in *commercio*, that is, are made non-transferable (non-conveyable) by law, the obligation is clearly unlawful” and one illustration of this is an attempt to transfer land in Ethiopia.⁶⁴ But it should be noted that disputes arising out of *kontract* are not always of civil nature; they can also assume criminal nature.⁶⁵ Our discussion below confines itself to the civil dimension of *kontract* litigations in the study area.

In the SZ, there had been lack of uniformity of decisions on *kontract* litigation. Decisions over *kontract* cases varied from court to court, from judge to judge in the same court, from time to time even by the same judge sitting in the same bench up until the beginning of the fourth quarter of 2011. Sometimes the *kontract* were invalidated, ordering the *tekonatari* to return the land to the *akonatari*. In other cases, judgments were rendered in favor of the *tekonatari* to retain the land. Still in other cases, judges applied the ten year period of limitation embodied in the Civil Code: if ten years lapsed as of the effective date of the *kontract*, the *akonatari*'s claim would be barred by the period of limitation; if the date of the *kontract* was less than ten years, then the *tekonatari* was required to restitute the land to the *akonatari*. This variation in disposition of *kontract* matters is widely witnessed in state courts in the SZ as land deals under this rubric were and still are taking place in cash crop parts of the region.⁶⁶

Concerned with this region-wide absence of uniformity in handling *kontract* disputes, the Southern Regional State Supreme Court adopted a uniform position in the disposition of *kontract*

⁶⁴ George Krzeczunowic (1983), *Formation and Effects of Contracts in Ethiopian Law*, (Addis Ababa: Addis Ababa University) pp. 65-66.

⁶⁵ Cases may also be filed by the *tekonatari*, which allegedly happens when the *akonatari*, realizing that he has a remote chance of recovering the land, commits theft or interferes with the *tekonatari*'s use of the land. In this scenario, the *tekonatari* triggers both civil and criminal litigations for the purpose of throwing the trouble maker into jail, seeking injunction or compensation for property claimed to have been damaged. Interview note 37 reveals that criminal cases filed in the court are “border disputes, destruction of crops and theft” and this informant said that the latter two constitute the lion's share of criminal cases in the court load and are linked to *kontract*.

⁶⁶ Interviews 28, 33 & 39 with High and Supreme Court Judges of the Southern Regional State, respectively, 21, 24 and 25 September, 2012.

cases through a circular approved by a forum which brings all court presidents in the region together. The circular, whose validity the Supreme Court traces to the region's courts establishments proclamation states *kontract* should be treated like any other ordinary agreement and as such those legal rules governing contracts in general shall apply to these deals as well. One of these stipulations is Article 1845 of the Civil Code that provides "...actions for the invalidation of a contract shall be barred if not brought within ten years." The circular also assumes that the intention of the parties at the time of the conclusion of the contract is clearly to transfer ownership over land; there is no intention on the part of the parties to reconstitute the land at a certain point in the future. The land is assumed to have gone out of the hands of the *akonatari* forever.

Based on these premises, the circular divides *kontract* sought to be invalidated into two: those whose duration between the date of conclusion and that of filing of invalidation suit is ten or more years and those with less than ten years. The former shall be barred by a period of limitation while the latter shall be struck down, which should lead to the restitution of the disputed land to the *akonatari*. The underlying purpose of the circular is ensuring stability of investment on land and giving effect to the constitutional rule of immunity against eviction by saving *kontract* whose duration is equal to or greater than ten years from being attacked by the *akonatari*.

Hence, courts in the SZ in particular and in the Southern Regional State in general are handling *kontract* disputes on the basis of this circular. On the one hand, the courts decide a *kontract* which was concluded ten or more years ago in favor of the buyer based on the standard justifications behind application of period of limitation, which is, allowing such deal to be attacked any time would make decision making difficult, if not impossible, due to destruction of evidence and death of witnesses and restitution is not desirable lest it create uncertainty on investment activities and reward those who slept on their rights. Yet, the main reason for the courts giving sanctity to *kontract* is the principle of not evicting the *tekonatari* who is regarded as land improver.

Farmers and pastoralists have been using their land for centuries. But they have never used to the level of productivity which sets over all development in motion. Given their current skills and financial ability to acquire modern inputs, they are unlikely to use the land in their possession satisfactorily. Should this be a guise under which land be taken from small farmers and pastoralists? The Constitution provides that access to agricultural land is dependent upon its improvement based on labor or capital. How much poor landholders are expected to

invest on the land before we say they are improvers? Cannot this be an excuse to take land from these holders, too, to give it to other improvers – investors?⁶⁷

“Declaring *kontract* illegal and thus ordering land restitution amounts to evicting the developer. We judges have to consider the prevailing interest in the society, which is not to restitute the land to the seller, in deciding these types of cases.”⁶⁸ A local judge says,

They say they are contracting out *khat* farm or other property on the land. The duration indicated in the land contract is longer than the one fixed in the state land law. The land sellers are people who cannot afford to buy agricultural inputs. After a while, the landholder asks the court for the invalidation of the *kontract* on the ground of illegality. We currently decide more in favor of the developer, the one who is currently working on the land, especially when he has been using the land for ten or more years; we do not strike down the contract. Disputes also arise from share cropping agreements where they agree to the effect that one supplies land and the other brings labor and capital to develop the land for a certain period of time and the produce is to be divided equally between the two. In this case, too, the landholder claims for the invalidation of the contract.⁶⁹

Kontract, whose life span is reckoned from the date of conclusion, is less than ten years, is nullified followed by an order reinstating the parties in their previous positions. *Kontract* cases disposed by the Southern Regional State Supreme Court have been challenged in the Federal Supreme Court, which has routinely rejected them for lack of *prima facie* case for basic error of law.⁷⁰

A legal expert working for the Southern Regional State Land Use and Administration Office challenges the circular mentioned above on the ground that the regional Supreme Court has exceeded its mandate in issuing it.⁷¹ The expert said, in a reaction to the Supreme Court’s action, the Land Use and Administration Office was revising the existing rural land law to introduce provisions nullifying *kontract* as well as imposing criminal sanction against those who engage in land alienations under the pretext of *kontract*.⁷² To the expert, this amendment which is submitted to the Southern Regional State Council for approval will effectively kill the circular which legalizes land sales contrary to a clear constitutional prescription.⁷³ The expert is

⁶⁷ A conversation the present author had with Supreme Court judges of Oromia Regional State in the course of a training session on rural land law held on 29 April, 2013, in Bushoftu Town, Ethiopia.

⁶⁸ Interview 28 note 66.

⁶⁹ Interview note 45.

⁷⁰ Interviews 33 and 39 note 66. Review of some rejected applications for cassation by this author confirms the regional judges’ assertion that *kontract* cases emanating from the Southern Region Supreme Court have so far been turned down.

⁷¹ FGD 09 with regional land administration experts, 21 September, 2012.

⁷² *Ibid.*

⁷³ *Ibid.*

suggesting that loopholes in the existing rural land laws of the region and of the federal government are working in favor of transfers to the detriment of an *akonatari*.⁷⁴

One might join with the expert to argue that the rural land laws of the regional and federal governments are silent about the specific legal status of *kontract* and legal effects of entering into such deals.⁷⁵ However, it is not palatable to blame the legislative gap since the law is clear on the ban on land alienation and so is the Sidama customary tenure-*utuwa*-in outlawing land alienation.

The Southern Regional State courts are applying contract principles as embodied in the Civil Code to dispose *kontract* cases which purport to transfer land ownership in violation of the spirit and letter of the Constitution. One clear violation of the tenets of the Constitution is the unambiguous constitutional stipulation that under no circumstances and by any actor whatsoever land ownership may be alienated. Further, immunity against eviction is given under the Constitution to a peasant (a pastoralist as well) but not to any other person such a *tekonatari* who is acquiring agricultural land with commercial intent. But the courts in the region justify their decisions, among others, on the ground of protecting the *tekonatari* from eviction, protection of the agricultural investment of the *tekonatari*. This is a clear misapplication, and thus a violation, of the Constitution. The *tekonatari* as mentioned above is with urban roots and his livelihood is not dependent upon farmland; he generates his living from non-agricultural sources. The immunity from eviction granted under the Constitution is not meant for class of persons such as this.

Further, the invocation of the period of limitation provision of the Civil Code itself is not convincing. When one reads the first limb of Article 1845 and Article 1810 (1) of the Civil Code jointly, one gets the message that contracts tainted with unlawful objects are not subject to prescription. This is so because the phrase “Unless otherwise provided by law...” under Article 1854 suggests so. This line of argument gets strength when one reads Article 1810 (1) which says “No contract shall be invalidated unless an action to this effect is brought within two years from the ground for invalidation having disappeared.” One might say that the ground for

⁷⁴ *Ibid.*

⁷⁵ For example, such matters as to when re-distribution may take place and the grounds for the same, as to who is entitled to inherit agricultural land, the respective rights and obligations of those who take part in sharecropping, the rights and obligations of those who are required to use agricultural land jointly and legality of acquisition of farmland by those with sufficient off-farm income through a variety of schemes including ‘donation’ are not addressed in the Rural Land Administration and Use Proclamation of the Southern Regional State.

invalidation of a contract on account of unlawful object disappears when the law making such object unlawful is repealed, in our case by allowing ownership or use rights over rural land to enter commerce. This being not done so far, the ground for the invalidation of *kontract* on the basis of the unlawful nature of their object stands. Thus, as long as land is made alienable, any dealing relating to land sale remains invalid. It might also be sensible to declare *kontract void ab initio*, as a deterrent factor, permitting one to require the *tekonatari* to remove his property from the land and return it to the *akonatari*.

Finally, the classification of *kontract* based on the passage of ten year by the courts is of no practical relevance for the *akonatari* simply because the land is not going to be restituted even where the *kontract* is invalidated. This is precisely because immediately after securing a decision invalidating the contract, the *tekonatari* files another suit demanding compensation for the property on the land based on Article 1815 of the Code that states: “Where a contract is invalidated...the parties shall as far as possible be reinstated in the position which would have existed, had the contract not been made.” This suit is accompanied by a routinely granted stay of execution order aimed at retaining possession of the land in the hands of the *tekonatari* until the litigation on compensation is finally settled. This second round litigation is long and a protracted one allowing the *tekonatari* in the meantime to continue his investment on the land. In the end, the *tekonatari* uses the facility of experts from local agricultural office to secure over assessment of the value of the property on the land under controversy.⁷⁶ This makes it impractical for the *akonatari* to regain his land. Hence, in disposing *kontract* disputes, the legal arguments the SZ and the Southern Regional State courts deploy are contrary to the tenets of the Constitution. Such arguments are technically unsound and make it possible for the *tekonatari* to win his case virtually under all circumstances. It is legal positivism that goes awry. As an informant put it, this involves a double-conflict:

People are forced to sell ancestral ground. This runs against both state proclamation and our ancestors` wishes. Sale of one`s ancestral ground makes one a social outcast as he who does that must leave the village for fear of being burnt by the eyes of ancestors. The state acts against its own proclamation in endorsing it.⁷⁷

v. *Kontract* in the eyes of government functionaries

In addition to the courts, other actors also give legal cover to such land alienation deals.⁷⁸ For example, agricultural development agents working under the SZ broker land deals using their

⁷⁶ Interview 37 with a legal aid service provider, 24 September, 2012.

⁷⁷ FGD note 12.

knowledge of the financial vulnerability of peasants. They are requested by potential land *tekonatari*, in the words of an informant, to ‘find land’ for them.⁷⁹ Second, members of the local land administration committee ‘write support letter’ to the local agriculture office for an issuance of land certificate in the name of the *tekonatari*. The committee members extort money from the transferor; they simply say to him: “Land sale is illegal. The *kontract* is unlawful. It is even against the Federal Constitution. The committee is going to issue land certificate in the name of the *akonatari*, not in your name.”⁸⁰ This is a coded message to the *tekonatari* to give a “good sum of money” to the committee members in return for a land certificate in his name. Based on this ‘support letter’, the agriculture office “puts a signature on the already printed certificate and awards the certificate to the *tekonatari*.”⁸¹ This issuance of a certificate in favor of the *tekonatari* is, as mentioned above, on the top of their role in overvaluing the property on a plot ordered by the courts to be restituted to the peasant with the view to making restitution ineffective.⁸²

Some land *tekonatari* even use their *kontract* to obtain agricultural investment license and investment incentives from local trade and industry office. An expert working in the local trade and industry office said: “our agricultural investors obtain land from two sources: government leasing and *kontract*. When the agricultural investors bring documents such as a *kontract* proving that they have secured land, we provide them with the required license and incentives for which they are eligible.”⁸³ The trade and industry office is apparently taking *kontract* deals to mean land rentals permitted by Rural Land Proclamation of the Southern Regional State. And the treatment of the *tekonatari* as an agricultural investor eligible for investment incentives opens a door for him to collateralize the land subject to *kontract*, which is currently the case at least in connection with land acquired in this manner for coffee processing purpose.⁸⁴ Generally, the entire government administrative apparatus is implicated in one or another way in this unlawful land transaction.

⁷⁸ According to Interview 42 with a lawyer, 21 September, 2012, practicing lawyers play no less part in this legalization process; they draft *kontract*, have them authenticated and defend them in the courts when attacked.

⁷⁹ Interview note 46

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Interview note 77.

⁸³ Interview 36 with an official, 24 September 2012.

⁸⁴ Interview 41 with a practicing lawyer, 25 September, 2012.

At this juncture, one should mention that local lawyers play a part in the legalization of *kontract* through preparation of written documents and ensuring their authentication.⁸⁵ The lawyers' role in facilitating the legalization of *kontract* appear to be akin to Ambreena Manji's finding in relation to small-scale land grabs in Kenya that "the legal profession, far from upholding the rule of law, has played a central role in..., using its professional skills and networks to accumulate personal wealth for itself and others."⁸⁶

C. Comparison

Informal land deals also exist elsewhere in the country and in sub-Saharan Africa. For instance, the practice of *kontract* is widespread in a neighboring State of Oromia, where small farmers in Western Wellega, Ilubabor and Jimma were displaced by urban bourgeoisie from their holdings in the name of *kontract* for sale of coffee plants forcing policymakers in that state to conduct research to assess the situation on the ground and such research revealed that many peasants became victims of *kontract*.⁸⁷ One coffee trader in Jimma area evicted sixty small farmers in the name of buying coffee trees.⁸⁸ In particular, peasant holders in coffee and *khat* growing areas of Oromia have been evicted from their holdings as a result of sale of the products of coffee and *khat* to unscrupulous urban bourgeoisie.⁸⁹ Gudeta Seifu says,

This has caused social and environmental problems. The sales transaction usually takes place at times when the holders are in distress and in dire need of finance to meet their basic needs. It should also be noted that most of the perennial crops are grown near forest areas and the farmers who have already alienated their holdings are now financially in a precarious position would resort to cutting the forests in their vicinity with a view to getting some money for their livelihood. In effect, this has brought devastating environmental effects.⁹⁰

Meqi is a village located in Oromia State along the road from Addis Ababa to Hawassa where land transactions in the form of *kontract* prevail. Its proximity to major towns in the southern parts of Ethiopia and its location on the Awash River plains makes it suitable for horticulture. The local authorities ascertained in early 2012 that a total of 700 small farmers lost

⁸⁵ Interview note 78 and Interview note 77

⁸⁶ Ambreena Manji(2012), "The Grabbed State: Lawyers, Politics and Public Land in Kenya", *The Journal of Modern Africa*, 50:3, p. 467.

⁸⁷ Gudeta Seifu (2009), "Rural Land Tenure Security in the Oromia National Regional State" in *Land Law and Policy in Ethiopia since 1991: Continuities and Changes*, (Muradu Abdo, ed.) *Ethiopian Business Law Series* vol. 3 (Addis Ababa: Addis Ababa University, Faculty of Law) p. 125.

⁸⁸ *Ibid.*

⁹⁰ Gudeta Seifu, note 87, p.135 and conversations the author had with Oromia Supreme Court Judges on April 29, 2013 shows the prevalence of informal land alienation in the region.

their land to commercial farmers with urban origins, individuals and companies, growing vegetables and fruits through *kontract* some of whose duration extended to 99 years as opposed to the legal limit of 5-15 years. Some of these commercial farmers rented land for birr 1,000 to 1,400 per hectare for one season but with advance payment for several years.⁹¹ The commercial farms use irrigation and are resource intensive such as water pump, fuel, seeds, fertilizers, shades and intensive labor. The expenses entailed by these inputs cannot be covered by the small holder farmers.

A driving force for small farmers to engage in this deal is lack of agricultural support system such as loans to enable them to become beneficiaries of their land. “Those who acquire land from small holder farmers are much more organized and networked than we expect”; one cannot stop them from acquiring land for commercial ends via enforcement of the law alone.⁹² A person with no piece of rural land given to him neither by the authorities nor by social transfer mechanisms has been rewarded with a prize as a model farmer by both the regional authorities and the Ministry of Agriculture for accumulating more than 20,000,000 birr by acquiring several hectares of land through *kontract* and growing vegetables thereon for the market.⁹³ It seems that it is based on these land alienation practices. Allan Hoben observes that in Ethiopia,

The present tenure system with state ownership of land...could not prevent land sales and mortgaging but made them take place where the sellers are at a disadvantage, could not prevent land transfer from rural communities to commercial farmers and urban dwellers... could not slow rural-urban migration...⁹⁴

A similar practice occurs in other parts of Africa. In regard to rural Tanzania, Issa Shivji says,

In practice the development of the so-called land markets is in disguised forms. ...a couple of coconut trees which purportedly exchange hands are valued way beyond their prices. Such prices obviously contain an element of the price of land itself. What is being sold here under the guise of incomplete foundation or coconut trees is land itself...⁹⁵

⁹¹ Leasee-Leassor Confusion over Commercial Farms, The Ethiopian Reporter, <<http://www.ethiopianreporter.com/business-and-economy/296-business-and-economy/4754-2012-01-06-07-32-57.html>> (accessed 20February, 2012).

⁹² Gudeta Seifu, note 87.

⁹³ Interview 46 with a land and environmental law specialist, November 26, 2012, Hawassa, Ethiopia.

⁹⁴ Allan Hoben (2000), “Ethiopian Rural Land Tenure Policy Revisited.” Paper Presented at the Symposium for Reviewing Ethiopia’s Economic Performance 1991-1999. Organised by Inter Africa Group. Addis Ababa. April 26-29.

⁹⁵ Issa Shivji (2009), *Where is Uhuru? Reflections on the Struggle for Democracy in Africa* (Godwin Murunga, ed.), (Fahamu Books) p.131.

In addition, based on case studies in sub-Saharan Africa, Christian Lund states “that processes of privatisation occur and have a long history in many places... In a significant number of situations, this causes increased tenure insecurity, uncertainty and conflict.”⁹⁶

People’s practices may... undermine, circumvent and neutralise legislation and reified customs. Not forcibly through organised and well-prepared actions but through the daily pursuit of interests by individuals and a common-sense negotiation of their situation. Thus, loaned, rented and pledged land may become unredeemable; land may be *de facto* mortgaged for a loan and hence alienable; [and] pledges are sometimes disguised forms of sale, where sales are more strictly prohibited’. Such practices have been observed as far back as the 1920’s in Ghana. Another process of privatisation and individualisation reported from Nigeria is triggered off when the custodian of the family estate mortgages it in times of financial stress.⁹⁷

He may become unable or unwilling to redeem it, in which case any member of the family is free to redeem it and to retain it as his personal property until the custodian or his successor(s) reimburses him ... In very many instances such reimbursement is never made. Rather, the custodian may borrow additional money from the redeemer with that same piece of land as security. The reimbursement price on the land may then become so high that succeeding custodians let their claim rest and the redeemer retains the land indefinitely.⁹⁸

In a village in northern Burkina Faso, people,

bought the land they had cultivated from their former masters and became absolute land owners despite the fact that the existing legislation did not accommodate such arrangements. Thus, land locally *recognised* as sold is as unredeemable as ‘a goat sold on the market place’... these practices take place at the margins of the law. That is, they do not conform to the legislation but are tolerated and at times legitimated by government institutions. In Côte d’Ivoire, for example, government personnel sometimes act as witnesses, and at other times they validate and confirm informal land transactions like sales which the law does not cover. In Rwanda (before 1994) Mathieu reports that illegal land sales between farmers were verified, recorded, and subsequently recognised in a ‘formally informal’ way through an ‘*attestation de notorité*’ (notary’s declaration).⁹⁹

D. Reiteration

Post-1991 Sidama has been marked by the reemergence of the practice of *kontract*. *Kontract* starts out as a private transaction; it later gets legitimacy by the state contrary to the clear tenets of the Constitution. State courts sanction *kontract* using principles of contract enshrined in the Code. Sanctity is given to *kontract* by the land administration agencies through methods such accepting annual land use fee in the *tekonatari*’s name and by registering land subject to *kontract* in his name.

I think efficiency-minded economists erroneously characterize *kontract* as a land rental agreement, viewing it as a free juridical expression of a peasant’s demand for lifting government

⁹⁶ Christian Lund (2000), “African Land Tenure: Questioning Basic Assumptions”, <www.hubrural.org/IMG/pdf/iied_dry_ip100eng.pdf>, p. 19 (accessed 7 December, 2013).

⁹⁷ *Id.*, p. 7.

⁹⁸ *Ibid.*

⁹⁹ *Id.*, p. 8.

imposed restrictions on transferability of land use rights.¹⁰⁰ According to such economists, some degree of differentiation in the size of landholdings is necessary in rural Ethiopia where too much equality in land allocation prevails under people's ownership of land approach, thinking that differentiation would lead to depopulation of the countryside and transfer of land to those who are better able to use it productively with its supposed trickledown effect. To these economists, the policy slogan should be letting this "people-driven land rental practice" evolve and be prudently governed. A legal pluralist on the other hand may view *kontract* as constituting a third layer of land tenure regime lying between *utuwa* and state land law. Lawyers explain *kontract* in terms of lack of detailed legal rules including absence of clear and specific rules outlining sanctions against those who enter into land sales.

Whichever argument is advanced to explain *kontract*, one point appears to stand out, though: the prevalence of *kontract* in rural Sidama is an indication of the weakening of the professed protective purpose of the current land policy of Ethiopia, key to it being ensuring that land remains in the hands of the peasant who will be enabled to use it productively. And the underlying concept of better use of land by land users other than small farmers was expressed as *'maqnat'* (improvement) during the imperial times as considered in Chapter 2. As discussed in Chapter 3, during the Derg period, the state strived to channel land and agricultural inputs to cooperatives and state farms. Currently, that same notion of improvement is embodied in regional and federal land laws couched as 'better use' or for 'better public purpose'.

René Lefort has recognized the class dimension of land deals,

rich farmers have grown richer, notably through rental or sharecropping agreements, to which the weakest are frequently forced to sign up. In the space of ten years, certain 'strong farmers' have multiplied the area they cultivate four or five times. These agreements very often do not respect the regulations, but the authorities turn a blind eye.¹⁰¹

Where the authorities in Lefort's research site might 'turn a blind eye' to what he calls 'rental or sharecropping agreements', state courts and administrative authorities in the SZ give sanctity to *kontract* in favor of the improver.

¹⁰⁰ Tesfaye Teklu (2004), "Land Scarcity, Tenure Change and Public Policy in The African Case of Ethiopia: Evidence On Efficacy And Unmet Demands For Land Rights", <<http://chilot.wordpress.com/2011/04/14/journal-articles-and-materials-on-ethiopian-land-law-and-land-tenure-system/>>(accessed May 29, 2011); and Margi McClung, note 47.

¹⁰¹ René Lefort (2012), "Free Market Economy, 'Developmental State' and Party State Hegemony in Ethiopia: the Case of the 'Model Farmers'", *Journal of Modern African Studies*, 50:4, p. 685.

While regulated land use rights transfers (Chapter 4), expropriation (Chapter 5) and the present chapter on *kontract* have attempted to reveal government-driven land alienation tendencies in respect of private landholdings, the next two successive chapters analyze government-induced communal land transfers attributable to land law's failure to recognize communal lands and its conferment of undue administrative discretion on the state to change communal lands to private landholdings.

* * *

Communal Rural Lands and the Ethiopian State

This chapter examines the legal status of rural commons as an aspect of the land question in Ethiopia by analyzing current rural land laws that provide that “Government being the owner of rural land, communal holdings can be changed to private holdings as may be necessary.”¹ This legislative stipulation has received some treatment in literature, which argues for its nullification on the ground of unconstitutionality. However, this legislative provision cannot be merely brushed aside as contrary to the tenets of the Constitution. Instead, there is a need to examine the underlying historical thinking behind the provision that declares rural commons as the property of the state.

As the chapter indicates, the State’s claim over the commons is based on a long standing historical thinking that any land and landed resource not privately enclosed is deemed to be part of the state domain. The State’s claim of the ownership of the rural commons is not a benign one - the claim to title over the commons is not merely symbolic nor is it made in order to protect the interests of community members with full acknowledgment of their traditional title. It is rather a radical claim in the sense that the state’s control over the territories especially in southern Ethiopia meant gross expropriation of communal lands, i.e., resources are made part of the government domain without invoking expropriation procedures. The State’s claim over the commons shows that the current land tenure of Ethiopia has not de-linked itself from the past land tenure systems of the country.

This radical state title over the commons, in addition to its encapsulation in the existing land law, is reflected in government policies, plans and current practice of leasing out farmlands to meet energy and food security needs of capital rich but land and water scare countries. As will be examined in the next chapter, such massive land transfers are being made on the argument that the lands so transferred are ‘unutilized’ or ‘under-utilized’ or ‘over-utilized’; that the food and tenure security of the local populations is unaffected; and that such lands leased out to

¹ Rural Land Administration and Land Use Proclamation No. 456, 2005, (hereafter the 2005 Rural Land Proclamation).

agribusiness are part of the 75 million hectares of cultivable fertile land (out of which only about 18 million hectares is being cultivated by peasants); and that improvement of such underutilized lands transferred to investors would bring about benefits including technology transfer, employment and infrastructure development to the local population. In this process, the state's approach has been to reject customary rules pertaining to communal lands, which are considered inimical to modernization and tend to impose on the people a particular notion of property in order to promote its own conception of modernization.

The contention here is thus that there is a need to delve into history to fully grasp the nature, justification and implication of this declaration of the rural commons as part and parcel of government domain to the disregard of the claim of the people who critically rely on those commons for their livelihoods. The chapter considers the fate of rural communal lands in Ethiopia in general to be illustrated by discussions on the treatment by the Ethiopian state of communal lands of agriculturalists and pastoralists in the next chapter. The first section considers perspectives on the commons focusing on the tragedy of the commons and an opposing view that argues for the managed nature of the commons through customary rules and institutions. The second section discusses the historical roots of the radical title asserted by the state over the rural commons in Ethiopia including some comparative discussion and assessment of the constitutionality of the state's position on rural communal lands.

A. Perspectives on the commons

Debate about the nature and status of the commons in general and rural communal lands in particular is important because of the crucial significance of these resources for the livelihood of rural masses. Rural people in poor countries use the commons to carry out life sustaining economic activities such as grazing, gleaning, and firewood and honey collection as well as place of burial and of cultural and religious rites and festivities. Hence, "rural households at large benefit from these environmental goods...but the poor are disproportionately more dependent."²

² Tesfaye Teklu (2003), "Rural Lands and Evolving Tenure Arrangements in Ethiopia: Issues, Evidence and Policies", *FSS Discussion Paper No. 10*, (Addis Ababa: Forum for Social Studies) p. 54. A large proportion of the population in developing countries obtains "a substantial fraction of their daily sustenance from lands that are not held in fee simple (freehold)", i.e., communally held lands. Daniel Bromley (1989), "Property Relations and Economic Development; The Other Land Reform", *World Development*, 17:6, p. 874.

For example, in highland Ethiopia, the commons are essential because many individual landholdings are not good enough to sustain a peasant's life. Land degradation and population increase with lack of off farm opportunities have made these private holdings generally poor and minuscule. As mentioned in the Introduction, the average cultivable land holdings in the densely populated parts of Ethiopia, which are inhabited by two third of the total

The present legal status of the rural commons in Ethiopia may profitably be linked with two perspectives. The perspective, which may be tagged ‘old’ thinking about the commons, is articulated by Garret Hardin and his followers using the famous expression - the tragedy of the commons. The ‘old’ thinking popularized by Hardin is a summation of the literature on the commons that precedes his publication in late 1960s.³ Hardin argues that the commons which include grazing land belong to everyone and thus ultimately to no one, which definitely invites desecration of these resources. Hardin assumes that the commons are open for every Tom, Dick and Harry and thus they are unmanaged.⁴ To Hardin, one better policy option to this recipe for disaster is private enclosure of the commons. Hardin says,

...the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another...and another...But this conclusion is reached by each and every rational herdsman sharing a commons. Therein is the tragedy...Freedom in the commons brings ruins to all...The tragedy of the commons is...averted by private property.⁵

population, is less than one hectare. Yet, it is asserted that three to four hectares of good quality land is needed to sustain a household with an average of five members. Dessalegn Rahmato (1993), ‘Land, Peasants, and the Drive for Collectivization in Ethiopia.’ In Thomas J. Bassett and Donald E. Currmey (eds.), *Land in African Agrarian Systems*, Thomas J. Bassett and Donald E. Currmey (eds.), (Madison: The University of Wisconsin Press), p. 284.

Thus, the commons are inextricably linked to the livelihood of the rural poor. In fact, there appears to be an intrinsic-principal relationship between a peasant’s private landholding and their access to the commons. In some cases, because of the minuteness, the poor quality of the private farm holdings and rainfall variability, the benefits the poor obtain from communal lands might by far exceed those obtained from private land possessions. Under these circumstances, continued access to the rural commons might turn out to be the main source of livelihood while the private landholdings might be appendage thereof.

³ For example, Aristotle in *Politics* Book II, Chapter 3 observes “what is common to the greatest number has the least care bestowed upon it. Everyone thinks chiefly of his own, hardly at all of the common interest”.

⁴ Garrett Hardin (1998), “Extension of ‘The Tragedy of the Commons’”, *Science*, 280:5364, p. 683, has made this modification to his un-qualifying term ‘the commons’ three decades after his seminal article:

... the weightiest mistake in my synthesizing paper was the omission of the modifying adjective “unmanaged.” In correcting this omission, one can generalize the practical conclusion in this way: “A ‘managed commons’ describes either socialism or the privatism of free enterprise. Either one may work; either one may fail: ‘The devil is in the details.’ But with an unmanaged commons, you can forget about the devil: As overuse of resources reduces carrying capacity, ruin is inevitable.

⁵ Garrett Hardin (1968), “The Tragedy of the Commons” , *Science*, vol., 162, pp. 1244, 1245 and 1247; prescribing regulation based on ‘mutual coercion’ in relation to some resources having the nature of universal access such as the atmospheric air and the high seas. For the early critique of Hardin version of the tragedy of the commons, see Beryl Crowe (1969), “The Tragedy of the Commons Revisited”, *Science New Series*, 166: 3909, pp. 1103-1107, where he supports Hardin by citing England’s enclosure movement set in motion to avert “a tragedy of overgrazing and lack of care and fertilization which resulted in erosion and underproduction...” .

The old thinking about the commons as embodied in Hardin’s work is not nuanced conceptually. Under the old thinking, communal lands are considered as conferring no individual access to and control over resources, necessarily requiring collective use, and the rules governing such resources are seen as prohibiting land transfers to outsiders. The commons are likened to resources under the state of open access, i.e., no property case. That attitude has now changed, in literature though. As a result, it is now a misconception to consider common property regimes as involving only collective production, as conferring the entire set of rights only upon a group, as involving no tradability and being regulated by no norms and thus akin to open access resources. Rogier van den Brink *et al* (2006), “Consensus, Confusion and Controversy: Selected Land Reform Issues in Sub-Saharan Africa”, the World Bank Working Paper No 71, pp. 5-7.

The second perspective that may be designated as new thinking about the commons has been popularized by Elinor Ostrom and involves nuanced conceptualization of the commons. It no more views the commons as resources necessarily left in norm-less condition.⁶ Bruce says the concept of common property is often characterized by diversity of tenure regimes.⁷ This means communal land tenure does not necessarily mean that members of the community would use the commons collectively. Use of or production on the commons is individual in some cases and it is collective in others. Common property does not mean that “the entire bundle of rights is given only to the group as a whole...”⁸ Communal property is property right held by a group and the nature of the property the group may enjoy can be ownership or rights less than ownership such as usufruct or lease.⁹ Daniel Bromley succinctly puts common property as representing “...private property for the group.”¹⁰ Common property is “property of a group held as a common pool resource that group members use simultaneously or sequentially.”¹¹

Communal land and other associated natural resources are ultimately controlled by the concerned community to the exclusion of non-members.¹² Members may have individual and/or common access to those resources that they transfer to their descendants.¹³ There are also occasions where communal resources are transferred to outsiders either in the form of sale or lease or sharecropping.

Ostrom argues that the world is replete with non-tragic use of the commons and thus the issue is not whether the commons are feasible or how faster we shall privatize the commons but under what conditions and at what scale the commons can be feasible.¹⁴ The direction we should go is not towards exclusion but towards finding an appropriate level or mix of governance of the

⁶ Elinor Ostrom (1990), *Governing the Commons, the Evolution of Institutions for Collective Action*, (Cambridge: Cambridge University Press)

⁷ John Bruce (2000-1), “African Tenure Models at the Turn of the Century: Individual Property Models and Common Property Models” <<http://ftp.fao.org/sd/sda/sdaa/lr00/02-land.pdf>> (accessed December 22, 2014) and John Bruce (1993), “Do Indigenous Tenure Systems Constrain Agricultural Development?”, in *Land in African Agrarian Systems* (eds. Thomas Bassett and Donald Crummey (eds.) (Madison: The University of Wisconsin Press) pp. 20-1, 23 & 35-56.

⁸ Rogier van den Brink *et al* note 5, p. 6.

⁹ John Bruce (2000-1) note 7 p.12.

¹⁰ Bromley D. (1992) as quoted by Bruce in African Tenure Modes note 7, p. 19.

¹¹ John Bruce (2000-1) note 7, pp. 21-2.

¹² Abebe Mulatu (2009), “Compatibility between Rural Land Tenure and Administration Policies and Implementing Laws in Ethiopia”, in *Land Law and Policy in Ethiopia since 1991: Continuities and Changes* (Muradu Abdo, ed.), *Ethiopian Business Law Series*, vol., 3 (Addis Ababa: Addis Ababa University, Faculty of Law) pp. 3-4.

¹³ *Ibid.*

¹⁴ Elinor Ostrom, note 6.

commons to prevent spill over by outsiders and to prevent exploitation of some members from within.¹⁵

Hardin's approach that goes for privatization of the commons is not dead at least in the Ethiopian context even if Ostrom's seminal work together with a growing literature on the commons has interrogated it. This new thinking sees the commons as a complex resource arrangement whereby some portions are used collectively and simultaneously while some other portions are accessed by members of the concerned group even individually and still some other commons must remain communal because of dictates of climate and economics. And further that the commons do not exist in norm-less state, and that the concerned communities' rights over the commons must be honored in making decisions regarding such resources. But progress in literature is one thing; practice is another. An entrenched thinking that echoes the dismantling of the commons in favor of a private property regime cannot be buried easily especially when it suits the interests of elites. It is a convenient device to justify grabbing the commons.

¹⁵ Lee Anne Fennels (2011), "Ostrom's Law: Property Rights in the Commons", *International Journal of the Commons*, 5:1. John Bruce (2000-1) note 7, p. 20, contends that recent scholarship on common property as well as lessons learned from common resource management projects disprove the theory of the tragedy of the commons and confirm the prospect for prudent use of natural resources communally. He remarks that project experiences "almost always encourage greater controls of resource use by local communities." Development practitioners have observed that "local communities sometimes manage their resources effectively, even under substantial pressure." *Id.*, p. 19. The literature on the commons has concluded that in common property,

a group with limited membership, the right to exclusive use of the resource, the opportunity to regulate resource use by group's members has the incentive [to manage its resources effectively], because the costs and benefits of disciplined, sustainable use are internalized by the group.

Ostrom E. (1986) as quoted in John Bruce (2000-1) note 7, p. 19; and see also Tesfaye Teklu note 2, pp. 54-5.

It is not always the case that there is "some necessary connection between common property as a legal regime and the nature of the resource, when in fact many resources can be managed as individual or as common property." John Bruce (2000-1), note 7, p. 20. Yet, "there are certain resources that by their very nature are less conveniently partitioned for management by households than by others" because "The costs of individualizing are high and it may be impractical...", for instance, in respect of pastures and forests. *Id.*, p. 19. "Herders who can no longer move to accommodate highly variable rainfall patterns need to establish source of water for each discreet grazing unit...the costs of establishment are too high for small stockowners' and enclosure of grazing land in such situation also results in denial of access to many small stockholders. *Id.*, p. 20. In forests, "there are protection, management and opportunity costs associated with long term investment in trees, and these can more easily be borne by a community..." *Ibid.*

Bruce writes:

Common property is regarded as an efficient solution in forestry... [There] is the need to maintain access to critical resources for the many rather than for the few, and especially to preserve the access of the rural poor. In some cases, the survival of minority peoples depends on the safeguarding of those communities' rights over their lands and forests.

Ibid.

B. Legal Status of communal rural lands in Ethiopia

This section examines the legal status of the commons from the perspective of the present government followed by an examination of the way the Imperial and the Derg regimes saw the commons. It closes with a consideration of the underlying shared attributes of the three successive governments with regard to the commons.

i. Legal status of communal rural lands at present

The following questions are considered in this sub-section: Are communal rural lands given legal recognition in the country? And is there such a thing as communal land tenure as a matter of state law and policy? As will be shown below, the state practice of tagging the commons as state domain has continued unabated. In fact, such practice has now been made more pronounced in laws, policies and actions of the state.

The Constitution defines private property as:

any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen... Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvement he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it.¹⁶

The Constitution has thus adopted the concept of improvement. Under this Constitution, for any person to have a legal claim over land they must show that they have made an improvement traceable to their labor and/or capital. One cannot claim land without establishing improvements thereon. Unimproved land in this sense belongs to the state. Those who merely extract the bare natural fruits of communal land cannot under this approach claim to have a right over those resources for they have not met the requisite condition for claiming such right.

The state has emphasized on many occasions that there is a huge amount of fertile vacant land in the southern parts of the country. For example, the rural development strategy of the Federal Government states the availability of vast fertile yet vacant land in low land parts of the country and the existence of pockets of unoccupied lands in densely populated areas.¹⁷ This narrative is repeated in other major strategy documents. As considered below, high ranking senior government officials recently have used terms such as ‘barren areas’ or ‘unutilized lands’ apparently to emphasize the availability of land of a significant size to be leased out to agribusinesses.

¹⁶ The 1995 FDRE Constitution, (hereafter the Constitution), Article 40 (2 & 7).

¹⁷ Rural Development Policies and Strategies of Ethiopia (2001), (Addis Ababa, The Ministry of Information).

The successive rural land laws do not favor recognition of the rural commons. The 1997 Rural Land Proclamation provided that regional land laws should provide for demarcation of communal land for grazing, forests, social services and other uses with the participation of the community.¹⁸ Yet, it did not provide for payment of compensation for improvements on communal landed resources in cases where peasants and ‘nomads’ lose their land rights due to government initiated land distribution suggesting that the commons were to be taken without compensation where the state needed them. This law defines land rights of peasants and ‘nomads’ in such a manner that their land use rights is conditioned upon land demarcation in the sense of individual farm plots destined for sedentary agriculture and that it is only in that context that one’s land possession gets the blessing of the government with its implication for payment of compensation for labor related improvements thereon upon expropriation and government initiated-distribution.¹⁹

This legislation seemed to have taken a positive step in recognizing the commons as belonging to the relevant community. Nevertheless, this apparent step forward was undermined in this very legislation when it conflated a community, as it is the case in the current rural land legislation, with a *kebele*, which in the current administrative arrangement constitutes the lowest government unit.

Under the 2005 Rural Land Proclamation, the government has reflected the country’s historical heritage in regard to communal land. As quoted in the introductory part of this chapter, Article 5(3) of this law says “Government being the owner of rural land, communal holdings can be changed to private holdings as may be necessary.” The preamble of the same land law states one of its aims is to encourage “private investors in pastoralist areas where there is tribe based communal holding system.” This legal provision, in practice, means primarily giving communal landholdings to private investors. This same law also defines state holding expansively as “rural land demarcated and those lands to be demarcated...and includes forest lands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands.”²⁰

More telling in this regard though is Article 2(12) of the legislation under consideration, which defines communal holding as rural land which is ‘*given by the government*’ to local residents for common grazing, forestry and other social services. As the italicized phrase shows

¹⁸ Rural Land Administration Proclamation No 89, 1997, Article 6 (6).

¹⁹ *Id.*, Articles 2 (4), 6 (6) and 6 (7-9).

²⁰ The 2005 Rural Land Proclamation, Article 2 (13).

“communal land” is given by the government in the sense of not recognition but creation of the commons. The same law also introduces the concept of minimum private holdings which is described as rural land privately held by peasants and pastoralists - sending the message that what is given recognition is private landholdings, not the communal ones.²¹ The law finds it difficult to recognize the concept of communal land as a separate form of landholding. It rather jumbles it with the notion of private holding prevalent in the sedentary mode of cultivation.

This concept of individualization of landholding is reinforced by the Expropriation Proclamation which speaks exclusively in terms of taking of private landholdings. It appears that the communal holdings of pastoralists, for instance, are not given recognition in their existing forms but only when pastoralists transform their ways of life into sedentary farming. The Regulations passed to implement the Expropriation Proclamation makes “lawful possession of the expropriated land holding” a precondition for receiving compensation.²² Here the term ‘lawfully’ seems to mean production of evidence of the acquisition of private landholding pursuant to state law.²³ Thus, it looks that any land other than the one held by private persons pursuant to state law constitutes state holding. This rendition of the rural land law enlarges the size of state land to the detriment of communal holdings, thereby spelling the juridical death of the commons in the eye of the state.

The 2005 Rural Land Proclamation apparently recognizes three forms of tenure including private, state holding and communal holding, but it strikes at the heart of the third land typology when it sees the government as an owner of land and bestows upon it the power to privatize communal land as it pleases. This in effect means this land law has recognized only two holdings: land is held either by private persons individually or by the state. This is consistent with the individualistic tradition embodied in the Civil Code of Ethiopia, which recognizes essentially two domains: land in the private domain and land in the state domain.²⁴

²¹ *Id.*, the Amharic version of Article 2 (11).

²² This is based on the Amharic version of Article 22 of Payment of Compensation for Property Situated on Landholding Expropriated for Public Purposes, Council of Ministers Regulations, No. 135, 2007.

²³ *Ibid.*

²⁴ The Civil Code, 1960, Articles 1444 and 1445. The term ‘essentially’ is used here because, in the Code, the communal tenure has received a treatment, but it is a temporary treatment conditioned considerably by an expansive form of the repugnancy clause; the Code recognized the commons provided customary rules pertaining to them would not retard the economic progress of the concerned community, offend the principles of natural justice and morality and that the exercise of land right by an individual member of the community would not be subject to unreasonable conditions. *Id.*, Articles 1498, 1499 and 1500. Even this attenuated form of the commons

One might argue that one should not make a fuss out of these state legal regimes because people on state lands are in effect enjoying *de facto* effective control. But the point is that these laws give the state the power to assert that these people are mere squatters using the lands without any legitimate title. When the state seeks to take these common resources, it can take them away without being obliged to pay compensation or seek consultation with the people. In fact, the argument in favor of the state would run that the people in such cases should vacate the lands thankfully. This means their claims are devoid of legal validity. The most important objection though is the underlying thinking behind the lack of recognition of communal tenure regimes on the part of the government: the implicit attitude that either these people possess no tenure rules or if they have them, these people's laws are not law proper.

To the extent some regional land laws recognize communal lands, they contradict with the 2005 Rural Land Proclamation. It may be argued that the latter trumps the former when conflict arises.²⁵ This relationship between federal and regional land laws should be seen in light

cannot stand now because subsequent land laws have superseded those provisions of the Code regarding the rural commons.

²⁵ This is so if we construe the power of the Federal Government on land matters couched in the Constitution as enacting land utilization laws broadly to include land tenure matters. Some have argued regional land laws have taken a positive step in recognizing communal holdings citing as an example the 2003 Rural Land Proclamation of the Southern State. Elias N. Stebek (2011), "Conceptual Foundations of Property Rights: Rethinking *De Facto* Rural Open Access to Common-Pool Resources in Ethiopia", *Mizan Law Review*, 5:1, pp. 36-7.

However, this was repealed. The 2007 Rural Land Proclamation has not taken a positive step in accepting communal land possessions because on the one hand it appears to acknowledge land rights of the community and on the other hand it bestows ownership rights of the commons upon the state in a rather self-contradictory manner. For instance, it defines communal landholding as "land out of government or individual possession and is being under the common use of the local community as a common holding for grazing, forest, and other social services." The Southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Use Proclamation No. 110, 2007, (hereafter the 2007 Southern State Rural Land Proclamation), Article 2 (14). This same law states rural youths "who wish to engage in agriculture shall have the right to get and use rural land which is possessed by the community..."

Id., Article 5 (4) provides that "land holding certificate for communal land shall be prepared in the name of the beneficiary community; *Id.*, Article 6 (11)...lands under the possession of community with potential for agriculture shall be reallocated to landless youths and peasants who have less farm land." *Id.*, Article 9 (4).

So far it looks as if the law in question credits communities with land rights over the commons, even if such common resources are vulnerable to periodic redistribution. The self-contradiction in the land law under consideration begins when it provides that "Government, being the owner of rural land, can change communal rural land holdings to private holdings as may be necessary" *Id.*, Article 5 (14) and see also Article 5 (16), for identical stipulation, of the Afar Regional State Rural Land Administration and Use Proclamation, 2009, Article 5(16) which is a replica of Article 5(3) of the 2005 Rural Land Proclamation note 1. And Article 29 of the rural land law of the Beni-Shangul Gumz Regional State tends to undo the following provisions with a similar power to the state to convert communal lands into private lands as it sees fit:

Where necessary and with the acceptance of the community, such lands shall be changed into private possession and by using modern technique utilizing the land for grazing, forest and other perennial crops. Communal lands found in the region shall be changed into private grazing possession gradually and substituted by improved forest species in order to develop the potential of productivity. Communal grazing land shall be put to its development

of the Constitution which empowers the Federal Government to enact land utilization laws while empowering regional states to administer land on the basis of such federal laws.²⁶ As the title and contents of the federal land law reveal, the Federal Government depends on a broad interpretation of the term ‘land utilization laws’ to include both land use and land tenure rules.

Moreover, there is a need to take note of two important concepts in the current rural land laws both of federal and regional origin. First is about the use of the concept of land distribution as opposed to redistribution. In the legislative practice of the country, the concept of land redistribution is used in cases where the state reallocates land under private holdings of peasants while the notion of distribution is employed to suggest that the land being distributed has never been allocated to anyone before. The implication in the use of the term ‘distribution’ as opposed to ‘redistribution’ in relation to communal property is that the commons belongs to the state domain and the state is merely giving out land from its own land bank without taking it from peasants.

Finally, the general reluctance or even failure to issue land certificates in regard to communal lands of pastoralists, shifting cultivators, and that of sedentary people while issuing certificates to peasants` private landholdings under the ongoing rural land certification programs of the government appears to be reflective of the age-old thinking of the state that the commons belong to it.²⁷

Unconstitutionality of state appropriation of rural communal lands and de facto state power: Commentators argue that land in general and the commons in particular is jointly owned by the people and the state. Such argument rests people`s ownership of land on interpretation of the relevant clause of the Constitution, namely ‘‘land is the property of the people and the

potential/productivity with the participation of the community. Local laws issued by the people and customary practices that do not contravene the law shall be applicable on utilization of communal lands.

The Beni-Shangul Regional State Rural Land Administration and Use Proclamation, 2010.

Perhaps different is the rural land law of the Tigray Region that provides:

Grazing land means land demarcated at the time of land redistribution and land demarcated with the consent of the local people and kebele administration. Use of grazing land shall be in accordance with custom of the locality concerned. The local people shall prepare and implement regulations regarding use of grazing land through kebele council.

The Tigray Regional State Rural Land Administration and Use Proclamation, 2008, Article 26.

²⁶ The Constitution, Articles 51 (5), 52 (2/a) and 55 (2/a).

state.’²⁸ For example, Mellese Damtie takes the words ‘people’ and ‘state’ to imply distinct entities. Thus as state and people are two distinct entities land should be construed to be owned jointly by these two entities²⁹ In other words, land in the country is co-owned by the people and the state. The assertion that the Constitution states that land is co-owned by the people and the state is congruous with a careful reading of the full text of the appropriate clause. Article 40 (3) provides,

The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.³⁰

This constitutional text shows that the words ‘peoples of Ethiopia’ in the first sentence is amplified in the second sentence to mean ‘the Nations, Nationalities and Peoples of Ethiopia’³¹ and the concept of ownership used in the first sentence is explained in the second sentence to mean ‘common property,’ means joint ownership in this context, especially when one relies on the corresponding Amharic version which uses the word *yegara*, connoting something that belongs to two or more persons. Besides contextual reading of these two words, the Constitutional Assembly that was elected to ratify the Constitution debated the question of joint ownership of land by the state and the people and took a position in favor of co-ownership of land by the state and the people of Ethiopia.³²

Therefore, it is sound to conclude that subsidiary land laws and government projects fail to acknowledge the people as co-owners of land even if such ownership right is recognized by the highest law of the land and the people’s time immemorial tradition.³³ The implication is these government laws and projects are contrary to the principle of people’s ownership of land as enshrined in the current Constitution and they must be annulled.³⁴ Abebe Mulatu and Muhammad Abdulahi endorse the argument about the constitutionality of government laws and projects that hinge on unconstitutional government’s sole ownership claim over communal land

²⁸ Mellese Damtie (2009), “Land Ownership and Its Relations to Sustainable Development” in *Land Law and Policy in Ethiopia since 1991: Continuities and Changes*, (Muradu Abdo, ed.) *Ethiopian Business Law Series*, vol., 3 (Addis Ababa: Addis Ababa University, Faculty of Law) p. 32.

²⁹ *Ibid.*

³⁰ The Constitution.

³¹ For the definition of these terms, see the Constitution, Article 39 (5).

³² Mellese Damtie, note 28.

³³ *Id.*, pp. 37-8.

³⁴ *Id.*, p. 38.

and landed resources in the countryside.³⁵ Abebe in particular has observed that the provision in the 2005 Rural Land Proclamation which provides for government ownership over communal lands is “...diametrically opposite to the right of pastoralists guaranteed by the constitution.”³⁶ Unfortunately, as explained in Chapter 4, there is no right to constitutional review by the regular courts.

Moreover, the status of the government as a manager and ‘custodian’ of land and other resources bestows upon them *de facto* power no less than ownership over such resources. The peoples’ ownership of land becomes merely symbolic. It would not be farfetched if one compares the status of the government in Ethiopia over land and the governing power of managers of large public corporations in the western economy. Adolf Berle and Gardiner Means argued that there is:

...divorce of ownership from the control of modern corporation...as a practical matter, stockholders have traded their legal position of private ownership for the role of recipient of capital returns...shareholders who become merely recipients of ‘the wages of capital’... the interests of the directors and managers can diverge from those of the owners of the firm, and they often do so. This separation between ownership and control of a corporation through expanded ownership of the company creates ...quasi-public corporation. The characteristics found in a quasi-public corporation are its tremendous size and its reliance on the public market for capital.³⁷

ii. Legal Status of the commons in the past

Lack of state legal recognition of the commons has a long history in the country as the Imperial and the Derg governments considered communal lands as part of the state domain to be used by them as they deemed fit.

a. Imperial period

The southern conquest outlined in Chapter 2 was followed by the creation of state land domain of large size and primarily out of communal lands. The size of land in the state domain was estimated to be two thirds of the land in south.³⁸ Once this state domain was created, the state distributed a portion of this to its non-salaried employees including those who took part in the incorporation expeditions. Later in the 1960s and 1970s, the imperial government used part of the state domain for the purpose of expanding commercial agriculture. The act of including

³⁵ Mohammud Abdulahi (2007), “Legal Status of the Communal Land Holding System in Ethiopia: The Case of Pastoral Communities”, *International Journal on Minority and Groups Rights*, vol. 14.

³⁶ Abebe Mulatu, note 12, p. 26.

³⁷ Quoted from Murray L. Weidenbaum and Mark Jensen’s New Introduction to the 1991 issue of Adolf Berle and Gardiner Means’s, *The Modern Corporation and Private Property*, (New Brunswick: Transaction Publishers, 1991) p. ix.

³⁸ Richard Pankhurst, note 39, p. 185.

the commons in the state domain was a unilateral act of the state and hence without resort to community consultation or payment of compensation under the theory that conquest meant that the state could prize itself with dominion over 'empty' land. Russel Berman writes:

The theory of residual state ownership finds particular support in the Ethiopian tradition of feudal land tenure... the principle...seems to be generally accepted by scholars that all land in Empire was theoretically held of the Emperor and at his pleasure, reverting to him in the event of failure of the tenant to provide adequate service of loyalty.³⁹

Richard Pankhurst on his part says the claim that "the ownership of land in Ethiopia was traditionally vested in the sovereign who could allocate or appropriate it at will" was 'a highly theoretical affair.' But Pankhurst admits that "Ethiopians [specially *gult* holders], who, though they might not theoretically have any permanence of tenure, would under the traditional Ethiopian system seldom or never have been obliged to move from their land."⁴⁰

The quotes from Pankhurst suggest two points. One is Pankhurst impliedly admitted the presence of the overriding principle of radical state title merely contesting its invocation by the state as a matter of fact. Second, he was writing about the land tenure system in 'traditional Ethiopia', which means the northern parts of the country, not particularly about the newly incorporated peoples of the south. This in essence does not dispute Berman's statement quoted above. The above shows a general principle of the overriding nature of the concept of state ownership of land but it does not directly establish the state's lack of recognition of the commons. Nevertheless, this general principle shows the point that the state's radical title extended even to lands inhabited and actively cultivated by people of sedentary mode of life.

What is more, various laws of the imperial regime acknowledge the existence of an expansive state domain. The 1931 Constitution of Ethiopia, the first written constitution in the country, declared the peoples of the country as the subjects of the emperor with its lands and other resources owned by the Crown. This constitution recognized three categories of property: the property of the Crown,⁴¹ private property⁴² and state property.⁴³ Thus, to this constitution property meant either that owned by the Crown or private individuals or the state, but not by communities. The exception to blanket designation of the commons as part of the state domain

³⁹ Russel Berman (1966), "Natural Resources: State Ownership and Control Based on Article 130 of the Revised Constitution", *Eth. J. L.* 3:2, p. 555; and Richard Pankhurst (1966), *State and Land in Ethiopian History* (Oxford: Oxford University Press) p. 185.

⁴⁰ Richard Pankhurst above, p. 185.

⁴¹ The 1931 Constitution of Ethiopia, Article 76.

⁴² *Id.*, Article 27.

⁴³ *Id.*, Article 78.

was the one adopted by the 1952 Constitution of Eritrea, which by the time was a federating unit of Ethiopia. This constitution recognized the property rights of the communities in the commons in using, in Article 37, the following words “Property rights and rights of real nature established by custom...exercised in Eritrea by tribes and the various population groups...” shall be respected.

The 1955 Revised Constitution, which replaced the 1931 Constitution, in Article 130 (d) provided that: “All property not held and possessed in the name of any person, natural or juridical,... whether real or personal, as well as all products of the sub-soil, all forests and all grazing lands, water-courses, lakes and territorial waters, are State Domain.” In connection with this provision, a commentator said: “the pastoralists had no rights over their grazing territory...The symbolic significance of this is expressed as the loss of citizenship or, at the very least lower status than the average citizens of the country.”⁴⁴ But unlike what is suggested in this quote, the purview of Article 130 (d) of the 1955 Revised Constitution was not limited to pastoral lands but extended to communal lands in their entirety. This constitutional clause was given concrete expression in Article 1194 of the Code which declares “Immovables situate in Ethiopia which are vacant and without a master shall be the property of the State.”⁴⁵ Further, within the tradition of its predecessor, the 1955 Revised Constitution acknowledged private property and state property without mentioning communal land and landed resources.⁴⁶

The Civil Code, which is still in force, recognized two classes of property: property in the private domain and property in the state domain.⁴⁷ Property in the private domain is conceived as a widest right, which essentially means tradable right to use, fruits and disposition.⁴⁸ Property in the state domain is divided into two: that which is in the public domain and that which is the

⁴⁴ Fecadu Gadamu (1994), “The Post-Revolutionary Rethinking of Arid Land Policy in Ethiopia”, *Nomadic Peoples*, Number 34/35, p. 71.

⁴⁵ The 1952 Eritrean Constitution.

⁴⁶ The 1955 Revised Constitution of Ethiopia, Articles 43-44 & 60.

⁴⁷ The Civil Code of Ethiopia, Articles 1444 and 1445. Article 1493(2) permitted the use by communities of their communal lands but prohibited them from alienating or mortgaging or charging those lands with an antichresis “except with the written permission of the Ministry of Interior.” Under Article 1499, the Code declared that any decision a community makes in respect of its land shall be of no legal effect if it is contrary to “the provisions of the Ethiopian Constitution, the mandatory provisions of this Code or other Ethiopian laws or made in violation of fundamental rules or procedure or justice.” More importantly, this recognition of the commons in its diluted form was ignored in practice by the state. For example, when pressed for redistributive land reform, the Imperial Government frequently pointed to the availability of large amount of vacant land in the south and it encouraged improvements of such areas via schemes such as farm workers` cooperatives and private commercial farms.

⁴⁸ *Id.*, Articles 1204-1205.

private domain of the state, and for the purpose of tradability, the latter is equated with property in the private domain of private persons. The land privately owned is supposed to be demarcated and registered in the name of individuals.⁴⁹ In the Code, property in the state domain is considered to engulf every property not held by private persons. The Code treated customary tenures as impediments to social and economic progress of the nation in what the elites of the time considered as a dramatically changing world situation and flatly rejected them as autonomous system of norms.⁵⁰

b. The Derg period

The Derg retained land in the state domain it inherited from the imperial regime. The 1975 Rural Lands Proclamation was built on the explicit assumption that rural land use rights were to be held either privately by households or collectively by producers' cooperatives or by state farms but not communally. Under this land law, even pastoral communities would use land communally for grazing purposes until the state would make them adopt sedentary mode of cultivation.⁵¹ The Derg continued the tradition of the imperial regime to impose conservation measures on communities.

The Derg's Ten Year Perspective Plan designated the commons as 'vacant lands' and to be put under full utilization in the form of resettlements of people from highland Ethiopia, settlement of the pastoral peoples themselves, expansion of socialist agriculture in the form of expansion of producers cooperatives and state commercial farms. The Derg thought that "for the pastoralists to develop, they must settle first."⁵² To the Derg, pastoralists were compatriots "who follow the tails of their cow, aimless wanderers who do not plan their movements rationally, who languish in backward socio-economic stages, [who] must [be] liberate[d] from such backwardness."⁵³ The 1987 PDRE Constitution recognized three forms of property namely socialist property which included state property which encompassed all "Natural resources, in particular land, minerals, water and forest"⁵⁴ and cooperative ownership,⁵⁵ private ownership⁵⁶

⁴⁹ *Id.*, Articles 1553ff.

⁵⁰ *Id.*, Article 3347(1).

⁵¹ The Public Ownership of Rural Lands Proclamation No 31, 1975, Article 27, imposes on the government the responsibility to settle pastoralists.

⁵² Fecadu Gadamu note 44 pp. 72-3; John G. Galaty *et al* (1994), "Introduction", *Nomadic Peoples*, No. 34/35, p. 9.

⁵³ Fecadu Gadamu note 44, p. 73.

⁵⁴ The Constitution of the Peoples Democratic Republic of Ethiopia, 1987, Article 13(2).

⁵⁵ *Id.*, Article 12.

⁵⁶ *Id.*, Article 15.

and other forms of property such as the property of mass associations and personal property.⁵⁷ As a matter of law and policy, thus, the Derg left no room for communal ownership of land by pastoralists or agriculturalists.

Some comparison: It is to be noted at this juncture that the uncertain legal status of the commons in Ethiopia is not unique in the sense that it is the dominant mark of the commons in sub-Saharan Africa. Liz Wily has recently argued that the communal resources in Africa are in the course of their demise as has been the case in the past because of this time around heightened large scale land grabs.⁵⁸ This is a more realistic view in comparison with her earlier optimistic, though guarded, view of land law reforms giving recognition to the commons in Africa.⁵⁹

Commonalities and departures: In summary, there are shared characteristics of the positions of Ethiopian governments towards the commons. A commentator remarked that, “Remarkably, there is little to distinguish the explanations put forward by governments guided by liberal versus socialist philosophy to justify the appropriation of land by the state.”⁶⁰ In this quote the term ‘socialist’ alludes to the Derg regime while the term ‘liberal’ pertains to the current government. In relation to the commons, one would say the same thing about the imperial regime that is widely characterized as feudo-capitalist. As the above account shows, the three regimes, though ideologically professed to be different, denied the communities of their land, their customary rules, and their rights over such lands. In the words of a local government official in the highland part of southwestern Ethiopia, “the [forest] land officially belongs to the state”.⁶¹ Yigeremew Adal and Ayalew Gebre-Mariam who have researched the commons in the northern part observe that governments in Ethiopia have always considered themselves as owners of communal land resources.⁶²

⁵⁷ *Id.*, Article 18.

⁵⁸ Liz Wily (2011), “‘The Law Is to be Blame’: The Vulnerable Status of Common Property Rights in Sub-Saharan Africa”, *Development and Change* 42:3, pp. 733ff.

⁵⁹ Liz Wily (2001), “Reconstructing the African Commons”, *Africa Today*, 48:1, pp. 76ff.

⁶⁰ G. Galaty *et al*, note 52, p. 5.

⁶¹ Till Stellmacher and Peter Mollinga (2009), “The Institutional Sphere of Coffee Forest Management in Ethiopia: Local Level Findings from Koma Forest, Kaffa Zone”, *International Journal of Social Forestry*, 43:2, p. 61.

⁶² Yigeremew Adal (2004), “Land Administration and Management of Communal Land Resources in the Post-Derg Period: A Case Study in Two Rural Kebeles in Northwest Ethiopia”, in *Some Aspects of Rural Land Tenure in Ethiopia: Access, Use and Transfer*, (Workmeh Negatu and Yigremwe Adal, eds.) (Addis Ababa: Institute of Development Research), p. 106; Ayalew Gebre (2004), “Resource Deprivation and Changes in Pastoral Land Tenure Systems: The Case of the Karrayu in the upper Awash Valley of Ethiopia” in *Proceedings of the Workshop on Some Aspects of Rural Land Tenure in Ethiopia: Access, Use and Transfer*, (Addis Ababa: Institute of Development Research), p. 38.

Yet the three regimes allowed, by acquiescence, rural communities to occupy and use common lands until they needed them for their own ends. When the governments needed those resources, they would be at liberty to put them to such uses without compensation or community consultation. The imperial regime used the lands so acquired in order to build political patronage and expand modern agriculture marked by expansion of large commercial farms in the late hours of the regime while the Derg used those lands for the purpose of undertaking resettlements, villagization and socialist agriculture in the forms of state farms and producers cooperatives while the present state is using these lands for massive large farms both by itself and private investors. The three governments used lands under state domain for imposed conservation measures, parks and wildlife sanctuaries in a manner that excluded the local people.

The three regimes share such factors as their assumption about the ownership of the commons, the reasons they offered for such position (to be considered in the next chapter) and deployment of the commons with detrimental effects on the people dispossessed.

C. Reiteration

The thinking of the Ethiopia power elites towards the rural commons has been influenced by economic-oriented legal codes the country transplanted from the western world since 1950s best embodied in the Code. This thinking is that land rights exist in the context of a defined tract of land and that such defined plot must be held by a person privately. The state classifies land as falling either within the state or private domain. It conceives land outside the private domain as falling invariably within the purview of the state domain. Hence, this state perception and practice do not recognize the commons as belonging to concerned communities. Nor does it engage in demarcation of state land and communal land as the latter is put out of legal existence.

The fact that communities are actually occupying and using these resources ought not to be mistaken for a sign of legal recognition of their rights by the state. In the eye of the state, it is a *de facto*, but not a *de jure*, occupation in the sense that the communities are using such resources without any legal basis and only until the state needs the resources. If and when the state wants a grazing land for its own requirements, it can put such land to its own use without invoking the tool of expropriation because the state is not expected to expropriate its 'own property'. That is why the late Zenawi said that there is "no land grab in Ethiopia - Not today,

not tomorrow.’’⁶³ Thus, rural people are turned into squatters in respect of their access to the commons. An informant declared: ‘‘there is no communal land in the area [i.e., Southern Region]. Land is either private or government.’’⁶⁴

The state changes its narratives from time to time: *dominium* and *imperium*, unutilized (empty) or underutilized or over-utilized land. The tragedy of the commons is used to justify the categorization of the commons under the state domain and consequently to facilitate the use of such resources as the state deems fit. The theory of the tragedy of the commons presents the commons as existing in a situation without governing regime which invites self-interested commoners to take too much out of common resources while investing nothing on it, leading to their ultimate ruin. The theory invites one to parcel the commons out to individuals who would supposedly take good care of the land. The doctrine proceeds on the assumption that there is a cause-effect relationship between privatization and economic productivity. Privatization of the commons is prescribed for in order to achieve this desirable outcome, espousing simplistic economic notion of land rights with its attendant dispossessing effects on the poor.⁶⁵ The state also deploys the underutilization narrative with its implication of the improvement discourse.

The chapter has implied that the relationship between the people and the state in relation to land ought to be that the state’s ownership rights are in trust to the people. This is not a mere *de lege ferenda*. This suggestion, I think, is in line with the Constitution which, as indicated in the Introduction, provides ‘‘Government has the duty to hold, on behalf of the People, land...’’ and to deploy it ‘‘for their common benefit and development.’’ This means the state cannot deal with land in ways which are inimical to the needs of the people – including their customary and communal approaches. The problem however is that the Constitution is unjusticiable.

The next chapter dwells upon the treatment of rural communal lands and the conflicting narratives of over-exploitation and of under-exploitation invoked by state authorities to take control over rural commons from villagers in Northern part of the country. Explored is the role of literature in reinforcing the state’s takeover measure which makes communities who are victims villains. It uses empirical evidence to dispel the erroneous assertion that communal rural lands in highland Ethiopia are kept away from the ongoing large-scale land transfers conducted

⁶³ Richard Dowden, ‘‘How Meles Rules Ethiopia’’, an interview with Meles Zenawi, <www.africanarguments.org>, May 12, 2012 (accessed October 22, 2012).

⁶⁴ Interview 33 with a High Court Judge in SZ, 24 September, 2012.

⁶⁵ Daniel Bromley, note 2.

by the government. The chapter that follows furthermore considers communal land transfers by the government in the lowlands traditionally regarded as the *El Dorado* of Ethiopia due to the assumed availability of vast amount of fertile 'empty land'. Unrestrained alienation by the state of communal rural lands in highland and lowland Ethiopia is a manifestation of their weak historical and legal foundations.

* * *

Communal Rural Land Transfers in Ethiopia

The present chapter is about large-scale land transfer in Ethiopia. Large-scale agricultural land transfer is not without historical antecedents in the country as discussed in Chapters 2 and 3. But Ethiopia's current land deals have attracted special attention due to three reasons. The first reason is the size, pace and opaqueness of the land deals. The second is that Ethiopia is to date Africa's largest recipient of food aid and known for her recurrent chronic food insecurity whereas these land transactions are meant to ensure the food and energy security of other countries. Third, it is argued by pan-Ethiopian political forces that the current land transfers would reverse the history of absence of foreigners with significant landed property interest in Ethiopia by allowing foreigner investors to have a dominant say over the future course and destiny of the country precisely because these elements blame the government for "selling the family spoons to foreigners."¹

The chapter considers the treatment of rural communal lands in highland Ethiopia and the conflicting narratives of over-exploitation and of under-exploitation invoked by state authorities to take control over rural commons from villagers in that part of the country. Here, explored is the role of literature in reinforcing the state's takeover measure which makes communities who are victims villains using empirical evidence to dispel the erroneous assertion that communal rural lands in highland Ethiopia are kept away from the ongoing large-scale land transfers effected by the government. That is, emphasized is the lack of tenability of lowland-highland distinction concerning large-scale land transfers because communal lands in both areas do not enjoy legal recognition of the commons and are sites for large-scale commercial farming. The chapter further shows that the present state uses the empty land narrative to claim ownership over rural commons in lowland Ethiopia.

The State inconsistently argues that regulatory mechanisms are put in place to secure benefits for the people from agricultural projects while at the same time conceding lack of such capabilities. The state's narrative is echoed by investors. The local people, on the other hand,

¹ Richard Dowden, "How Meles Rules Ethiopia," an interview with Meles Zenawi, <www.africanarguments.org>, May 12, 2012. (accessed June 20, 2013).

counter the empty land narrative on cultural and livelihood grounds and dispute the materialization of the touted benefits from large-scale farming. As Chapter 9 examines, international institutions particularly the WB and the USAID offer a nuanced support to Ethiopia's current exercise of large-scale land deals; the WB and the USAID, as indicated in the current chapter and further elaborated in the next chapter, have disapproved both of the manner though not principle of large scale land grabs. However, their disapproval seems to be ignored by the government.

The chapter also indicates that the thinking behind large-scale land acquisitions privileges government authorities to have unchecked control over land given the absence of independent civil society organizations operating on the ground and given the lack of organized resistance against the dispossessing effects of the ongoing state agricultural modernization in the frontiers. This means the present land transfers in Ethiopia manifest land grab in the sense that land is being taken by government “without permission from the people who have historically considered it their own” to lease out to investors.² The chapter concludes that the official line that large-scale farming is confined to lowland areas on empty land is a myth. So is the claim that there are solid regulatory mechanisms in place not to displace and to ensure local benefits from the investments.

Global and national drivers of large-scale land transfers and the magnitude thereto are discussed in the first section. The one that follows examines the existence of large-scale farming in the highland parts of Ethiopia including discussion of the narratives invoked by the state and reinforcing scholarship. The third section focuses on narratives of the state in taking communal lands in lowland areas of Ethiopia together with the discussion of the views of investors about this project of agricultural modernization in the peripheral areas of the country as well as the counter narrative of the people. The chapter suggests that it is doubtful if the claimed benefits of large-scale land deals will be achieved given the manner in which Ethiopia has so far handled investment in large-scale agriculture in particular given the nature, financial and technical capabilities and motivations of the investors as well as the regulatory capabilities of the State.

² Gregory Myers (2012), “A Right to Land”,
<http://transition.usaid.gov/press/frontlines/fl_jul12/FL_jul12_LANDTENURE.html> (July/August, 2012)
(accessed 23 October, 2012).

A. Global and national drivers

Globally, four factors – food, energy, financial crises and carbon trade – have led to land transfers of unprecedented proportion to agricultural investors who are tied to capital rich but resource poor food importing countries that seek to minimize their reliance on the volatile world food market by directly accessing land for food and bio-fuel productions.

First, in early 2008, the world was hit by food crisis manifested through shortage of food supplies in the global market, mainly caused by decades of low private and public investments in agricultural sector of agrarian nations.³ The continuity of the surge in food price is probable due to population growth and rising incomes of people in countries such as China, India and Brazil with its attendant effect of a shift in their dietary patterns.⁴ Second, the fluctuation in fuel prices in 2007-2009 pushed countries to look for alternative sources of energy in particular bio-fuels which require large farms to grow maize, soya, sugarcane, palm oil and *jatropha*.⁵ The third factor is the financial crisis, which has led financial institutions to look for a more stable source of investment, namely, putting their monies in land.⁶ Fourth is carbon trade that is associated with global climate change, which has led conservationists to control forest lands to the exclusion of local people.⁷

Nationally, the current renewed interest in this project is driven mainly by the State's search for economic legitimacy as encapsulated in the developmental state discourse of the

³ For instance, “between 1980 and 2000, the share of donor funding dedicated to agriculture slumped from 18 percent to five per cent.” White B. *et al* (2012), “The New Enclosures: Critical Perspectives on Corporate Land Deals”, *The Journal of Peasant Studies*, 39:3, pp. 619ff. and K. Deininger and D. Byerlee (2011), “Rising Global Interests In Farmland. Can It Yield Sustainable and Equitable Benefits?” (World Bank, Washington, DC.)

⁴ Lorenz Cotula and S. Vermeulen (2011), “Contexts and Procedures for Farmland Acquisitions in Africa: What Outcomes for Local People?” *Development*, 54:1, doi:10.1057/dev.2010.94; Lorenz Cotula *et al* (2009), “Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa”, (London). Further, it is expected that such high food price and its volatility will continue to remain to be the order of the global food market due to bio-fuel quotas set by developed countries especially the European Union, food import restrictions by large food importing countries, upsurge in speculation and events relating to climate change, mismatch between increase in cereal productivity and demand over a long period of time, insufficient food stock, and macro-economic factors - sending the message to food importing nations that they can no more rely on global food market and thus being pushed to look for alternative options to meet their food demands.

⁵ Lorenz Cotula *et al*, note 4.

⁶ Investors have made major land deals with the Ethiopian state, for example, with the view to getting higher profits, supplying stable raw materials to their food processing companies as well as diversifying their investment portfolios.

⁷ “Land Grabbing in Africa and the New Politics of Food”, Policy Briefs 01, 2011, <r4d.dfid.gov.uk/PDF/Outputs/futureagriculture/FAC_Policy_Brief_No41.pdf>, (accessed 27December, 2013); and W. Anseeuw *et al* (2012), “Land Rights and the Rush for Land - Findings of the Global Commercial Pressures on Land Research Project”, (ILC, Rome).

Government. As discussed in Chapter 4, the extant Government has since 2000 sought for what might be called economic legitimacy. Economic legitimacy is an attempt to overcome a deficit in political legitimacy by the current government by registering a sustained high rate of economic growth through export oriented agricultural development strategy. This is designated as output as opposed to input legitimacy.⁸

As the discussion in Chapter 9 reveals, the four global crises stated briefly above have not served as determining forces in the context of Ethiopia since evidence shows that the Country has not designed nor been forced to design a policy of large-scale land transfers in response to these international developments. To wit, the government's plan to transfer large-scale agricultural land especially in the Lowland parts of the Country has been in place since the time of the adoption of the Constitution.⁹ The Government has just seized the opportunities presented to them by favourable global developments to implement their agricultural policy in place years before the onset of these global factors. Admittedly, the Government has further elaborated its incipient policy towards transfers of large-scale agricultural land in the wake of rising interest in worldwide control over farmland.

B. Profile of large-scale agricultural land transfers

How much land, to whom and for what? Rapid pace of land acquisitions, secretive nature of some of the land deals, corruption, multiplicity of land granting authorities, lack of modern land measurement tools and poor data storage by the authorities make it difficult to know the exact amount of land transferred.¹⁰ There are nevertheless some indications of the extent of actual and planned land transfers. The Ethiopian Government has a plan to transfer about 7

⁸ According to, Bertelsmann Stiftung's Transformation Index 2012 Ethiopia Country Report, <www.bti-project.org/reports/country-reports/esa/eth> (last accessed July 7, 2014), the motivation of the regime government in Ethiopia is towards output rather than input legitimacy, which means over privileging economic records. ; Ethiopia appears to emulate what Zhu calls 'performance legitimacy' in the Chinese context, in Yuchao Zhu (2011), "Performance Legitimacy" and China's Political Adaptation Strategy", *Journal of Chinese Political Science*, vol. 16; Cf. Michael Bratton and Robert Mattes (2001), "Support for Democracy in Africa: Intrinsic or Instrumental?", *British Journal of Political Science*, 31:3, where they have argued that comparative survey of attitudes of citizens in Ghana, Zambia and South Africa shows that citizens support democracy for its own intrinsic worth and do not give a pride of place to economic performance at the expense of advancement of democracy. See also Larry Jay Diamond (1990), "Three Paradoxes of Democracy", *Journal of Democracy*, 1:3, for the argument that democracies do not inherently perform economically worse than dictatorships.

⁹ The Minutes of the Constitutional Assembly of the FDRE Constitution (1994) (unpublished, on file with the author).

¹⁰ Franziska Albrecht *et al* (2013), "Using Crowdsourcing to Examine Land Acquisitions in Ethiopia", <gispoint.de/fileadmin/user_upload/paper_gis_open/537532003.pdf>, (accessed 17December, 2013) p. 100.

million hectares of agricultural land to investors towards mid 2015. As the Introduction showed, the Ministry of Agriculture claims this is feasible given the fact that 74.3 million ha is suitable for crop production.¹¹ And the ambition of the government to continue to transfer agricultural land is clear from the amount of land identified to be transferred and the actual amount transferred. Amount of land identified for large-scale farming in Beni-Shangul Gumz Regional State is 1,405,067 hectares as of 2011.¹² Similar figure of the Southern Regional State is 307,295.7 as of September 2012.¹³ And in these two states as is the case in Gambella Regional State, the figures on land requests are higher than those actually delivered.¹⁴ For example, according to a recent estimate, regional authorities in Gambella supplied 129,708 hectares of land between 1992 and 2010; this is out of 380,578 hectares of land requested and the request met being about 34 percent.¹⁵

The Ethiopian State has been leasing out large tracts of farmland to investors since mid 1990s but the pace and volume of land transfers has shown exponential growth as of 2008.¹⁶ Most sources estimate that so far Ethiopia has transferred about 3.6 million hectares of cultivable land to investors.¹⁷ But the figure the authorities give on the land actually transferred by the Ministry of Agriculture as recently as September 2013 is 2.2 million hectares.¹⁸

Table 14: Regional distribution of land transfers by the Federal Government¹⁹

Region	Size of land transferred in hectares as of 2011
Gambella Regional State	256,000
Beni-Shangul Gumz Regional State	635,831
Southern Regional State	470,287
Oromia Regional State	1,319,214

¹¹ Agricultural Investment Potential of Ethiopia, MOARD, March 2009, p. 4, <www.moard.gov.et> (accessed October 9, 2013).

¹² MoARD Investment Support Directorate Report (unpublished document, on file with the author).

¹³ Data obtained in September 2012 from the Investment Agency of the Southern Regional State.

¹⁴ *Ibid.*

¹⁵ Philipp Baumgartner *et al*, note 16, p. 11.

¹⁶ Philipp Baumgartner *et al* (2013), “Impacts of Large-Scale Land Investments on Income, Prices and Employment: Empirical Analysis in Ethiopia”, <www.zef.de/.../90cd_Baumgartner-%20etal%202013%20Impact%2> (accessed 27December, 2013) p. 8.

¹⁷ Felix Horne (2011), “Understanding Land Investment Deals in Africa, Country Report: Ethiopia”, the Oakland Institute, p. 7.

¹⁸ The Ethiopian Reporter Newspaper, interview with Mr. Bezuaem Bekele, an official at the Ministry of Agriculture of Ethiopia in charge of large scale agricultural investment, <http://www.ethiopianreporter.com/index.php/interview/item/3212>, 08 September 2013 (accessed 11October, 2013).

¹⁹ Felix Horne, note 17. However, according to K. Deininger and D. Byerlee note 3, the distribution by regional states is: Gambela (535,000 hectares), Oromia (380,000), Beni-Shangul-Gumz (191,500), Southern Regional State (60,500), Afar (20,000) and Amhara (18,000).

One still finds that land already transferred is quite large despite the fact that the factors mentioned above prevent one from finding out the exact amount of land so far transferred. The WB estimated that out of 406 land deals (1.2 million ha) made during 2004-2009, 383 were made with domestic investors including Ethiopian nationals living abroad; this accounts for only 49% of the total land transfer while 23 foreign investors alone acquired 51% of such land.²⁰ Estimates of land transferred to foreign investors vary: 600,000 ha²¹ or 1.2 million ha²² or 2.9 million ha²³ or 3.6 and 4.5 million ha.²⁴ According to the FAO statistics, large-scale land deals constitute 8.2 percent of Ethiopia's agriculture area.²⁵ In the Oromia Regional State, around 72% of the investors involved in agricultural land transfer are Ethiopian nationals who, however, got hold of only 16% of the total land transferred.²⁶ Yet, the exact amount of land acquired by domestic investors is not clear nor is the extent to which they have partnered with foreign investors. But their share is relatively small. The foreign investors come from about 36 countries.²⁷

Some investors have acquired a huge amount of land. For example, the Government has transferred 300,000 hectares to Karaturi in Gambella Regional State alone²⁸ and another 25, 000 hectares to the same investor in Oromia National Regional State. The Government has transferred 10,000 hectares to Saudi Star, promising to it 500,000 hectares of land in Gambella Regional State.²⁹ Some African leaders have acquired land.³⁰

²⁰ K. Deininger and D. Byerlee, note 3 and Felix Horne, note 17.

²¹ Lorenz Cotula *et al* note 4.

²² K. Deininger and D. Byerlee, note 3.

²³ Lorenz Cotula *et al* note 4 and Felix Horne, note 17.

²⁴ Felix Horne, p. 21, note 17.

²⁵ "Analysis: Land Grab or Development Opportunity", BBC News, February 22, 2012.

²⁶ Tom Lavers (2012), "Land grab' as Development Strategy? The Political Economy of Agricultural Investment in Ethiopia", *Journal of Peasant Studies*, 39:1, pp. 105-132.

²⁷ This includes Saudi Arabia, India, Pakistan, China, Egypt, South Korea, Qatar, Libya, Israel, European Union, Djibouti, Nigeria, South Africa, Brazil, USA, UK and Germany.

²⁸ It was later reduced to 100,000 hectares pledging to increase its size increase from time to time.

²⁹ Data collected for this thesis from the Ministry of Agriculture, December 30, 2013.

³⁰ Field data gathered for this thesis in 2013 indicate former Nigerian President Olusegun Obasansjo acquired 5 acres, current Djiboutian President Ismael Omar Guelleh (7, 400 acres for cereals) and the Egyptian Prime Minister 49,400 acres for cereals in Afar and South Africa 3,000 acres via Agri-Vie for floriculture.

Ethiopia

2,100,000 Hectares

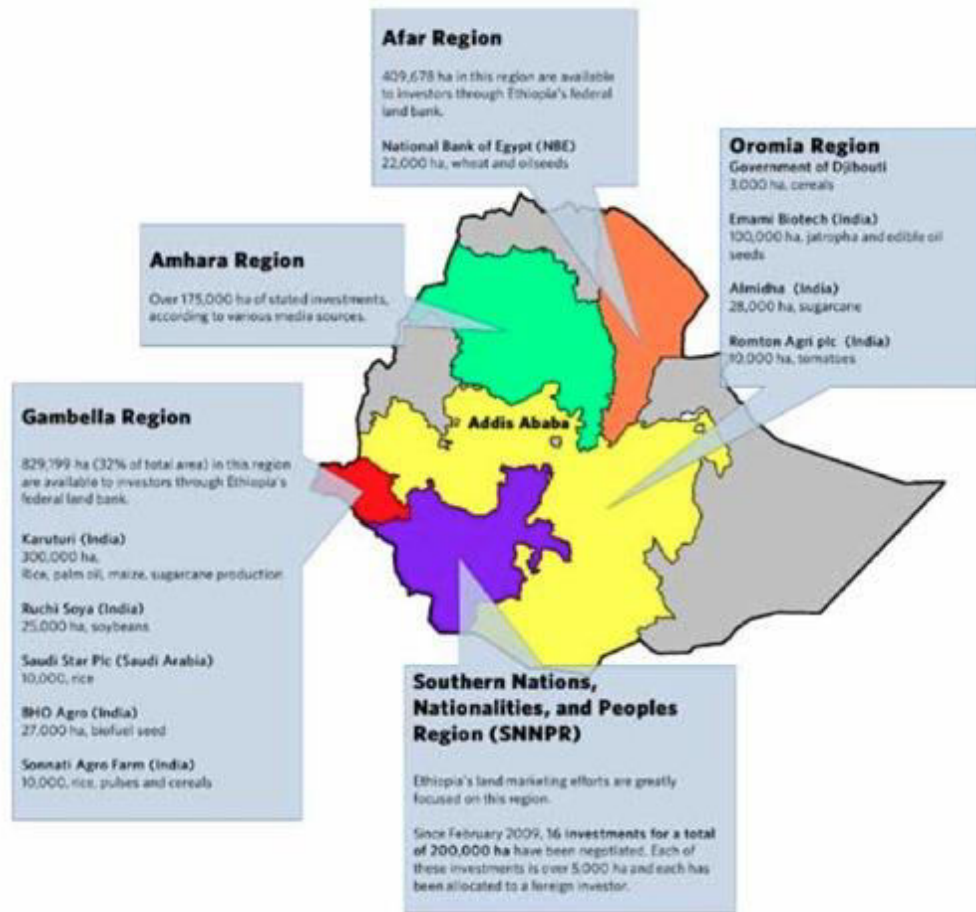


Chart 1: Regional distribution of land transferred to large-scale farmers (source: Oakland Institute, 2011:2)

Land is transferred on the basis of renewable lease agreement with the Government for a duration ranging from 10 to 60 years and lease prices fall between 1 and 22 dollars per hectare per year. Crops pledged to be grown on these lands are sugar cane, maize, jatrofa, cut-flower, rice and olive oil destined for export with no contractual commitment to supply them to domestic markets.³¹ (See Annex III for a partial list of agricultural land lease agreements indicating amount of land transferred, crops pledged to be grown and origin of the investors.) State owned

³¹ Tom Lavers, note 26; and Benjamin Bety Campion and Richmond Antwi-Bediako (2013), "Biofuel Conflicts in Ghana and Ethiopia" <<http://www.thebrokeronline.eu/Articles/The-seed-fuel-wars-of-Africa>> (accessed December 22, 2014)

enterprises have also enclosed massive tracts of land either to expand existing investments or start new agri-business projects in particular sugar cane³² and cotton plantations, not to say least about land the Government is enclosing for dam and mining projects whose precise magnitudes are not yet known.³³ Enclosures for sugar plantations have led a journalist who produced a documentary on the Lower Omo Valley to say, “with thousands facing uncertain futures, never before has sugar left such a sour taste in the mouth.”³⁴

C. The State

i. The over-utilization and under-utilization narratives in highland Ethiopia

As explained in Chapter 2, the Imperial Government of Ethiopia deployed the twin notions of *imperium* and of *dominium* to assert control over the land and other resources of the conquered South. Patrick McAuslan articulated these two terms as “...that the monarch owns all the land in England and derives his or her ownership from being the supreme lord...In practice and law, no distinction was made between conquering the country and acquiring absolute ownership of that country’s land”.³⁵ McAuslan describes the term *imperium* as assertion of sovereignty by an occupying state over a conquered territory while *dominium* as an absolute ownership claim by the same over the land in that territory.³⁶ Similarly, the Imperial State of Ethiopia was guided by the concept of *imperium* and *dominium* and the derivate ideas of improvement, trusteeship and civilizing the people who occupied the commons in the vast arid and semi-arid portions of the Ethiopian territory.

Since the revolution in 1974, land in rhetoric has become the property of the Ethiopian People and its management is given to the state in trusteeship. The current Government of Ethiopia, as was the case for the Derg, appears to invoke two reasons in defense of their control

³² Data collected for this thesis from the Ethiopian Sugar Corporation in March 2013 indicate that there are three sugar plantation factories under expansion and ten new factories underway: six of the new factories to be built in the lowlands of the Southern State require about 150,000 hectares of land. Besides, the government has identified 5 million hectares of land for sugar plantation by private investors. For the details of the sugar projects, see <www.etsugar.gov.et/en/projects.html> (accessed December 22, 2014).

³³ See the Ethiopian Electric Power Corporation, <www.eepco.gov.et/projectcat.php?pcatid> and the Ethiopian Geological Survey, <www.gse.gov.et>, some hints at the land requirements of power and mining projects. (Both accessed December 22, 2014).

³⁴ Dominic Brown, “Ethiopia’s Tribe Cry for Help”, *Al Jazeera*, February 13, 2012).

³⁵ Patrick McAuslan (2007), “Land Law and The Making of The British Empire” in *Modern Studies in Property Law* (Elizabeth Cooke (ed.), vol., 4, (Oxford: Hart Publishing) p. 241.

³⁶ *Ibid.*

over rural commons in highland areas.³⁷ First, the state is asserting dominion over rural commons under the guiding hands of the theory of the tragedy of the commons, i.e., such common resources have been reduced to open access resources for a variety of reasons, and that the State is rescuing those resources from depletion. Second, the State also uses the underutilization narrative. Moreover, in relation to lowland parts, the State uses the empty land narrative. This section considers these reasons.

a. The overutilization narrative

Under the theory of the tragedy of the commons both in its old and new forms as explained in Chapter 7, the State would argue that the commons are in danger because they have become everybody's resources which in effect means they are no man's land. As a sovereign, there is a duty on the part of the Government to control and govern such resources on behalf of the present and future generations, for example, through privatization. Or the theory would lead to reinforcement of the historical hegemonic position of the State in relation to these resources since the State would be called upon to 'save' these resources from depletion. And the theory of the tragedy of the commons would also imply that the commons exist either without governing norms or at best in the state of collapsed customary institutions. For example, the Ethiopian State justifies its continued dominion over the commons located in sedentary areas on the ground that such commons are affected by over population of people and animals. To the Government, this overexploitation of the commons in the Highland Ethiopia has led to deforestation and land degradation because of conversion of the commons into farming and increase in fuel consumption as well as overgrazing. An informant linked the disappearance of rural communal lands in Sidama with the narrative and actions of government authorities as follows.

Before the arrival of the government to this place, Wondo Genet Forest ('paradise forest') and grazing land used to be a vast open space used in common by the Sidama and neighboring Oromo people. It was not a 'desert' as often claimed by the authorities. Nor were we 'wasting and making it naked.' The Imperial Government granted part of this land to member of the royal family who converted it into coffee farms and part of it to different institutions. When the Derg came, they enclosed it as a protected forest, guarding it with militias, giving part of it to producers' cooperatives. People used to graze their cattle; collect firewood and mow grass informally even if the forest was enclosed by the Derg. Now the communal land is given to investors who claim to engage in ecotourism, animal fattening and floriculture businesses. They did not consult the people.³⁸

³⁷ Highland Ethiopia includes Tigray, Amhara, significant portions of Oromia and the Southern regions which are densely populated where roughly 89 % of the national population resides practicing settled agriculture where social and physical infrastructure is concentrated and endowed with temperate climate and diverse agro-ecology.

³⁸ Interview 02 with a landless youth, 12 September, 2012; Interview 10 with a public servant 16 September, 2012; Interview 12 with an official, 17September, 2012 and Interview 13 with an official, 17 September, 2012.

Some commentators reinforce this state narrative about the commons. Albert Gore, a US Senator, comments,

One tragic example of the loss of forests and then water is found in Ethiopia. The amount of its forested land has decreased from 40 to 1 percent in the last four decades. Currently, the amount of rainfall has declined to the point where the country is rapidly becoming a wasteland.³⁹

The Senator's bleak comment is a typical narrative repeated time and again in diaries of travelers, official sources as well as school textbooks in Ethiopia to such an extent that it has become a 'conventional wisdom'.⁴⁰ Reports of successive governments of Ethiopia paint a picture of communal lands as "overgrazed, their forest cover erased, the land over tilled, the soil exposed to erosion, its fertility lost, the terrains left naked, etc." due to improper utilization by the concerned communities.⁴¹ The storyline has been received by politicians and international and national experts; it also generates technical and financial backing of donors. Allan Hoben calls this long standing 'cultural policy paradigm', claiming its prevalence in Ethiopia and elsewhere in Africa. He describes it as,

The core narrative is quite simple: "Long ago when there were fewer people in Ethiopia, indigenous farming systems and technology enabled them to make a living without seriously depleting their natural resources. Over the present century human and animal populations have grown. Indigenous farming systems have been unable to keep up. Population has exceeded carrying capacity, causing ever-increasing and perhaps irreversible environmental damage. Only a massive investment in environmental reclamation can reverse this process. People are unable to make this investment without outside assistance because they do not know how and because they are too poor to forego present for future income or to provide for their children."⁴²

Hence, as the argument goes, there is a need on the part of the state to undertake top-down exclusionary conservation measures including establishment of parks and wild life sanctuaries or the privatization of the commons. This articulation of the commons by the state in substance, though not in form, constitutes the tragedy of the commons argument.

The state gets additional ammunition from literature which claims traditional tenure institutions in the settled parts of Ethiopia have collapsed as a result of decades of government modernization attempts. Or the claim of the available literature at best is that the customary rules in that part of Ethiopia are so weak that one cannot rely upon them for the rehabilitation of the commons; such collapse or weakening of customary rules has left the commons without any

³⁹ Albert Gore (1992), *Earth in the Balance: Ecology and the Human Spirit* (Emmaus, PA: Rodale Press), p. 107.

⁴⁰ James C. McCann (1999), *Green Land, Brown Land, Black Land: An Environmental History of Africa, 1800-1990* (Oxford, James Currey Ltd.)

⁴¹ *Id.*, p. 81

⁴² Allan Hoben (1995), "Paradigms and Politics: The Cultural Construction of Environmental Policy in Ethiopia", *World Development*, 23:6, p. 101.

governance mechanisms. Hence, this institutional vacuum warrants the state to fill in the void. In other words, the commons have now become open access resources that must be brought back to property regime by the act of the state.

For instance, Yigremew Adal, based on his case study on communal land resources in two communities in the north western part of the country, states that the state has weakened previously viable community tenure institutions and that it was unable to put in place its own resource management rules and principles.⁴³ In the face of this, he thinks that communal lands are virtually reduced to open access resources and suggests the advisability of privatizing the commons for “better management and equitable uses.”⁴⁴ In addition, Elias Nour argues that as a result of norm gap common resources are turned into open access resources, which inevitably leads to the “tragedy of resource non-sustainability.”⁴⁵ Elias regards open access entailing widespread “deforestation, overgrazing, squatting and resultant resource dissipation...; ultimately conversion of many green mountains into sand dunes and rocky landscapes.”⁴⁶ Some other commentators that customary tenure practices either lack clarity or are weak in their enforcement. For instance, Yeraswork Admassie says common property resources are surrounded by vague rule systems:

...which refers to (1) dubious legal status of the group’s collective claim on the resource. More often than not, common property rights are based on traditionally established praxis, customary law, etc., which are not always

⁴³ Yigremew Adal, note 46, p. 114.

⁴⁴ *Id.*, p. 114.

⁴⁵ Elias N. Stebek (2011), “Conceptual Foundations of Property Rights: Rethinking *De Facto* Rural Open Access to Common-Pool Resources in Ethiopia”, *Mizan Law Review*, 5:1, p. 40.

⁴⁶ *Id.*, pp. 34 & 40. Elias further argues that in some situations communities using common resources suffer from lack of tenure regime. Elias might perhaps subscribe to what Yigremew and Dessalegn have in mind in justifying the ‘absence’ of traditional norms governing the commons in the highland Ethiopia. It has also been said that,

...customary management systems and institutions which previously have served relatively well have broken down under pressure from political and administrative modernization and have not been successfully replaced while at the same time state custodianship has been a dismal failure and has in many cases led to mismanagement and loss of natural resources. Dessalegn Rahmato as quoted in Yigremew Adal (2004), “Land Administration and Management of Communal Land Resources in the Post-Derg Period: A Case Study in Two Rural Kebeles in Northwest Ethiopia,” in *Some Aspects of Rural Land Tenure in Ethiopia: Access, Use and Transfer*, (Workmeh Negatu and Yigremwe Adal, eds.)(Addis Ababa: Institute of Development Research) p. 114.

Elias suggests the possibility of government interventions in those instances. This suggestion is a powerful weapon for the state to intervene because in Elias’s opinion the commons are no longer commons but are open access resources, which impairs the sustainability of such resources. The tone of Elias’s article appears to be that any well-defined property regime including government generated tenure rules save the commons from ruin. Generally, Elias has invited takeover of communal resources by the state so long as it comes up with more effective tenure rules in a sense of a demonstrable capacity to implement the same. Elias’s article has failed to clearly advocate for the recognition of the communal tenure as a starting point, which suggestion would not necessarily deprive the state of a say over these resources, but it would make the state one of the actors in respect of the commons, not the only actor.

sanctioned by the legal apparatus of the modern state, and (2) because the internal regulatory rule system is highly dependent on the social context...⁴⁷

However, the reasoning that extant customary land tenures are deficient because they suffer from lack of clarity or the state has not recognized them and, consequently, they are weak in their sanction aspect is unconvincing. Lack of clarity is not the inherent attribute of customary tenure systems; incompleteness or vagueness or ambiguity can manifest itself in written state law, too. And it is unsound to argue that traditional land tenure institutions lack teeth to bite just because the state has not backed them with its enforcement machinery. In fact, some have gone even to the extent of arguing convincingly that order is possible in the absence of both legislation and law (i.e., both judge-made and customary laws) because under conditions where the costs of learning about the law and submitting to formal dispute resolution procedures are so high people resort to ‘common-sense norms’.⁴⁸

Moreover, the argument that deficiency of the customary tenures brings about the tragedy of the commons and thus the need for government takeover of these resources is not even in line with the key claim of the doctrine of the tragedy of the commons. The doctrine in the main suggests individualization, i.e., full individual ownership of open access resources to be governed according to rules enacted by a minimalist state. In other words, the thrust of the theory of the tragedy of the commons does not ask the state to take over open access resources nor does

⁴⁷ Yeraswork Admassie (2000), ‘Indigenous Common Property Resource Management: Cases from Wello and North Shewa’ in *Institutions, Resources and Development in Ethiopia*, (Alemu Mekonnen and Dejene Aredo eds.) (Addis Ababa: Ethiopian Economics Association and Department of Economics) p. 25. Further, researching the governance of forest resources of Kaffa, southern western Ethiopia, Till Stellmacher and Peter Mollinga have shown the shortcomings of community legal regimes by trying to establish that customary rules and institutions regulating forest resources in Kaffa lack effective enforcement mechanism; the deficit in these traditional rules being the exclusion of outsiders who settled there as farmers as a result of the Derg’s resettlement programs even if these new comers do critically rely on use of forest resources. Till Stellmacher and Peter Mollinga (2009), ‘The Institutional Sphere of Coffee Forest Management in Ethiopia: Local Level Findings from Koma Forest, Kaffa Zone’, *International Journal of Social Forestry*1, 43:2, pp. 46-9; Elias N. Stebek (2008), ‘Dwindling Ethiopian Forests: The ‘Carrot’ and ‘Stick’ Dilemma’, *Mizan Law Review*, 2:2, pp. 268-269, for discussion on the top-down mentality of laws, regulations, policies, strategies and institutions the Ethiopian state has put in place since 1962 in respect of forests.

Stellmacher and Mollinga have concluded that the legal regime for natural resources use in Kaffa is ‘unclear and uncertain’. *Id.*, p. 63. And this uncertainty ‘offers, original people and new settlers, little means and incentives to apply future oriented sustainable use and management practices’ and hence promotes depletion and loss of resources. Stellmacher and Mollinga have also argued that traditional rules regulating those resources are still viable but in addition to being ‘unclear and uncertain’, their sanction aspect is based simply on social consensus, showing lack of faith in their effectiveness. *Id.*, p. 63. Yeraswork, and Stellmacher and Mollinga impliedly warn Ethiopia of a possible total and ultimate conversion of common resources into open access resources, which means the state of the tragedy of the commons.

⁴⁸ Robert Ellickson (1991), *Order Without Law: How Neighbors Settle Disputes* (Cambridge, Mass: Harvard University Press)

it solicit state intervention in forms other than protection of private property rights. Even where some proponents of the tragedy of the commons advocate for “definite social arrangements ... that create mutually agreed coercion”⁴⁹ to be enforced by government regulatory agencies, they confine it to what they regard as universal environmental goods such as the atmospheric air but not in connection with the rural commons emphasized in the present chapter namely grazing lands and forests and forests resources.

In general, here the literature reviewed above argues that customary land tenures over the commons have either disintegrated owing to different factors or when they do exist, they are vague or ambiguous or lack teeth to bite; and that this has brought about the degeneration of common property over resources into open access resources and such undesirable scenario welcomes the government to tighten its historical grip on open access resources or take them over from the community or alternatively their privatization. Daniel Bromley says,

...[when] evidence of resource degradation on nonprivate land is observed, the fault is immediately said to lie with a quaint property regime that fails to assign clear ownership and by implication, stewardship. Indeed there is almost universal agreement among development experts that the solution is to create private property for individuals, or to create state property so that the destructive users might be displaced or properly controlled by some remote government agency.⁵⁰

b. The underutilization narrative

The state’s invocation of the tragedy of the commons in regard to the commons in highland Ethiopia is not a consistent affair. Sometimes the state contradicts itself by deploying the under exploitation narrative especially in regard to forest resources and grazing lands in Ethiopia’s highland and with its attendant solicitation for private investment or government takeover.⁵¹ For instance, the Ethiopian National Action Program to Combat Desertification “encourage the development of forests by individuals, organizations and government and the designation of protected forests and productive forests to be administered in accordance with laws to be enacted for each, stressing the need to give security of ownership of forest products to the developer.”⁵² Existing forest and water resources laws rest partly on the tragedy discourse

⁴⁹ Garrett Hardin (1998), “Extension of ‘The Tragedy of the Commons’,” *Science*, 280:5364, p. 1247.

⁵⁰ Daniel Bromley (1989), “Property Relations and Economic Development; The Other Land Reform,” *World Development*, 17:6.

⁵¹ Kathleen Guillozet (2011), “Livelihoods and Land Use Change in Highland Ethiopia,” (PhD Dissertation, Oregon State University, unpublished, on file with the author), pp. 62-63.

⁵² *Id.*, p. 62.

and partly on the under exploitation claim, thus the need to put them to full commercial exploitation by actors other than the surrounding population.⁵³

Further, the advocacy by government authorities in their rural development strategies about the existence of ‘pockets of underused rural lands’ in the highland Ethiopia and attracting agricultural investors to such lands is also a testimony to the promotion of the under exploitation narrative by the state. This has led to large-scale agricultural land transfers to investors for the production of floriculture and other cash crops in the densely populated parts of the country, namely in the central and northern parts as the following tables shows.⁵⁴ This is expected as these parts of the country are densely populated, hospitable, and endowed with better infrastructure requisite for a viable commercial farming. It is found that,

For the entire period from 1992 to January 2011, Oromia accounted for one-third of the requested land [for corporate farming], followed by Amhara with approximately 15% including the multi-regional licenses, these two regions accounted for over 75% of the land requested. This indicates that significant investments were located in the central highlands of Ethiopia.⁵⁵

This casts doubt on the message aired by state officials that large-scale agricultural land transfers are confined to lowland areas.

Table 15: Sample land leased out to agricultural investors in highland Ethiopia

Name of company	Location	Size of land in ha
Panasha International Agro-Industrial	Menze, Amhara	2,500
Ambo Ngemer Agro-Integrated	Ambo, Oromia	128,000
Karuturi	Wolisso and Holeta, Oromia	3,950

Source: Own fieldwork

Further, “The June 2011 data shows that 82 flower farms are operational out of which 47 are foreign owned, 8 joint ventures and 27 domestic owned. The total land area that is developed is 1,309.2 hectares out of 3,319.9 hectares that is allocated for flower growing.”⁵⁶ Data collected for this study in Sidama locality show that four investors who have acquired about 3,111ha land from a forest land enclosed once by the government as protected forest in Wondo Genet (a

⁵³ Mellese Damtie (2011), “Anthropocentric and Ecocentric Versions of the Ethiopian Legal Regime” in *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Peter Burdon, ed.) (Kent Town, Australia, Wakefield Press) p. 159ff. Bossiso *et al* have examined water resources implication for this process stating that the concept of ‘Economic water scarcity’: ‘human, institutional, and financial capital limit access to water even though water in nature is available locally to meet human demands’. See Deborah Bossiso *et al* (2012), “Water Implications of Foreign Direct Investment in Ethiopia,” <www.water-alternatives.org> (accessed December 22, 2014)

⁵⁴ Elias N. Stebek, note 45 and Kathleen Guillozet, note 51.

⁵⁵ Philipp Baumgartner *et al* note 16, p. 10.

⁵⁶ Elias Nour (2012), “The Investment Promotion and Environment Protection Balance in Ethiopia’s Floriculture: The Legal Regime and Global Value Chain” (PhD Thesis, University of Warwick, <<http://go.warwick.ac.uk/wrap/56244>> (accessed, 20 November, 2013) p. 181.

Sidama village).⁵⁷ Apart from this land given out to investors in the SZ, according to official data, is 3,443.854 ha as of September 2012.⁵⁸ Admittedly, the magnitude of these figures is not large. Yet they indicate the motivation of the State not to spare the Highland parts when it comes to corporate farming, access to land by the State for this end being articulated using the under-exploitation thesis. An informant linked the disappearance of rural communal lands in Sidama with the narrative and actions of government authorities as follows.

Before the arrival of the government to this place, Wondo Genet Forest ('paradise forest') and grazing land used to be a vast open space used in common by the Sidama and neighboring Oromo people. It was not a desert as often claimed by the authorities. It was the source of five rivers as it is now. The Imperial Government granted part of this land to member of the royal family who converted it into coffee farms and part of it to different institutions. When the Derg came, they enclosed it as a protected forest, guarding it with militias, giving part of it to producers' cooperatives. People used to graze their cattle; collect firewood and mow grass for cows informally even if the forest was enclosed by the Derg. Now the communal land is given to investors who claim to engage in ecotourism, animal fattening and floriculture businesses. They did not consult the people. We the landless youth can do what the so called investors claim to do on the land if given the opportunity. The officials claim that the people are squatting on the forest land, wasting and making it naked. We the landless youth in this village protested against this current land allocation but they harassed and imprisoned some of us.⁵⁹

In summary, the effect of the tragedy of the commons and under-exploitation narratives on the people appears the same since both discourses are deployed by government authorities to exclude local people from rural communal lands.

ii. *Tef meret* (empty land) narrative in lowland Ethiopia

This section examines the narratives of the government and of investors in regard to large-scale farming with a focus on those occurring in low land parts of Ethiopia. This is preceded by a brief profile of lowlands.

Profiling the lowlands: In the present federal arrangement, lowlands are mainly located in Afar, Oromia, Somali, Southern, Gambella and Beni-Shangul Gumz regional states.⁶⁰ They constitute about 64 of the land mass of the country and home of approximately ten to twelve percent of Ethiopia's population. The people are of diverse ethnic and religious backgrounds

⁵⁷ These include: Wondo Genet Forestry College, Wabe Shebelle Hotel, Essential Oils Enterprise and Wondo Genet Agricultural Research Center.

⁵⁸ Rural Land for Agricultural Investment, Trade and Investment Division of the SZ, a document gathered during fieldwork, September 2012.

⁵⁹ Interview 02 with a landless youth, 12 September, 2012; Interview 10 with a public servant 16 September, 2012; Interview 12 with an official, 17 September, 2012 and Interview 13 with an official, 17 September, 2012.

⁶⁰ One may lump these regions into two rough categories: Lowland and Highland Ethiopia. Lowland Ethiopia includes Afar, Somali, Gambella and Beni-Shangul-Gumuz regions. Lowlands are characterized, by sparse population, pastoral mode of life and arid and semi-arid climate. But they are crossed by major rivers whose banks are suitable for irrigation. They encompass a vast territory stretching from north-east to north-west along borderlines virtually encircling Highland Ethiopia.

pursuing pastoral, semi-pastoral and shifting modes of agriculture. These areas lie 1500m below sea level and feature arid and semi-arid plain fields traversed by significant rivers (the Awash River, the Wabe Shebelle River, the Omo River, the Baro River and the Genalle River).

As mentioned in Chapter 2, these peoples' encounter with the central state prior to and during much part of 19th century was that of occasional raids for cattle looting. In the second half of 19th century, they experienced a common history of being forcibly incorporated into the Imperial State of Ethiopia, which was followed in the late 19th century and a good part of the 20th century by their tribute payment to provincial lords and the state. The period of cattle raids and of tribute left the traditional legal institutions of these peoples largely unaffected. As discussed in Chapters 2 and 3, introduction and expansion of commercial farms in these areas in the late 1960s and early 1970s led to shrinkage of pastures and water pastoralists utilized for centuries, pushing them to marginal areas and exacerbating resource driven conflicts. Further, land enclosures by the central state for game reserves and wildlife sanctuaries undermined the pastoralists' traditional land use and management rights.⁶¹ More significantly, at present, the lion's share of farmlands already transferred and planned to be transferred come primarily from these parts of the country.

What tef meret means: It is an Amharic term that literally means 'empty land' but it goes beyond mere emptiness.' The term including its synonyms such as 'vacant, marginal, unutilized and idle land' is being deployed by the Ethiopian state to justify large-scale agricultural land transfers in lowland parts.⁶² The late Zenawi said,

what we are doing is putting all unutilized land in this country and we have a lot of unutilized land in the lowlands. What we have done is to build infrastructure in those areas and therefore open up the area for investments both by domestic and foreign private sector.⁶³

⁶¹ Enclosures located in lowland Ethiopia include: Awash National Park, Omo National Park, Gambella National Park, Abiyata-Shala National Park, Mago National Park and Netchsar National Park with underlying thinking behind the enclosures being the exclusion mentality.

⁶² Ethiopia: Sustainable Development and Poverty Reduction Program, 2002-2005, (SDPRP) (Addis Ababa: Ministry of Finance and Economic Development, July 2002) p. 51; and The Bio-fuel Development and Utilization Strategy of Ethiopia: Addis Ababa: Ministry of Mines and Energy, 2007.

The state has also used the marginal land discourse in regard to *jatropha* production in highland Ethiopia, claiming it can bring foreign currency to the country and income to the farmers, without using cultivable land and thus endangering local food security. Mengistu Assefa (2013), "Jatropha Potential on Marginal Land in Ethiopia: Reality or Myth" IFRO Working Paper 2013/17, p. 5-6.

⁶³ Keffyalew Gebremedhin (2013), "Dispossessing and Displacing People to Settle Them Down: Part III. Meles Says No Land Grab in Ethiopia—Not Today, Not Tomorrow!", <<http://transformingethiopia.wordpress.com/2011/08/23/part-iii-meles-says-no-land-grab-in-ethiopia%E2%80%94not-today-not-tomorrow/>>(accessed 29March, 2012)

Abay Tsehaye, a senior minister in the current government, in responding to critiques directed against the Kuraz Project (a multi-billion dollar sugar plantation project underway in the pastoral areas of South Omo on about 150,000 ha land) said:

The farms are in barren areas... the plan is to transform South Omo residents socially, economically and culturally... Groups campaigning against the plans have selfish motives. They want these people to remain as primitive as they used to be, as poor as they used to be, as naked as they used to be, so that they will be specimens for research and an agenda for raising funds... Previously impoverished communities will be “far better off” as they will benefit from irrigated land, improved social services, support from agricultural experts and job opportunities.⁶⁴

The Minister echoed the late Zenawi’s statements that:

this area is known as backward in term of civilization... The Ethiopian government will never allow the pastoralist community to remain under poverty and backwardness any more. The livelihoods and living styles of Ethiopian pastoralists should be altered altogether.⁶⁵

Zenawi also said, “[w]e have three million hectares of unutilized land. This land is not used by anybody. This land should be developed”.⁶⁶ The points underlined by these top politicians have been reflected, for example, in the Bio-fuel Strategy of Ethiopia which provides for the allocation of land for development of bio-diesel “in low and barren areas or marginal soils where rain fall is scarce ...”⁶⁷

This current invocation of the empty land discourse is not a novel development. As the history of Ethiopia shows, in the second half of 19th and early 20th centuries, the imperial government’s modernization project aimed to achieve the goal of nation-building was extended to the southern populations. This enabled the imperial state to bring vast ‘west lands’ under its dominion through conquest. The state took it as its mission to ‘improve’ these ‘empty lands’. The term ‘*tef meret*’ was used to suggest that the land being taken was unutilized while the notion of ‘*makenat*’ was used to mean that the unutilized land should be improved and the people therein be brought to the level of civilization under the guiding hands of the state. The use of such ‘othering’ words does not merely suggest that those areas are not populated, but that the areas are not populated with civilized people in the sense they are alien to sedentary mode of

⁶⁴ Ethiopia Builds 10 New Sugar Plants as It Aims to Become Leading Exporter, <<http://www.etsugar.gov.et/en/projects>> (accessed 27December, 2013).

⁶⁵ This he said on the occasion of the celebration of the 13th Pastoralists’ Day of Ethiopia on 25th of January 2011. “Livelihoods of Ethiopian Pastoralists: Threats and Opportunities”, (Feb. 2011): <http://www.waltainfo.com/index.php?option=com_content&task=view&id=25278&Itemid=82> (accessed 24September, 2011).

⁶⁶ Indo-Asian News Service (2011), “No Indian Land Grab Says Ethiopian PM.” <<http://farmlandgrab.org/post/view/18669>> (accessed 26 November, 2011)

⁶⁷ The Bio-fuel Development and Utilization Strategy of Ethiopia note 62, pp. 3 & 12.

cultivation, habit of building permanent dwelling houses and townships. As considered in Chapters 2 and 3, the imperial government's thinking that the land in these territories was unutilized and that the people had to be made to see the light of civilization was passed onto the Derg. In this sense, for the state the issue of land grab in the present day Ethiopia cannot arise because the state is simply transferring to investors land it acquired during the expansion area and received subsequent legalization.

Comments: The empty land discourse is unfounded. It arises out of lack of recognition of the customary land rights of communities. It also emanates from an understanding of the manner of land use from the perspective of settled agriculture, which requires private land enclosure. This is not idle land because it is being fallowed or being reserved for variety of uses including but not limited to grazing or medicinal ends. The existence of intense and frequent intertribal and ethnic conflicts over access to pasture and water points in the lowland areas of Ethiopia is evidence of the fact that the land deemed idle is not the case. Contrary to the claim of the Ethiopian State that it is transferring only lands that are idle,⁶⁸ studies on worldwide deals have “revealed that large tracts of land were already occupied by the local population before the land acquisitions took place.”⁶⁹

... with respect to all settlement classes (low, medium and high), around 26 % of the area within the land acquisition zones was already occupied by the local population and 24 % of this land showed signs of cultivation (low, medium and high). If these percentages are extrapolated to produce a national estimate, then 627,266 ha of already inhabited area and 579,014 ha of area that is cultivated by the local population are part of large-scale transnational land deals. Preliminary research by the Land Matrix Partnership has indicated that nearly 227 million ha have been part of transnational land deals since 2001. We can extrapolate these numbers to all land deals and therefore we estimate that approximately 59 million ha and 54.4 million ha for inhabited and cultivated areas, respectively, are threatened by the impacts of land transactions.⁷⁰

⁶⁸ Daniel Shepard (2011), “The Role of The International Finance Corporation in Promoting Agricultural Investment And Large-Scale Land Acquisitions”, Proceedings of the International Conference on Global Land Grabbing, Land Deal Politics Initiative; A. Wily (2010), “Whose Land Are You Giving Away, Mr. President?” Proceedings of the Annual World Bank Land Policy & Administration Conference, Washington DC.

⁶⁹ Land Matrix Partnership (2013), <www.landmatrix.org/get-the-detail/by-target-region/eastern-africa/?order-by>, (accessed 27December, 2013) and M.C. Rulli *et al* (2013), “Global Land and Water Grabbing”, PNAS Proceedings of the National Academy of Sciences of the United States of America, 110 (3), pp. 892-897.

⁷⁰ Franziska Albrecht *et al* note 10, p. 103-104; and also Oxfam International (2011), “Land and Power: The Growing Scandal Surrounding the new wave of Investments in Land” (Oxfam Briefing Paper).

As described in the previous chapter, the present regime's conception of lowlands dates back to the imperial times. In the southern parts of the country the imperial government expanded its state domain with this type of mentality. The lands not fenced-in and on which permanent huts were not constructed were deemed as unoccupied land belonging to the state. The same thinking was adopted by the successor of the imperial government, the Derg which used vast expanses of common land for state farms, resettlement and producers cooperatives without compensation. History shows that these lands especially in the southern regions belonged to communities and the communities still regard them as their own. Yet, the fact that the lands were taken in the

It should be noted that the real meaning of the empty land argument should not be mistaken for its literal meaning; lack of a predominately settled agriculture in the peripheries presupposes lack of improvement and more generally of modernization that should be attained through private land enclosures and building of towns, creation of concentrated population⁷¹

This dominant narrative pushed by the government bureaucracy in Ethiopia has not escaped the gaze of scholars. Fouad Makki and Charles Geisler characterize the consideration of the frontier territories as El Dorado by articulating the process of agricultural land transfers as a process of transforming an assumed “static pre-modernity and customary forms of property, production and exchange ... into the supposedly universal and dynamic forms of capitalist modernity.”⁷²

In sum, the official narrative of empty land hinges on a categorical dichotomy that low lands are either settled or unsettled; it does not recognize a possibility of an area being low or medium or high settlement. The land is identified as empty in the eye of the officials who rely on economic parameters and deficient technical process of identification of marginal land.⁷³ In the process, land that is the fountain of people’s livelihood is tagged ‘empty’ and their mode of life is shoved aside as pre-modern and static.

iii. The regulatory approach: turning empty lands into beneficial sites?

What it means: Regulatory approach means legal, constitutional and institutional frameworks are claimed to be put in place by the government in order to deliver benefits from lands transferred to investors. This means ‘empty land’ is being leased out to investors in accordance with legal and institutional settings to generate jobs, build social and physical

expansion area and later declared by state law and policy as part and parcel of the state domain does not in the eye of these communities undo the initial acts of land grab or their initial claim over it.

⁷¹ See Patrick McAuslan, note 35; Joseph William Singer (2011), “Original Acquisition of Property: From Conquest and Possession to Democracy and Equal Opportunity”, *Indiana Law Journal*, 86:1 pp. 16-17; Moor, Thomas (1516), *Utopia with Erasmus’s The Sileni of Alcibiades*, (David Wootton, ed. and trans.) (Hackett Publishing Company) expressed the enclosure movement Britain in his book Utopia famously as ‘sheep eating men’. In some ways, this modernization of the frontiers through enclosures is similar to the British enclosure movement that hastened the birth of capitalism as it can also be likened to the enclosures of the lands of the indigenous communities in the United States of America.

⁷² F. Makki and C. Geisler (2011), “Development by Dispossession: Land Grabbing as New Enclosures in Contemporary Ethiopia”, (International Conference on Land Grabbing, Land Deals Politics Initiative) pp. 16-17. Also see Fouad Makki (2014), “Development by Dispossession: Terra Nullius and the Socio-Ecology of New Enclosures in Ethiopia” *Rural Sociology*, 79:1, pp.1-25.

⁷³ S. Borass *et al* (2011), “The Politics of Agrofuels and Megaland and Water Deals: Insights from the ProCana Case, Mozambique”, *Review of African Political Economy*, 38:128, pp. 215-234; Mengistu Assefa, note 62,

infrastructure, and earn foreign currency and transfer technology beneficial to the local population and beyond.⁷⁴ Thus, land deals are being done,

... on the basis of a clearly set out lease arrangement. That is a win-win arrangement. It is not a land grab. And, therefore, we are very comfortable with the fact that we have put in place all the necessary guidelines, environmental and otherwise, to make sure that everyone benefits from this exercise...these agreements that we are signing with Indians as well as other foreign companies are precisely designed to make sure that everybody benefits ... we have a constitutional order here. The constitution clearly states you do not disempower; you do not grab property from anybody. There is a rule of law here and it is firmly entrenched in our system...⁷⁵

The quote echoes the regulatory approach which as explained in Chapter 9 is also followed by international institutions such as the WB and the USAID, who claim that win-win outcomes are guaranteed provided shortfalls in land regulatory capabilities in poor nations such as Ethiopia are addressed.

Comments: However, researches conducted on Ethiopia's present transfers of land for large-scale farming indicate that government authorities have pushed small farmers and agro-pastoralists off their lands with no or little compensation, without consultation and participation in the name of beneficial development that has not yet started to materialize.⁷⁶ Nor is there a reason to believe it is likely to materialize in the absence of adequate institutional and of legal mechanisms to ensure the realization of the objectives set by the government as the following observations indicate.

Weak land laws: Land laws favor the state. As shown in Chapter 3, the 1975 Rural Lands Proclamation was proclaimed to end the exploitative feudal land relations in the country. Ironically, that very law meant to give land to the tiller enabled the Derg to have control over agricultural land. The same chapter showed that this land policy together with subsequent policy and legislative pronouncements allowed the Derg to continue taking land from the people as it pleased for its collectivist projects.⁷⁷ As explained in Chapters 4 and 7, at present, legislative

⁷⁴ The late Zenawi said,

Once people begin to see the results of the investments in terms of job creation, availability of foreign exchange, availability of various agricultural products in our markets and so on, they will see the benefits for themselves and it will be completely irrational for them [his critics] to try to shoot themselves on the foot. And so the benefit of the investment, in my view, will be its ultimate protection....

For this see, Keffyalew Gebremedhin, note 63.

⁷⁵ *Ibid.*

⁷⁶ Dessalegn Rahmato note 89.

⁷⁷ In the bid to eliminate any competing force in the governance of rural land, the 1975 Rural Lands Proclamation invalidated customary land tenures. Thus, real control over private and communal land did not pass on to the people. It was rather retained in the hands of the central government but in the name of a new rhetoric of people's ownership of land held in trusteeship, a rhetoric different in form from the earlier myth of the emperor's

rendition of the provisions of the Constitution in such a way that the balance of power over land matters tips towards the executive authorities and historical power governments in Ethiopia have had over land created conducive situation for allocations of land to large-scale agricultural investors to the detriment of small holders and agro-pastoralists. This is despite the fact the Constitution envisages the development of large scale-commercial agriculture without jeopardizing the interests of two other classes of land users, namely peasants and agro-pastoralists; federal and regional laws have been passed to give prominence to the government's power to allocate land to commercial farmers. Moreover, as discussed in Chapter 5, the 2005 Expropriation Proclamation allows government authorities to take land from people for public purpose which is defined loosely to mean any state activity deemed to serve the public purpose.⁷⁸ The constitutionality of these laws cannot be contested.⁷⁹

Re-centralization: As Annex IV indicates, large-scale agricultural land transfers are accompanied by re-centralization of land allocation, and investment incentives and institutional schemes in favor of investors to 'ensure speedy investment'. In other words, matters related to large-scale agricultural investment are handled by the Federal Government including land allocation and provision of incentives. One might positively view centralized land allocation as contributing to speedy delivery of land to investors through assumed reduction of investment entry cost.⁸⁰ The same can be said about the effect of centralized agricultural investment in general. In terms of finance, investors can raise seventy percent of their capital through bank loan especially those investors having export in mind.⁸¹

Investment laws aimed to "accelerate the economic development of the country"⁸² encourage investment in commercial agriculture because the investment regime offers host of

dominion over land. In the 1975 Rural Lands Proclamation, small holders and pastoralists were presented as having control over the fruits of the land. In the context of southern Ethiopia, the effect of the rural land law reform of 1975 aided the state to keep on retaining control over the land grabbed by the imperial expansionist projects of the late 19th and early 20th centuries.

⁷⁸ See Chapters 5, Section A (i).

⁷⁹ See Chapter 8.

⁸⁰ The Federal Government took over allocation of 1,000 and more hectares of land from the regions claiming to avoid corruption and rent seeking by the late Zenawi who reported to the Parliament in 2011.

⁸¹ Essayas Kebede, Director of Agriculture Investment Directorate, in interview with Reuters, "Ethiopia sets aside Land for Foreign Investors" on July 30, 2009 said that -, commercial farm "investors who qualify have the opportunity to receive loans from local banks up to 70 percent of their capital investment as well as attractive incentives and tax holidays."

⁸² The Investment Proclamation, 2002, the Preamble.

other incentives such as exemption from income,⁸³ profit taxes from two to eight years, carry forward losses, remittance of funds and duty free importation of motor vehicles necessary for agricultural production and streamlined and one-stop shop investment services at no cost to investors.⁸⁴ The income and profit tax exemptions are based on “the more you export the longer duration of your incentives” principle. In fact, an investor who supplies their products only to domestic market may not get exemption from income tax.⁸⁵

This centralized allocation of land is nevertheless in the face of division of authority over land under the Constitution where the Federal Government is to “enact laws for the utilization of land”⁸⁶ while the regional states are to “administer land.”⁸⁷ This division of power over land matters is seen as allowing the regional states, among others, to transfer land to corporate farmers because doing so is an act of land administration. But the large amount of land so far transferred has been and being handled centrally by the Federal Government through its Ministry of Agriculture that has obtained legislative mandate pursuant to which regional states are required to identify land for large-scale agriculture and hand over to it that would in turn put the land in its bank to lease it out to investors in the name of the concerned regional state. In this way, the Ministry of Agriculture has acquired more than 3 million hectares of land awaiting transfer to investors.⁸⁸ The arrangement together with other aspects of investment in agriculture made supposedly to speed up investment in this sector has raised the issues of whether this arrangement is undermining local people’s consultation and participation in the land delivery process and more broadly the self-governance rights of regional states as encapsulated in Article 39 of the Constitution.

⁸³ Investment Incentives Regulations No. 146, 2008, Art. 2.

⁸⁴ The Ethiopian Investment Board Directive No. 3, 2011, Art. 5; see also Ethiopian Investment Board Directive issued in May 2011 allowing investors to import motor vehicles necessary for the upgrading or expansion of existing investment in agriculture.

⁸⁵ Regulations No. 146, Art. (2)(5) note 83; the Investment Proclamation note 82, Art. 24 (on one-stop-shop), Art. 20 (on remittance of funds), and Art. 23 (which puts decisions virtually over all significant investment matters which include incentives and licensing issues in the hands of the Federal Investment Agency) and the Investment Proclamation No. 373/2003 has greatly simplified investment entry requirements.

⁸⁶ The Constitution, Art. (51 (5)).

⁸⁷ *Id.*, Art. 52 (2/d).

⁸⁸ Fieldwork data gathered for this thesis in July 2013.

Initial impact: Preliminary research findings indicate that Ethiopia is not in a position to get benefits anticipated from large-scale agricultural investments.⁸⁹ In its 2011 research report, the WB documents the state's use of expropriation extensively to provide land to investors would undermine the legitimacy and neutrality of the state and rendering peasants landless in some situations thereby undermining the livelihood of those from whom land is being expropriated.⁹⁰

As discussed in Chapter 5, compensation is paid for the property on the land, not for the land, and that “investors get incentives in the form of land and water almost for free, which encourages rent-seeking behaviors, non-viable projects and amounts to a regressive subsidy by the poor to the rich.”⁹¹ In the land transfer process, there were “serious weaknesses in institutional capacity and management of land information contributing to rivalries among institutions with overlapping responsibilities, an air of secrecy, deficient processes for local consultations, unclear boundary demarcations.”⁹² The Bank has taken note of low level of and inadequate actual demarcation of protected areas such as forest lands and weak capacity to accomplish the task and weak land rights of the local people as the central dangers posed by this upsurge of investment in lands.⁹³ And government authorities in some cases inform local people about planned projects or in some other cases they do not inform them at all, but it is mere *post facto* relay of information, but not consultation with and participation of local people in land deals.

⁸⁹ Dessalegn Rahmato (2011), “Land to Investors: Large-Scale Land Transfers in Ethiopia” (Forum for Social Studies, Addis Ababa). Dessalegn says the state has deployed its hegemonic power over land to dispossess lands from peasants and pastoralists and transfer the same to investors; the land deals are done with no or little safeguards and government institutions do not have capacity to enforce even the limited contractual commitments assumed by investors and he concludes that the country's anticipated benefits from promoting large-scale investments in agriculture have not been met nor are likely to be met. *Id.*, p. 28. Other institutions have strengthened the WB's findings that the ongoing corporate farming poses a threat to livelihood of communities through loss of land rights, absence of consultation and participation of local people and lack of project monitoring capabilities of government administration.⁸⁹ See Maru Shete (2011), “Implications of land deals to livelihood security and natural resource management in Benshanguel Gumuz Regional State, Ethiopia” International Conference on Global Land Grabbing, LDPI pp. 17-18; K. Deininger and D. Byerlee, note 3, p. 57.

⁹⁰ K. Deininger and D. Byerlee, note 3, pp. 104-105 & 108.

⁹¹ *Id.*, p. 109. The concerned people are not given compensation for land which arises from the fact that their customary land rights are not recognized by the authorities who think that the lands being handed over to investors are either ‘unutilized or underutilized’, a characterization of land which forecloses payment of compensation.

⁹² *Ibid.* The lands transferred to investors are not demarcated properly, allowing the investors to encroach upon ‘communal lands.’ *Id.*, p. 121.

⁹³ *Id.*, pp. 70-71 and 92-93.

The WB, for example, has found out that “many investment projects make vague mention of the intended use of the land, the value of the investment and the type of production.”⁹⁴ In one region, “only a limited number of projects used the land as intended, others either used the land for other purposes such as forest clearing and even leasing it out to peasants.”⁹⁵ As the WB reckons, “a mere 30 percent of agricultural investment projects are in initial implementation phase.”⁹⁶ The promised net investments were ‘very low.’⁹⁷ It has stated that the “expected job creation is limited with an average of 0.005/ha for cases where figures are given.”⁹⁸

Further, it appears that the project of large-scale farming is already triggering conflict in the lowland areas especially in the Gambella Regional State which has so far supplied land to nearly 900 agricultural investors. On top of straining relations between settlers from Highland Ethiopia and local people, armed groups have recently killed and wounded several farm workers including expatriates.⁹⁹

There is also a concern that the ongoing agricultural investments could aggravate the country’s perennial chronic food insecurity. This is due to the fact that investors are not required to supply their produce to the domestic markets which is clear from the unqualified acceptance of market led agriculture in the country’s rural development policy which embodies the belief that if investors find the domestic market more profitable they will sell their food produce in this market and if they find the international market more profitable they will import such food products. Top government officials have said that agricultural investors are entitled to sell where it is profitable and that the main aim is to increase the income of the people so that they can buy food in the market.¹⁰⁰ For instance, Abera Deressa, former State Minister of Agriculture, said:

⁹⁴ *Id.*, p. 60.

⁹⁵ *Id.*, p. 118, the Bank puts the government’s power to cancel non-performing projects in a positive note but this can undermine the confidence of investors.

⁹⁶ *Id.*, p. 224.

⁹⁷ *Id.*, p. xxxii.

⁹⁸ *Id.*, p. 64.

⁹⁹ The Ethiopian Reporter, “Five Saudi Star Workers Killed in Gambella”, <<http://www.ethiopianreporter.com/news/293-news/6168-2012-05-02-06-50-57.html>>, May 2, 2012); scale farming might escalate rebel movements as the five regions namely, Afar, Oromia, Somalia, Gambella and Benishangul are sites of rebel movements who claim they are struggling for liberation of their respective region from Ethiopia.

¹⁰⁰ William Davison (2010), “Ethiopia Plans to Rent Out Belgium-Sized Land Area to Produce Cash Crops”, <<http://www.bloomberg.com/news/2010-10-26/ethiopia-plans-to-rent-out-belgium-sized-land-area-to-produce-cash-crops.html>>, Bloomberg, October 26, 2010 (accessed 8 November, 2011).

“If we get money, we can buy food anywhere... Then we can solve the food problem.”¹⁰¹ Thus, it seems that there is neither law nor contractual commitments which require investors to produce for the domestic food market. This is evident from the factors that have driven corporate farming in the first place: invest in land abroad to meet the food and energy security of the investors` home countries. It is said that “The idea that one country would go to another country... and lease some land, and expect that the rice produced there would be made available to them if there’s a food crisis in that host country, is ludicrous.”¹⁰²

Furthermore, a number of circles have voiced that the government is undertaking intra-state village clustering programs (which as of the end of December 2013 involved 275,000 households (i.e., 1.5 million people) out of the planned 360, 000 households¹⁰³) in the lowland areas in order to release land for corporate farming.¹⁰⁴ The USAID, which is not opposed to commercial agriculture and even village clustering itself, has yet expressed concern about the process of village clustering when Thomas Staal, former USAID/Ethiopia Director, said,

But, for us, it is very important that there is real consultation with them and there is an understanding of their needs and trying to move them forward at a pace that not only moves them but also understands their concerns and needs... Our real concerns are more in planning, preparation, and environmental awareness, as well as the mitigation aspects of it and the actual rolling out of the project. However, it needs to be done in a way that looks at the environment, looks at the infrastructure, and looks at the impact on the local people.¹⁰⁵

Village clustering in the lowland areas is accompanied by land dispossession and is linked to large-scale agricultural land transfers as suggested by (a) a complaint filed on behalf of people in Gambella with the WB Inspection Board; (b) a bill passed by the US Congress which prohibits

¹⁰¹ *Ibid.*

¹⁰² Andrew Rice (2009), “Is There Such a Thing as Agro-Imperialism?” <<http://www.nytimes.com/2009/11/22/magazine/22land-t.html?ntemail0=y&emc=tnt&pagewanted=all>>, November 16, 2009 (accessed 10December, 2011)

¹⁰³ As fieldwork data gathered in Addis Ababa in December 2013 show, these households are drawn from four regions that enjoy special assistance under the Federal Special Assistance Board namely, Afar, Somali, Gambella and Beni-Shangul regional states.

¹⁰⁴ The state rejects the accusation by international human rights groups that the ongoing villagization program has connection with the transfer of land to corporate farmers, arguing instead it is a voluntary `village clustering` for the purpose of providing the hitherto scattered villages infrastructure and social services; members of clustered villages are given up to 5 hectares of fertile land, for free, which is thought to be sufficient for their livelihood on the top of provision of land for house construction, community services and as well as for grazing purpose and with extension services and inputs so that they are able to use the land in a productive manner.

¹⁰⁵ Thomas Staal, former USAID/Ethiopia Director said there was no link between moving people in the lowland areas and releasing land for corporate farming.

In Gambella and Benishangul-Gumuz, my staff has had a number of trips out there. We and many donors have concerns about the development aspects there. But, we have not seen any evidence of human rights abuses, and we have not seen evidence of a link between moving people to make way for large-scale commercial agriculture. <<http://www.addisfortune.net/interview-Where%20Mission%20Man%20Goes%20Missionary.htm>> (accessed 13September, 2013).

US aid from being utilized in connection with government programs linked to land dispossessions; and (c) court proceedings by an Ethiopian farmer against the UK government over resettlement project seeking a ruling that the UK “acted unlawfully by providing aid to Ethiopia without assessing its human rights record” and thus the aid has contributed to the dispossession of land from him and thousands of fellow villagers from Gambella region.¹⁰⁶

Finally, the WB’s report discussed above has mentioned the fact that the legal mandate to require environmental impact assessment has been transferred to an authority without capacity and with conflicting interest.¹⁰⁷

In sum, an early assessment of Ethiopia’s large-scale investment in agriculture shows, No limits on water use, no Environmental Impact Assessments..., and no environmental controls. Displacement from farmland is widespread, and the vast majority of locals receive no compensation. There are large discrepancies between publicly stated positions, laws, policies and procedures and what is actually happening on the ground. There is no meaningful pre-project assessment, and little in the way of local benefits associated with these land investments... Commercial investment will increase rates of food insecurity in the vicinity of land investments.¹⁰⁸

Too early to judge? The government argues that it is too early to declare large farm projects a failure in terms of the anticipated benefits such as infrastructure and expansion of social services. Essayas Kebede, former Director of Agriculture Investment Directorate and now State Minister of Agriculture, says “Developing farmland doesn't happen overnight.”¹⁰⁹

It might be too early to assess the performance of large-scale farm projects in terms of impacts such as job creation, foreign currency earnings and harm to the environmental. But it is not too early to assess their impacts in terms of loss of livelihood resources such as land, forest and water tenures. This is because access to these rights is more often than not lost at the moment of their hand-over to agri-investors and their impacts could be felt immediately thereafter. Informants thus describe the negatives effects on their livelihood of land dispossession.¹¹⁰

¹⁰⁶ Ian Birrell, “Ethiopian Accuses UK over Support for Brutal Government in Addis”, Daily Mail, March 30, 2014 and David Smith, The UK Guardian, July 6, 2014.

¹⁰⁷ K. Deininger and D. Byerlee, note 3, p. 122.

¹⁰⁸ Felix Horne, note 17, p. 7.

¹⁰⁹ Ludger Schadomsky (2011), “Land grabbing in Ethiopia - foreign investors and famine”, Deutsche Welle, <<http://www.dw-world.de/dw/article/0,15351878,00.html?maca=en-rss-en-world-4025-rdf>> August 31, 2011) (accessed 21 November, 2011).

¹¹⁰ A farmer said, “I have two cows. I do not have a grazing land. I feed the cows at home. Grazing land is almost gone.” Interview 01 with a farmer, 12 September, 2012. A landless informant spoke about a common resource that is lost. “I used to have many cattle that used to graze on the common pasture. I do not have cattle any longer. I used to get firewood from the forest there. Now the forest has become farmland. The land is stolen. A thief does not come from afar. He steals with the cooperation of those who are among us.” Interview 21 with landless

In addition, the government nevertheless admits the existence of deficits in institutional capacity to regulate these large farms. To this end, it has currently ‘cooled down’ the pace of agricultural land transfers in order to “evaluate the performance of already transferred lands and reorganize itself.”¹¹¹ This ‘moratorium’ is expected to lead to, as the government did on some occasions in the past, cancellation of non-performing land lease contracts.¹¹² The government explains the moratorium in terms of lack of human and organizational capacity and the need to revisit allocation of land without taking investor capabilities into account. The suggested solution is the establishment of agricultural economic zones and institutional rearrangement which is yet to materialize.¹¹³

It appears that the question of limited capacity cannot satisfactorily explain for the prevalence of mere fencing of land acquired for investment. First, the reasons offered for the so called moratorium contradict with the government’s position that acquisitions of land for large-scale agriculture are taking place in the context of proper legal and institutional frameworks. Second, the concept of ‘virtual land grabbing’ as opposed to ‘real land grabbing’ can better explain the situation. The former refers to taking land for a purpose other than developing the land, chiefly to take incentives, bank loans, raise the share price of a company, logging and speculative purposes, which is unlawful under the contract they sign with the government.¹¹⁴ Taking land to ‘abuse’ or ‘improperly use’ investment incentives or engage in ‘rent seeking or speculative land trade’, to use official expressions, has been rampant in hotel and real estate

farmer, 18September, 2012. And it was said, “In the past, we had wide land and many children. Now the land is less and the cattle are finished. There is no milk now. There are no good cattle, there is no grazing land. When we had grazing land one milk cow was enough for me and my neighbours, [the cow] was eating well and it was enough...” Kathleen Guillozet, note 51, p. 46.

¹¹¹ Wudineh Zenebe (2012), “The Ministry of Agriculture puts Moratorium on Transfers of Land to Re-assess itself,” the Ethiopian Reporter, March 14, 2012.

¹¹² For example, the Beni-Shangul Gumz regional state reported in 2012 that it was considering taking legal action against at least 50% of about 2000 large scale agricultural investors who are not developing the land, some simply fencing it in and others underperforming, The Ethiopian Reporter, “Benishangul Gumuz unhappy over investment implementation” <<http://www.thereporterethiopia.com/News/benishangul-gumuz-unhappy-over-investment-implementation.html>>, June 6, 2012 (accessed 20 August, 2013).

¹¹³ Ethiopia established Agricultural Investment Agency in 2013 and set up agricultural investment zones for this end.

¹¹⁴ During fieldwork done for this thesis in September 2012, it was learnt that the Southern Regional State cancelled numerous non-performing agricultural investment projects. For a similar development in Indonesia, see John F. McCarthy *et al* (2012), “Trajectories of Land Acquisition and Enclosure: Development Schemes, Virtual Land Grabs, and Green Acquisitions in Indonesia’s Outer Islands”, *The Journal of Peasant Studies*, 39:2, pp. 521-549.

investment sectors which in some cases have led to cancellation of lease contracts and imposition of hefty fines.¹¹⁵

In summary, the service of the state is increasingly made at the disposal of investors as if Ethiopia's revolutionary slogan 'land to tillers' was changed into 'land to investors'.¹¹⁶ In writing about adverse effects of commercial farming on the Afar who inhabit in the eastern part of Ethiopia, Lars Bondestam said that "the introduction of cash crop agriculture was made possible by removing the indigenous people from their land, thereby undermining their living conditions."¹¹⁷ And others dubbed the process as converting the people into "wage labourer pastoralists."¹¹⁸ Bondestam consequently advised the state "to stop the growth of commercial farming along the Awash Valley, and to concentrate on the continued survival of those Ethiopians who are still alive."¹¹⁹ This imperial policy of land expropriation has continued unabated and in an expanded way to date resulting in pervasive land dispossession and tenure insecurity.¹²⁰

D. Investors

As indicated in the previous section, in Ethiopia, large-scale agricultural investors are heterogeneous. Some domestic investors have affiliation with local elders; others are state owned enterprises with a considerable leverage on the local population as they throw the full force of the state behind land acquisition. Still others are outsiders to the local population with little connection with local population.

While the domestic investors invoke state land and investment laws, agreements they sign and the influence of elders as the case may be, foreign investors in addition rely on bilateral investment treaties (BITs). BITs are,

characterized by unequal bargain between signatory states, resulting in terms that are more favourable to foreign investors than poor host countries and their impoverished population ... Accordingly, foreign investors are mostly protected against the domestic regulatory power of host countries having a BIT protection against local content

¹¹⁵ This refers to the 2011 crackdown on what the government called 'rent seekers'.

¹¹⁶ For analysis of current trends in Ethiopia regarding transfer of rural land, including communal resources, to investors, see Dessalegn Rahmato, note 89.

¹¹⁷ Lars Bondestam (1974), "People and Capitalism in the North-Eastern Lowlands of Ethiopia" *Journal of Modern African Studies*, 12:3, p. 439.

¹¹⁸ Ayele Gebre-Mariam (1994), "The Alienation of Land Rights Among the Afar in Ethiopia," *Nomadic Peoples*, 34:35, p. 144.

¹¹⁹ *Ibid.*

¹²⁰ Bekele Hundie and Martina Padmanabhan (2008), "The Transformation of the Afar Commons in Ethiopia", CAPRI Working Paper NO. 87, pp. 24-5.

requirement, local employment requirement, local supply requirement, restrictions on free repatriation of profit....¹²¹

Ethiopia has so far signed BITs with 29 countries.¹²² The analysis of these agreements reveals greater protection afforded to foreign investors as embodied in the narrower construction of public purpose in favor of foreign investors as indicated in Chapter 5 and the adoption of property rights friendly standard for compensation in the case of expropriation.¹²³

Agricultural investors have some common arguments. First, they say they have acquired land in accordance with the law to generate jobs and foreign currency and develop social and physical infrastructure to local people. Their argument based on provision of local infrastructure has been rightly called ‘solicitude.’¹²⁴ Second, they say they aim at ‘feeding the future’ by ‘closing yield gap’ (estimated to be between 70 and 75 %) in the small holder production that is structurally unable to bridge it in the foreseeable future.¹²⁵ Third, some investors say they face hostility from the local population and are victims of vandalism despite the fact that their land lease contracts require the government to “protect the right of the lessee to the peaceful possession of, use and quite enjoyment thereof... against any riot, disturbance or any turbulent time.”¹²⁶

E. Local people`s narrative

The term ‘local people’ refers to three categories of people: traditional chiefs, the common people and *mete* (new comer). The first two are indigenous while the third are settlers. It is a mistake to present local people as one homogenous unit all opposing in unanimity with the ongoing large-scale land transfers. For instance, recent case studies in Afar and Gambella regions show that traditional chiefs especially those who have been co-opted by the state and investors support agricultural development projects; similarly, new comers have endorsed the projects tending to see some form of employment opportunities while resistance comes from

¹²¹ Olivier De Schutter (2011), “The Green Rush: The Global Race for Farmland and the Rights of Land Users”, *Harvard International Law Journal* 52:2, pp. 504ff; W. Anseeuw *et al*, note 7.

¹²² Fantu Faris *et al* (2014), “Questioning the Regulatory Approach to Large-scale Agricultural Land Transfers in Ethiopia: A Legal Pluralistic Perspective”, *The Law and Development Review*

¹²³ Martha Belete (2013), “Standard of Compensation for Expropriation and/or Nationalization of Foreign Investment in Ethiopia”, *Journal of Ethiopian Law*, 27:2.

¹²⁴ David Nally (2014), “Governing Precarious Lives: Land Grabs, Geopolitics, and ‘Food Security,’” *The Geographical Journal*, p 7.

¹²⁵ *Id.*, p. 5-6.

¹²⁶ This is required by Article 6 (6) of Model Land Lease Agreement prepared by the Ministry of Agriculture of Ethiopia (Unpublished, on file with the author).

the common people who are being affected more than the other groups.¹²⁷ The response of the people to large-scale agricultural investments briefly documented below relates to that of the common local people.

Some claim that the voice of local common people is conspicuously absent in the contested development narrative of the government in relation to large-scale rural land transfers. They say what is being heard is the voices of other players such as international institutions and rights advocacy groups and scholars that claim to speak on behalf of the people.¹²⁸ It is correct if this means lack of formally organized contestation of the development conception that underlies large farm land transfers. It is, however, a mistake if lack of people's public contestation of large-scale farming is taken for a complete absence of expressions of contestation as there are informal resistances against the empty land narrative by articulating land as a livelihood and cultural asset. This means people have challenged the government's approach to communal land and landed resources, though not in a systematic and sustained manner.

The popular attack against the government's approach to land transfers ranges from petitioning to higher government echelons to vandalizing projects carried out on their land resources without their blessing.¹²⁹ The following acts are expressions on the part of the people

¹²⁷ Philipp Baumgartner *et al*, note 16, p. 29.

¹²⁸ Jon Abbink (2012), "Dam Controversies: Contested Governance and Developmental Discourse on the Ethiopian Omo River Dam," *Social Anthropology*, 20:2, pp. 125-144.

¹²⁹ Nobuko Nishizaki (2004), "Revisiting Imposed Wildlife Conservation: Arssi Oromo and the Senkelle Swayne's Hartebeest Sanctuary, Ethiopia", *African Study Monographs*, 25:2, p. 74. For other forms of resistance, see Fekade Azeze (2002), "Mengistulore: Oral Literatures Depicting the Man, His Regime, Officials and Proclamations" in Bahru Zewde (ed.), *Ethiopia, the Challenges of Democracy from Below*, (Uppsala: Nordiska Afrikainstitutet).

On the underlying nature of contestation, see Michel Foucault (2009), *Security, Territory, Population: Lectures at the College De France 1977-1978* (Ed. Michel Senellart and Trans by Graham Burchell) (Palgrave Macmillan). The state presents its existing policies as incontestable in a public forum. For this see, J. Abbink note 128, Chapter 8; and Christopher Clapham (2006), "Ethiopian Development: The Politics of Emulation", *Commonwealth & Comparative Politics*, 44:1. Incontestability of government policies and practices generally and those related to land specifically is manifested via official utterances and policies which are portrayed variously as 'golden' or 'best' or 'without other alternative' or 'the only correct scientific and proven path' or embodying 'authentic public interest'. The Renewal Path and Ethiopian Renaissance (2011), (hereafter the Renewal Path) (Addis Ababa: EPRDF) p. 107. Another way of trying to maintain these policies and practices untouched is enactment of restrictive statutes especially after the 2005 election regarding the media, political parties, civil societies and charities and anti-terrorism. Anti-terrorism Proclamation No. 652, 2009 and Charities and Societies Proclamation No. 621, 2009. For comments on these laws, see Assefa Fiseha (2012), Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet (abbreviated as Ethiopia's Experiment), *Regional and Federal Studies*, 22:2; Sisay Alemahu Yeshanew (2012), CSO Law in Ethiopia: Considering its Constraints and

that the projects carried out on the expropriated commons are illegitimate.¹³⁰ The foundation of these acts of resistance lies in the claim that the land “unofficially belongs to the people.”¹³¹

First, the people reject the government’s empty land narrative arguing that such narrative including the associated underutilization argument is an incorrect assessment by outsiders of the productivity of land. Such so called empty land is in fact being used by people in a way compatible with their mode of life. For the affected people, the claimed empty land being alienated is a source of their livelihoods.¹³² In particular, the people use the claimed empty land in common for grazing, fire wood, forage, thatches for construction of huts, honey collection and generally to obtain significant amount of their food necessities in addition to the use of such spots for social, religious and cultural festivities. They also use these lands and natural resources to distribute them to those who come of age.

Hence, the local population sees communal lands as belonging to them, as an intrinsic part of each of the member’s private landholding. A local man said, “There is no empty land in

Consequences, *Journal of Civil Society*, 8:4; and Gedion T Hessebon (2013), “The Precarious Future of the Ethiopian Constitution”, *Journal of African Law*, 57:2.

There are specific practices which tend to criminalize demands for rights dubbing them as *lemat madenakef* (literally means obstruction of development) but it is a term that inspires fear since the conduct so designated is ‘anti-development’. For instance, in the Sidama area, local officials use this characterization in respect of expropriation. In the words of an informant, “when people demand advance compensation during expropriation, local officials intimidate them with *lemat madenakef*, which means ‘you are anti-development and you will be locked up if you persist in your demands’. Interview 26 with a member of a rural land administration and use committee, September 19, 2012.

The country’s recent past offers a further illustration: the Derg (who adopted the guiding philosophy of ‘Ethiopia Tikdem’ (literally, Ethiopia First) but connotes ‘priority of the common good over individual interests’) took no time to criminalize those with a different voice. A military court was set up to try those who would conspire against the motto ‘Ethiopia Tikdem’ by engaging in any strike, holding unauthorized demonstration or assembly or engaging in any act that might disturb public peace and security. See Art. 3 (1 & 2) of Special Courts Establishment Proclamation No. 7, 1974 and Arts. 7-9 of the Provisional Military Government Proclamation No. 1, 1974.

On the incontestability of the official stance on land policy, even if the ideas behind such ideologies were natural, one would join with Gilbert Rist who observes, “...it is never right to claim that what is true in the natural order is also true in the social order.” Gilbert Rist (2011), *The Delusions of Economics* (hereafter *Delusions*), (London: Zed Books) p. 152. Other scholars have critiqued claims of this sort whose foundation lies in the supposed discovery of ‘the true public interest’. Joseph Schumpeter (1950), *Capitalism, Socialism and Democracy* (3rd ed.) (New York: HarperCollins Publisher).

¹³⁰ Ayele Gebre-Mariam, note 118; see also Fecadu Gadamu (1994), “The Post-Revolutionary Rethinking of Arid Land Policy in Ethiopia”, *Nomadic Peoples*, 34:35, p. 69.

¹³¹ Till Stellmacher and Peter Mollinga note 47, p. 61.

¹³² FAO (2010), “Africa’s Changing Landscape: Securing Land Access for the Rural Poor”, p. 5, <www.fao.org/docrep/012e/a1209e00.pdf>, (accessed 30December, 2013) says as “Evidence ... reveals land allocated to investors in Beni-Shangul Gumz and Afar region was previously being used for shifting cultivation and dry season grazing.”

Gambella without a history...’’¹³³ And an elderly man in the Somali regional state, when asked to be part of the government’s program of village clustering, which entails change of his mode of life into a sedentary farming said, ‘‘we the Somalis are not condemned to dig land and our land is also not created for digging.’’¹³⁴ He added even highlanders who have been ‘‘digging land for centuries are unable to ensure their food security’’ to suggest that sedentary agriculture and food security do not necessarily have positive correlation and pastoral life style can also bring about food security.¹³⁵ Assemaro Legesse puts the attitude of Borana pastoralists in South Eastern Ethiopia towards enclosure and tilling as ‘‘nothing but contempt for those who stoop to till the soil.’’¹³⁶ An indigenous man from the Gambella said:

All of the land in the Gambella region is utilized. Each community has and looks after its own territory and the rivers and farmlands within it. It is a myth propagated by the government and investors to say that there is wasteland or land that is unutilized in Gambella...¹³⁷

Second, for the people land transcends economic value; it is embedded in their culture. In stating that land is rooted in people’s culture, a local man says,

There is a fear that there will be no more culture within the pastoralist area... We’re going to lose our culture and there will be nothing remaining for the next generation. I’m afraid this life may only be a story that we can tell our children.¹³⁸

As a cultural asset, for them, no one including the community itself, let alone the central government, has the mandate to alienate land. It is stated to this effect by a member of an affected community in the south-western Ethiopia that if villagers are being bribed to sell land, they: ‘‘...can’t sell the land, it’s not theirs. That land is ancestral land.’’¹³⁹ The Oromo sing the following verses in praise of the Earth:

Oh Earth, mother of grass,
under you is water,
on top of you is grain,
we dig and eat on you,
we raise cattle and lead them out
to the pasture on you,
you carry us on your back,
Please, give us your peace!¹⁴⁰

¹³³ Ed Butler, ‘‘Land Grab Fears for Ethiopian Rural Communities’’, *BBC News*, December 16, 2010.

¹³⁴ As quoted in Kabtamu Niguse (2012), ‘‘Land Tenure and Tenure Security among Somali Pastoralists: Within the Contexts of Dual Tenure Systems’’, (LL.M Thesis, Bahir Dar University, Ethiopia, Unpublished, on file with the author) p. 93.

¹³⁵ *Ibid.*

¹³⁶ Asmarom Legesse (1973), *Gada: Three Approaches to the Study of African Society* (New York: The Free Press) p. 17.

¹³⁷ Guardian, UK, ‘‘How Food and Water are Driving a 21st-century African Land Grab’’, March 7, 2010)

¹³⁸ Ed Butler note 133.

¹³⁹ *Ibid.*

¹⁴⁰ As quoted in Mellese Damtie note 52, p 167.

Parker Shipton puts the matter as,

... people seek in land not just material satisfaction but also power, wealth, and meaning-their aims can be political, economic, and cultural ... people relate to land not just as individuals, but also as members of groups, networks, and categories... Despite what economic development planners may think and hope, land is seldom if ever just a commodity.¹⁴¹

Third, they reject the manner in which lands are taken away from them for agricultural investment and the attendant effect. An affected local man from Gambella region stated:

All the land round my family village has been taken over and is being cleared. People now have to work for an Indian company. Their land has been compulsorily taken and they have been given no compensation. People cannot believe what is happening. Thousands of people will be affected and people will go hungry. The foreign companies are arriving in large numbers, depriving people of land they have used for centuries. There is no consultation with the indigenous population. The deals are done secretly. The only thing the local people see is people coming with lots of tractors to invade their lands.¹⁴²

A farmer told the VOA that: “We are for development of our country, but we cannot develop our country when land is in the hands of the government... You can work on your land, and all of a sudden, they push you out of your land.”¹⁴³ This story by the people is contrary to the late Zenawi’s statement of assurance: “We are making sure that the Gambela people are settled and have land and that young people can go to farms not as guards but as farmers.”¹⁴⁴ A frustrated local man said,

What power do we have to stop them? We just stay silent. They are cutting down our bush and forest, and bulldozing our garden then they want us to sell off all our cows. No one is going to sell their cattle. They should go away. They should leave our forest alone and leave it to us to cultivate with our hands.¹⁴⁵

Fourth, people take actions against projects that are implemented against their blessings. An example can be provided to illustrate this point. The Derg in 1976 created a wild life sanctuary and state farm in Senkelle Wildlife Sanctuary in Arssi, 300 km south of Addis

¹⁴¹ Parker Shipton (1994), “Land and Culture in Tropical Africa: Soils, Symbols, the Metaphysics of the Mundane”, *Annual Review of Anthropology*, vol., 23, pp. 348 and 350. See also Parker Shipton (2009), *Mortgaging the Ancestors: Ideologies of Attachment in Africa*, (New Haven and London, Yale University Press).

¹⁴² John Vidal, “How food and water are driving a 21st-century African land grab”, *The Guardian*, UK, March 6, 2010. According to an informant, people resist expropriation through preemptory land sale, reoccupation of expropriated land and some protest demonstrations. Interview 22 with a practicing lawyer, Southern Regional State, September, 22, 2012; and Sisay Mengiste and Alemu Kassa (2013), *The Question of the Raya People and the Responses of National Governments* (in Amharic), (Addis Ababa, Ethiopia) p. 243, which documents a recent road blockage by people in a city located in the northern part of the country in protest against land expropriation without proper compensation and due process of law.

¹⁴³ “Foreign Agro Firms Scoop Up Ethiopian Farmland,” <http://www1.voanews.com/english/news/africa/east/Foreign-Agro-Firms-Scoop-Up-Ethiopian-Farmland--84973402.html>, VOA, February 22, 2010

¹⁴⁴ Richard Dowden note 1.

¹⁴⁵ John Vidal, “Ethiopia at centre of global farmland rush,” <http://www.guardian.co.uk/global-development/video/2011/mar/21/ethiopia-land-rush>, *The Guardian*, UK, March 21, 2011.

Ababa, in about 120 kilometer square land area, which was enclosed and guarded by government rangers to prevent the local people (Arsi Oromo and Sidama) from exercising their age-old rights.¹⁴⁶ The government regarded “the area as no man`s land and ignored the existence of the local people.”¹⁴⁷ In part of this area the Derg established a state farm. In setting up the sanctuary and state farm, the government promised the local people supply of clean water and job opportunities. When the people saw that the government did not deliver on their promises, they put up resistance against this land alienation for commercialization and conservation projects claiming that the sanctuary still belonged to them. The government considered its interest in establishing wild-life sanctuary and the local people`s interest in continuing to access the area as mutually exclusive.

In setting up the sanctuary in question, the government seemed to have adopted the premise that wild life conservation measures and people`s mode of life cannot co-exist, which was also the thinking behind wild life conservation measures in Eastern Africa as a whole.¹⁴⁸ The affected people expressed their resistance by destroying properties of the sanctuary and of the state farm, in particular in 1991 when the country was in political transition. In the entire course of the projects, the people felt entitled to hunt in the sanctuary and occupy land made part of the sanctuary for cultivation and grazing. Nobuko Nishizaki concludes:

It is vital that conservationists understand the structures and customs of the local people in all social, cultural and historical aspects. The local claims and rights to access the land must be recognized and considered in advance in any conservation policymaking processes.¹⁴⁹

Further, people also engage in preemptive informal land transfers to outsiders and enclosure of the commons for themselves when they anticipate that the government will take their communal lands. People assert their own version of the improvement doctrine arguing that they themselves possess the ability to improve the communal land.¹⁵⁰

¹⁴⁶ Nobuko Nishizaki, note 128.

¹⁴⁷ *Id.*, p. 65.

¹⁴⁸ Martin Enghoff (1990), “Wild Life Conservation, Ecological Strategies and Pastoral Communities: A Contribution to the Understanding of Parks and People in East Africa,” *Nomadic Peoples*, 25:27, pp. 96-98, rightly states that in Eastern Africa wild conservation measures that are still in practice rest on the old thinking that wild life parks and the activity of livestock production by pastoral peoples cannot co-exist and thus, the two should be separated by enclosures guarded by government rangers because that would remove destructive and irrational overstocking.

¹⁴⁹ *Id.*, p. 75.

¹⁵⁰ Ayalew Gebre (2004), “Resource Deprivation and Changes in Pastoral Land Tenure Systems: The Case of the Karrayu in the upper Awash Valley of Ethiopia” in Proceedings of the Workshop on Some Aspects of Rural

Failing these acts of contestations and when projects by others including the government go ahead on the commons, local people act in a way that creates a specter of fear in the minds of those who took over land without their approval: they take matters into their own hands. This is evidenced by the invasion of parks, game reserves, state farms and state forests by local people, the evictions of those resettled as outsiders, the dissolution of cooperatives leading to the partition of land allocated for such cooperatives, and claims for distribution of state farms.¹⁵¹ Haunted by this specter of tenure insecurity, many people who resettled on the commons returned to their original villages and others still stay there with recurrent conflicts with the natives and with a lingering sense of insecurity of their tenure.

Finally, the people occasionally attempt to resort to formal complaint to avoid land alienation or mitigate its effects. A recent example where local people have filed their formal complaints all the way to the Office of the President of the country is a Gambella case. The case involved the grant by the Ministry of Agriculture of 3, 012 hectares of land to New Delhi-based Vedanta Harvests Private Limited Company for tea production.¹⁵² The people unsuccessfully argued that it is a forest land that they have protected for generations to steward it for future generation and that such an allocation of forest land is inconsistent with “our country’s representation of Africa in international panels regarding global warming through our Prime Minister.”¹⁵³

Land Tenure in Ethiopia: Access, Use and Transfer, (Addis Ababa: Institute of Development Research), pp. 14 & 24.

¹⁵¹ *Ibid.* Also to be noted in this regard is the announcement of the ‘10th Integrated Urban Development Master Plan of Addis Ababa and the Surrounding Towns in the Oromia Regional State’ - a federating member of Ethiopia’s current federal system. These towns envisaged in the Master Plan are small towns that are surrounded by large rural areas that form part of the Oromia Regional State and are predominately populated by small farmers; the announcement ensued protests especially against the plan’s widely anticipated effect of massive land disposessions for the purpose of doubling the existing size of the ever expanding capital, Addis Ababa, and its lack of respect for regional autonomy pledged by the Constitution; the protests spread out in western and eastern parts of the Oromia Regional State, leading to loss of lives, arrests and imprisonment, property destruction as well as vandalism and tense security situation. This incident is well documented by Negaso Gidada, former President of Ethiopia and now a member of an opposition political party, in an article entitled “A Tragic Consequence of the 10th Addis Ababa Integrated Development Master Plan: Warning for the Future,” May 7, 2014.(unpunished, on file with the author).

¹⁵² Elias N. Stebek (2011), “Between ‘Land Grabs’ and Agricultural Investment: Land Rent Contracts with Foreign Investors and Ethiopia’s Normative Setting in Focus” *Mizan Law Review*, 5:2, p. 199-201; and Verdanta Chief Executive Manojeeet Barkataky said, “The government has given us the land, signed, sealed and documented. I do not know anything about any dispute,” “It’s replacing green with green. Not green with concrete.” as quoted by William Davison (2011), Bloomberg, “Ethiopian President Concerned by Lease of Forest to Indian Firm”, February 4, 2011... (accessed 12October 2012).

¹⁵³ This was taken from a letter written by Mr. Girma Wolde Giorgis, former President of Ethiopia, to the Minister of Agriculture whose full content is translated and reproduced in Elias N. Stebek note 151, p. 200.

The local people's reactions are ineffective due to powerful alliance in support of the land alienation process and the ill-organized nature of the resistance.¹⁵⁴ The ineffectiveness also lies in failure to clearly articulate the nature of their argument: is their argument that the state shall take their claim into account in the alienation process or the state itself shall make claim to the people in taking land? That is, it is unclear as to who must be a claim maker in regard to land transferred to developers. The people's contestation is unsupported by civil society organizations operating within the Ethiopian territory due to the repressive effect of civil society, media and anti-terrorism statutes mentioned in Chapter 4. Thus, there is limited and ineffective contestation of the making of large-scale land transfers in Ethiopia.

F. Reiteration

Ethiopia's agricultural development strategy which promotes the 'empty land' narrative in regard to lowland Ethiopia has also been accompanied by a contradictory process of emptying land as reflected in the ongoing government program for village clustering in this part of the country. Village clustering involves delineation of communal land for a household and confining such household to government allocated individual farm plots. In this process of land delineation, hunters, shifting cultivators and pastoralists are being transformed into peasants, thereafter precluding them from laying claim to communal land previously under their control by virtue of their respective customs. So the strategy being pursued under the present agricultural policy in the low land areas is to encourage large-scale farming using 'empty land' and emptied land (i.e., land released for corporate farming via village clustering). The government seems to possess the required armory to put this strategy into practice: land laws and policies as well as the country's historical experiences.

According to the government, lowland areas of Ethiopia are targets of large-scale farming since there is a vast amount of empty land in those areas while highlands are not sites of land alienations for large commercial agriculture purposes because that would lead to significant

¹⁵⁴ Perhaps there is a need to take insights from the Landless Workers' Movement in Brazil which uses both legal and political tactics to obtain land to its members from the land rich documented in George Meszaros (2013), "Social Movement, Law and the Politics of Land Reform: Lessons from Brazil," Legal Studies Research Paper No. 2014-08 <ssnr.com/abstract=2459909> (accessed December 1, 2014). So is from methods used by land occupation movements in Zimbabwe. For this, see Sam Moyo and Walter Chambati (eds.) (2013), *Land and Agrarian Reform in Zimbabwe: Beyond White Settler Capitalism*, (Dakar ODESRIA). Lessons might be taken from these movements taking in mind that their aim is towards de-concentration of land while the aim in the Ethiopian case is the opposite case of resisting land taking from small holders.

peasant dislocations. To government authorities, expansion of infrastructure and improved security conditions in lowland areas as well as inflow of foreign capital due to a rise in global interest in farm land presents opportune moment for the country to expand large-scale farming.

There are additional reasons for the government to give the impression that highland Ethiopia is not the focal point of large scale farming. First, this peasant dominated and densely populated highland Ethiopia is their political base. The government would naturally seek to avoid significant peasant disaffection. Food security seems to be another reason for the government to show restraint against peasant evictions in the highland areas.

... given the prevalence of smallholder agriculture with low capital inputs, a strategy geared to increasing their productivity through inputs such as chemical and organic fertilizers and improved seeds could generate high returns without creating major social dislocations. If each ...cultivator was to produce one quintal of grain more per year it would represent a considerable augmentation of...total cereal production... A universe of smallholder agriculture, whatever its limitations, would ensure that peasant households will continue to have direct access to basic food grains.¹⁵⁵

Some scholars endorse this dichotomy in saying “the highland peasantry is an untouchable political base...”¹⁵⁶ However, as shown in Chapter 7 and in this chapter, highland Ethiopia is not spared, making the dichotomy of lowland versus highland in regard to large agricultural investments in today’s Ethiopia false. The difference is a matter of pace, method, scale and the type of justification invoked for the project. Dessalegn shows that there are land alienations even in highland parts of Ethiopia.¹⁵⁷

Moreover, there are examples of tendencies of peasant dislocations for large farming purpose in northern, central and south-western highland parts.¹⁵⁸ Lowland areas are better relative to the past: “unlike all previous governments our writ runs in every village. That has never happened in the history of Ethiopia.”¹⁵⁹ Unlike in the past, lowland areas now enjoy relatively better stability and security; willing global capital, expansion of infrastructure and better administrative reach of the government. Yet lowlands still present formidable security and infrastructure challenges on the top of shortage of labor, making land acquisition in better secure, densely populated but land scarce highland parts of the country still preferable for investors.

¹⁵⁵ Fouad Makki, note 74, p. 10.

¹⁵⁶ Fouad Makki and C. Geisler, note 74, p. 15-16; and T. Lavers (2012), “Land Grab as a Development Strategy? The Political Economy of Agricultural Investment in Ethiopia”, *The Journal of Peasant Studies*, 39:1, p. 125.

¹⁵⁷ Dessalegn Rahmato, note 90.

¹⁵⁸ Philipp Baumgartner *et al*, note 16, p. 10.

¹⁵⁹ Richard Dowden note 1.

Due to this, there is significant large-scale farming in the highland parts. The land devoted to large-scale farming in the highlands comes from two sources: communal lands and private small landholdings, the former taken over by the state without compensation (see Chapter 7) while the latter through expropriation (see Chapter 5). As seen in these two chapters, government authorities do not appreciate the intertwined nature of private landholdings and the commons, invariably separating communal lands from private landholdings. Besides, as the chapter on *kontract* illustrates, the state apparatus facilitates small-scale transfers of land in favor of improvers. A broader implication of the implementation of ADLI in both parts of the country is a trend for rearrangement of land tenure to the detriment of peasants and agro-pastoralists. Fouad Makki has put this common threat as follows.

The enclosures and displacements currently unfolding in the lowlands should serve as a portent of what might potentially transpire on a much larger scale and with more alarming effects in the densely populated highland zones. For most of the past century, there was a notable gulf in political understanding and cultural sympathy between social activists and reformers in the two zones. The historically conditioned objective situations of each served to divide their subjective outlooks. Today, in the face of a common threat, it is more urgent than ever to bridge this divide by the practice of a real solidarity...¹⁶⁰

Local people contest the high modernist project of agricultural modernization underpinned by conception of land as an economic asset destined for improvement by capital by invoking the socially embedded nature of land rights.

The Constitution can theoretically be deployed to resist the ongoing large-scale agricultural land deals in their current form. This Constitution follows a blend of community ownership and user right approach to land tenure, allowing both groups and individuals to have some say over the fate of the single most important livelihood asset in the country, agricultural land. At the level of communities, the Constitution envisages a type of community co-ownership of land and administration of this co-owned land by the government on behalf of communities in accordance with laws enacted by federal and regional governments, which are supposed to be dominated by representatives of peasants and pastoralists. In theory, this political arrangement should not produce land legislation detrimental to the rural masses. And at the level of the individual, land rights as enshrined in the Constitution offers to peasants and agro-pastoralists minimum security in their land possessions. Nevertheless, a challenge to the actual realization of this minimum legal security is the ruling class that has not detached themselves from the

¹⁶⁰ Fouad Makki (2012), ‘‘Power and Property: Commercialization, Enclosures, and the Transformation of Agrarian Relations in Ethiopia’’, *The Journal of Peasant Studies*, 39:1, p.100.

historical way in which the state acquired land from the people; their action is a continuation of that historic act of conquest which started out in the second half of the 19th century. The present state, like its predecessors, is unwilling to recognize the tainted nature of this expansion era's state acquisitions of land.

Despite some occasional hints at external influences, the preceding eight chapters have presented land policy and law of Ethiopia as a result of an internal process. The last chapter takes up the degree of influence of the WB and the USAID over Ethiopia's land policy and law.

* * *

9

Role of International Institutions

The preceding eight chapters have considered two contrasting forms of land tenure security for Ethiopian rural producers. The first form emanates from the State and is characterized by people's ownership of land that is anchored on the principle of 'agricultural land for all rural people' and user rights without alienation. This form of security claims to over-privilege the social aspect of land. The same chapters have however indicated that this form of state-generated land tenure security is being denuded and contradicted by processes of state-driven commodification of land as exhibited by lax expropriation (Chapter 5), state ratification of informal land alienation in the form of *kontract* (Chapter 6) and state appropriation of rural communal lands for large-scale commercial farming through the use of the tragedy of the commons, the empty land and underutilized land narratives (Chapters 7 and 8).

The second mode of land tenure security implicit in the preceding eight chapters is peasants' demand for land tenure security in their own terms, i.e., along the land to the tiller ideal by providing them with effective control over agricultural land, the fruits thereof and appropriate support schemes but coupled with principled interventions by the state in the interest of protecting disadvantaged members of the society and availing land to outsiders for a variety of purposes.

The previous chapters - particularly Chapters 1, 4, 7 and 8 have hinted at external influences. Yet, such chapters have generally assumed that the developments taking place and the issues have been largely of Ethiopian genesis. However, it is clear that some international institutions have law and policy prescriptions for Africa and other postcolonial societies. To this end, Ambreena Manji has argued that the WB and bilateral donors are working towards the privatization of land in sub-Saharan Africa through what she calls land law reform campaigns.¹ Her observation goes with the general land policy goal of the USAID as stated by Gregory Myers who is a senior land tenure and property rights specialist at this institution:

¹ Ambreena Manji (2006), *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets* (London: Zed Books) pp. 51-77; see also Franz von Benda-Beckmann (2006), "The Multiple Edges of Law: Dealing with Legal Pluralism in Development Practice". In *The World Bank Legal Review: Law, Equity, and Development*, Vol. 2 (Caroline Sage and Michael Woolcock, eds.) (The World Bank, Martinus Publishers).

We all firmly believe that a fundamental building block of any democracy or market-based economy is the right to property... If you don't have the right to property, you cannot be a member of the economy. You can't participate in a broader economy or a market system. And you don't have a say in the political process. I believe that, as countries move forward toward recognizing or toward addressing this issue, this will reduce the kinds and the types of investments [i.e., aid] which we need to make in development, because people will have a greater political standing and greater economic opportunities to be able to do the kinds of things that you and I do here in the United States: to make our own individual decisions about how we best deem to manage our lives, how we want to engage in political decisions or political discourse, and how we want to engage in economic opportunities that will benefit ourselves and our families.²

This chapter shows that what Myers has stated as a general policy in the above quote is what the USAID is trying to see implemented in Ethiopia. In Ethiopia, this has been the case from the time of the postwar period when US based law and modernization approaches endeavored to influence issues relating to land and land law reform.

A key issue for the chapter is therefore the extent to which reforms of land law and policy were influenced by external forces. This is done by discussing the role of international institutions who say that peasants should be given property rights in land by examining the role of the WB and of the USAID due to their long standing presence and the magnitude of their activities in Ethiopia.³

The chapter specifically indicates that the WB and the USAID would like to see that people are given property rights in their land since they appear to believe that the poor are poor

² Gregory Myers, "A Right to Land", <<http://transition.usaid.gov/press>>, July/August, 2012 (accessed August 13, 2013).

³ Involvement of the WB and the USAID in Ethiopia dates back to the end of the Second World War. They are currently involved in multiple projects including: land administration, sustainable land management, food security and agricultural growth program. There are other international institutions and transnational civil societies with different objectives such as human rights approach to land rights and human rights cum food security and conservation. SIDA, EU, Dutch and Finish development agencies considered land tenure security and land management as crucial areas of rural growth. For this, see Comments from the Development Assistant Group, 2006, (unpublished, on file with the author) p. 4 & 10. The Netherlands is funding land registration activities in Kafa Zone, Southwest Ethiopia. SIDA supports land registration in the Amhara region of Northwest Ethiopia. Orgut Consulting AB (2010), "Land Registration and Certification: Experience from the Amhara National Regional State in Ethiopia",

<www.sida.se/globalassets/global/...regions/.../ethiopia_amhara_final.pdf> (accessed December 3, 2014)

Finland runs a similar project in Beni-Shangul Gumuz Regional State. For this, see E. Tessemaker *et al* (2007), "Netherlands Support to Land Tenure Security in Developing Countries: Overview of Lessons Learned (Ministry of Foreign Affairs).

In addition, the FAO promotes food security centred land tenure security, i.e., ensuring the property rights of peasants in their land possession and supporting peasants to enhance their productive capacity. They view large-scale land transfers in light of peasant participation and supporting them to be more productive instead to taking land from them in favour of large farms. For this, see Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012).

There are also transnational civil societies such as the Human Rights Watch and Oakland Institute who promote property rights approach to land to protect the interests of small-scale farmers and pastoralists especially in recent large-scale land transfers. For this, Felix Horne (2011), "Understanding Land Investment Deals in Africa, Country Report: Ethiopia", (the Oakland Institute.)

primarily because they lack tradable formalized property right in key assets such as land already under their possession. They think that their land tenure model would address the major land tenure problems which in their view are prevalent in the country, namely: land tenure insecurity, lack of recognition of the land rights of those who occupy and invest in state lands, restrictions of land rental markets, possibility of periodic state land reallocation and expropriation with loose conception of public purpose and inadequate compensation.

The chapter also highlights how the WB has moved from full privatization embodied in the 1975 Land Policy to the 2003 Land Policy and that even if there are those within the WB who pursue the land for the welfare of the poor approach the dominant theme within the WB belongs to the property rights path propagated by de Soto.

The chapter concludes that there is a divergence between the position of the WB and the USAID and that of the Ethiopian state because the former seek land law to permit small holders to trade with their use rights at least in the sense of allowing them to engage in land mortgage and long term land rentals while the latter formally rejects the idea of land collateralization by peasants in favor of allowing them to engage in land rental markets conditionally, for a limited period and in a controlled fashion. Even if tradability of land use rights by small farmers is the direction to which the two global actors would like Ethiopian land law to take, the extent of their influence has so far been complex and vague as a variety of incompatible objectives are deployed. Therefore, it is not possible to definitively say land policy in Ethiopia is taking a course set for it by these external actors.

The first section discusses the WB`s land policy in general and its position on Ethiopia`s land policy since the imperial period. Similarly, the next section considers the USAID`s stance on Ethiopia`s land policy under the imperial and present regimes, which is followed in the third section by a search for the point of intersection between the positions of the WB and the USAID. The next section considers the extent to which the two global forces have influenced the course and direction of Ethiopia`s land policy.

A. The World Bank

The WB has thought since the imperial period that land tenure security has been key to Ethiopia`s agricultural development and that peasants` land tenure insecurity has been an impediment on whose removal its position has changed over the years as has been the case in its worldwide position on this matter.

During the imperial period, in 1960s and early 1970s, the WB did not opt for land reform, which is about redistribution of land to the land hungry. It rather advocated for land law reform which is more technical. The theoretical intention in land law reform being promoted by the WB was to improve security of tenure for peasants, but in practice it promoted the development of a market in land with its possible implications for shift of land from poorer peasants to richer ones.⁴

The position of the WB on Ethiopia at the time appeared to be consistent with its overall global stance on land reform matters. Until 1975, the WB treated land reform in the developing world as a political matter and wanted to direct its aid towards what it called “merely technical matters.”⁵ The WB concentrated first on infrastructure development and then on input supply such as fertilizers, seeds and extension services. As of 1975, the WB realized the significance of uneven distribution of land and land tenure insecurity in the agricultural development of developing countries. But the WB could not dislodge itself from its previous position because, on the one hand, it appreciated the role of land reform in economic development, and, on the other hand, its previous stance which considered land reform as a national political issue dominated its funding. In its 1975 land reform policy paper, it defined its role in land reform in developing countries as undertaking land tenure studies in countries where reform did not start and supporting them to implement their own land reforms if already initiated.⁶

The 1975 land reform policy paper almost exclusively focused on formal title, this means it capitalized on efficiency as confined to land’s role in enhancing agricultural productivity, that

⁴ In 1970, the WB stated that “insecure occupancy is a major obstacle to increasing investment in agriculture.” The World Bank Report (1970), “Economic Growth and Prospects in Ethiopia”, vol. i., p. 2. It regarded “the communal system in the north, the paramount landlord system in the south and central highlands and the tribal systems in the lowlands and the government occupancy system served as dis-incentive to investments in farming and to efforts at rational land use.” *Ibid.* The WB’s 1975 report on Ethiopian economy noted that “landlords find it increasingly profitable to displace their tenants on short notice as machine technology provided higher returns.” The WB thought that sufficient studies and organization structure were in hand to begin a phased land reform program, for example, via regulation of tenancy, and carrying land reform out would improve the basic incentives for agricultural modernization of Ethiopia. The World Bank (1975), “Land Reform: Sector Policy Paper”, (hereafter Land Reform) pp. 23, 39 & 61. The WB further advised the Ethiopian state on “the urgent need for cadastral surveys, land registration, the grant of titles, and the regulation of land-lord tenant relations.” For this, see the World Bank Report (1970): “Economic Growth and Prospects in Ethiopia”, vol., v, p. 7. See also Fasil Kiros (1993), *The Subsistence Crisis in Africa: The Case of Ethiopia* (OSSREA) p. 85.

⁵ Jean Philippe Platteau (1996), “The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment”, *Development and Change*, vol., 27, pp. 29-30.

⁶ The World Bank, Land Reform note 4.

is, secure land tenure meant titled privately owned land, which would lead to increase in agricultural productivity. On the basis of this thinking, the WB supported land sales⁷ on the assumption that land privatization would spur agricultural growth which in turn would have a trickledown effect on citizens in general. This prescription is despite the fact that the WB realized that in Ethiopia, for example, “landlords could easily restrict peasants’ alternatives and maintain control over land and labor...”⁸ and it cited the imperial land tenure system to illustrate the vital point that land reform was not independent of the political process.⁹

During the Derg period, the WB’s studies on Ethiopia’s agricultural development showed that the peasant sector consistently outperformed the producers’ cooperatives in crop yields.¹⁰ The WB found out in its researches that the small holder agriculture, as compared to cooperatives and state farms, was the most efficient method of stimulating agricultural development and attaining food security in the country.¹¹ Thus, the recommendation that came out of these studies was that the peasant sector should be made to enjoy land tenure security and given input supports to enhance productivity; the key to the minimization of land tenure insecurity was to remove the numerous transfer restrictions placed on the land rights of peasants as it was prudent to abolish the practice of frequent land redistributions by the government.¹² The WB’s role in this period seemed not to go beyond forwarding recommendations to the Derg about the advisability of small farmers’ land tenure security and the need to support them to make them more efficient. It seems that this suggestion appeared to be more driven by the WB’s disapproval of the Derg’s pursuit of collective agriculture than an expression of its faith in the peasant agriculture *per se*.

⁷ Klaus Deininger (2003), “Land Policies for Growth and Poverty Reduction”, (hereafter *Land Policies for Growth*), p. 44-45 and Peters Pauline (2004), “Inequality and Social Conflict over Land in Africa”, *Journal of Agrarian Change*, 4:3, pp. 273ff.

⁸ Klaus Deininger, *Land Policies for Growth* note 7, p. XXXIV.

⁹ *Id.*, p. 32.

¹⁰ Dessalegn Rahmato (1993), “Land, Peasants, and the Drive for Collectivization in Ethiopia”. In *Land in African Agrarian Systems* (ed. Bassett *et al*) (The USA, Madison, The University of Wisconsin Press) p. 289-290.

¹¹ Degefa Tolossa (2003), “An Assessment of Agricultural Policies in Ethiopia (1957-1991) with Special Emphasis to Regional Development”. In *Topics in Contemporary Political Development in Ethiopia*, (Tafesse Olika *et al* (eds) (Department of Political Science, Addis Ababa University), p.120. In 1985-86, for example, “the peasant sector out produced the cooperative sector with respect to every major cereal and pulse when measured in crop yield per hectare...” Donald Crummey (2000), *Land and Society in the Christian Kingdom of Ethiopia: From Thirteen to the Twentieth Century* (Urbana: University of Illinois Press), p. 249.

¹² Klaus Deininger, *Land Policies for Growth* note 7.

During the current administration, especially after 2003, to the WB, the key to removing land tenure insecurity in Ethiopia has been to conceive land as both a livelihood and marketable asset. The WB no longer argues that the prevailing land tenure insecurity can be removed if and only if land is fully privatized and a universal title deed issued. The WB concedes that distress land sales can occur.¹³ The WB's current thinking is that land tenure and hence agricultural productivity in Ethiopia could be enhanced even within the context of people's ownership of land provided land rights are expanded, restrictions on land rentals, inheritance, and donations removed, land certificates at least in regard to high value lands issued and updated, land administration matters decentralized, made transparent, inclusive and participatory, expropriations are accompanied by adequate compensations and effective judicial safeguards, land dispute settlements mechanisms improved, customary land rights are recognized and a firm commitment not to re-distribute land is made and given due publicity.¹⁴

This position of the WB is articulated in the 2003 land policy which documents its position on land policy for the first time since the 1975 land reform policy paper. The 2003 land policy conceives land tenure security as a perception on the part of a landholder that "there is a higher probability of losing it"¹⁵ or he/she is "vulnerable to eviction threats."¹⁶ This land policy opens with criticisms of existing land policies saying that dialogues on land policies are frequently featured by "preconceived notions and ideological viewpoints" rather than "a careful analysis of the potential contribution of land policies to broader development, the scope for interventions in the area and the mechanisms that can be used to achieve broader social and economic goals."¹⁷

In the 2003 land policy, the WB claimed that property rights in land are measurable and secure if: the time horizon is relatively longer, the rights are defined clearly, the enforcement

¹³ *Id.*, p. 32.

¹⁴ *Ibid.*

¹⁵ *Id.*, p. xxvi.

¹⁶ *Id.*, p. xxviii.

¹⁷ *Id.*, p. ix. Sir Nicholas H. Stern, , then Senior Vice President of the WB, prefaced three fundamental principles of the land policy paper as: first, "providing secure tenure to land can improve the welfare of the poor" [to] create "the incentives needed for investment, a key element underlying sustainable economic growth"; second, "facilitating the exchange and distribution of land...at low cost through market and nonmarket channels, is central to expediting land access by productive but land poor producers...and the development of financial markets that rely on the use of land as a collateral" in particular by facilitating the removal of restrictions on rental land markets; and third recognition of the role of government in "promoting and contributing to socially desirable land allocation and utilization." *Id.*, pp. ix-x.

organs are backed by law and social legitimacy, accessible and accountable, and the state is flexible enough to let land right evolve with appropriate interventions when the need arises.¹⁸ To the WB, empirical evidence across the developing world shows that secure property rights to land offers such economic benefits as increased investment by the land user and increase in the value of the land, the transferability of the land, access to credit and improved functioning of the credit financial markets and reduction in “the time and resources individuals have to spend in trying to secure their land rights.”¹⁹ For instance, restrictions on the functioning rental markets continue to be applied in Ethiopia and those restrictions “will have a negative impact on agricultural productivity and households’ welfare; will discourage investment, off-farm employment, and migration; will increase the insecurity of land rights.”²⁰ The WB’s 2008 World Development Report on agriculture for development in a changing world focuses upon

¹⁸ *Id.*, pp. xxii-xxv.

¹⁹ *Ibid.* Secure land tenure also produces non-economic benefits such as improvement of local governance and more protection of traditionally discriminated groups such as women and minority groups. *Id.*, pp. xxv-xxvi. In its 2002 report on Ethiopia, which appeared to have fed into the 2003 Land Policy, the WB observed that the problems of land tenure in rural Ethiopia were the ability of the regions to redistribute land without strict public purpose and adequate compensation, the prohibition of land collateralization and lack of clarity in the definition of the rights of peasants. “The FDRE: Developing Exports to Promote Growth” (World Bank Report No. 23294-ET, 2002), p. vii. Such constraints made the land rights of peasants insecure, limiting their potential to “to borrow to expand or improve production.” *Id.*, p. vi. Removal of these deficiencies in the land tenure would contribute positively to higher growth and poverty reduction. *Ibid.*

The 2003 Land Policy observed that in Ethiopia restrictions on the operation of land rental markets have undermined the emergence of non-farm enterprises, resulting in poor land utilization and hindering the development of the broader rural economy of the country. Klaus Deininger, Land Policies for Growth note 7, p. xxxiv. In Ethiopia, “tenure insecurity increases households’ propensity to establish visible investments, such as trees, while at the same time decreasing their incentive to invest in activities that have a more direct and positive effect on productivity but are less directly visible such as establishing and rehabilitating terraces.” *Id.*, p. 38. “This shows that households attach high value to greater levels of tenure security.” *Ibid.* Thus, a study that the WB’s experts used as an input for the Land Policy states,

... for farmers the issue of tenure security seems to be a more important consideration than the form of ownership as such. While in the sample 32% of the farmers preferred private ownership with full transfer rights an even greater number (47%) were satisfied with state ownership with secured use rights. The overall point is that nearly 80% of the farmers want more secure use rights. A Research Report on Land Tenure and Agricultural Development in Ethiopia, October 2002, Ethiopian Economic Association/Ethiopian Economic Policy Research Institute.

The Land Policy continues to state, “Results from Ethiopia indicate that producers who are afraid of being affected by redistribution in the future are significantly less likely to engage off-farm work, suggesting that the way in which land markets are regulated will affect the broader rural economy and the emergence of off-farm employment”. Klaus Deininger, Land Policies for Growth note 7, p. 86. It mentioned as problems: “making land use right conditional upon residence in a community, insecure tenure, prohibition of using land as a collateral, “leaving agriculture in a Malthusian trap”. *Id.*, p. 106 and 116.

²⁰ *Id.*, p. 118. See also Klaus Deininger *et al* (2003), “Market and Nonmarket Transfers of Land in Ethiopia: Implications for Efficiency, Equity and Non-farm Development” (Policy Research Working Paper No. 2992, World Bank) and Klaus Deininger *et al* (2011), “Impacts of Land Certification on Tenure Security, Investment, and Land Market Participation: Evidence from Ethiopia”, *Land Economics*, 87:2

development policies in poor countries to work towards “assigning property rights and recognizing current use rights over land resources”.²¹

In sum, the WB seeks the introduction in rural Ethiopia of at least land rental markets, which could be accomplished through removal of restrictions of transferability of use rights which it claims to promote the interest of the poor and to remove a roadblock for agricultural development.²²

B. The USAID- an intermediate policy position?

Similarly, the USAID seeks for Ethiopian peasants and agro-pastoralists secure land rights, the right to rent out their use rights, and the opening up of markets for agricultural inputs. Yet, the USAID’s ultimate interest seems to be full privatization of land in Ethiopia. The USAID has deployed the ongoing land certification program, among others, to at least facilitate land rental and collateral markets, which it calls an intermediate policy position between full land privatization and people’s ownership of land. It is in this spirit that the USAID wants to ‘stay engaged’ with the Government on land policy issues.

During the imperial period, in 1960s and early 1970s, the USAID intervened through the input side of Ethiopian agriculture by supplying extension services that unfortunately aggravated the existing tenure insecurity²³ because its projects were implemented in favor of land lords in the context of a skewed landholding structure, and the land lords, by virtue of their access to information and infrastructure such as roads took advantage of those services.²⁴ Experts fielded

²¹ World Development Report (2008), “Agriculture for Development”, the World Bank, p. 16.

²² For the issue of how the WB’s position of development projects generally and land tenure reform particularly has evolved within see, Julio Faundez (2006), “Should Justice Reform Projects Take Non-State Justice Systems Seriously? Perspectives from Latin America in *The World Bank Legal Review: Law, Equity, and Development*, Vol. 2 (Caroline Sage and Michael Woolcock, eds.) (The World Bank, 2005, Martinus Publishers).

²³ Dessalegn Rahmato (2009), *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s and 2000s* (hereafter the Peasant and the State) (Addis Ababa: Addis Ababa University Press), p. 64.

²⁴ Ann Lambton (1971), “An Approach to Land Reform”, *Bulletin of the School of Oriental and African Studies*, 34:2, pp. 238-239; Heinrich Scholler and Paul Brietzke (1976), *Ethiopia: Revolution, Law and Politics*, (Munich, Weltforum Verlag). A project by SIDA ended up evicting as many as 5,000 tenants because landlords, finding the inputs supplied by the project advantageous, wanted to work their land by themselves or lease it out to investors for higher price: Dessalegn Rahmato, the Peasant and the State note 23, p. 57; see also Degefa Tolossa, note 11, pp.112-116, for the objectives and achievements of SIDA’s Chilalo Agricultural Development Unit and for a general road map for the US’s land reform policy in developing countries, see Roy L. Prosterman (1972), “Land Reform as Foreign”, *Foreign Policy*, No. 6 p. 128. The USAID also agreed to finance land survey and registration projects but that remained a mere draft and whose implementation would have been of little use for the landless and tenants.

by the USAID who had a negative attitude towards the peasantry²⁵ suggested the replacement of ‘unviable peasant holdings’ by agricultural modernization which meant American style mechanized mega and medium scale farms.²⁶

During the current administration, the USAID runs the Ethiopian Land Tenure Administration Program (ELTAP) to assist enactment of land laws, undertake land registration and certification, rights awareness, improve land dispute settlement and build the capacity of land administration institutions within the existing people’s ownership of land scheme upon realizing that full privatization is a non-starter for the government but hoping for the possibility of expanding and strengthening land rights short of ownership.²⁷

... Discussion with government officials and a review of policy statements has made it clear that the issue of the privatization of land is not an option at this time for the government. While the State still maintains primary rights in property, it could move towards a system of long-term leases that vest strong secondary rights in landholders, allowing them to sublease or make other land transactions (e.g., mortgages). These long-term leases would help to address some of the weaknesses in the existing land tenure system.²⁸

Generally, the USAID would like to see the restrictions imposed on transferability of land rights of peasants lifted with ultimate movement towards a complete private ownership of land with the assumption that when land is subject to market forces, land gets itself in the hands of a person with ability to use it productively and this in turn triggers effective agricultural development. Staal says, “If you ask me personally, from my own perspective, I would say that

²⁵ One of such experts, for instance, said the peasantry practiced “stone-age agriculture very similar to the kind of agriculture which existed in Mesopotamia at least 10,000 years ago.” Dessalegn Rahmato, the Peasant and the State note 23, pp. 33-34. Another who was based in an agricultural college in Ethiopia says that the peasant was so deeply attached to his customs that he would regard departure from it “as immoral.” *Id.*

²⁶ *Id.* The USA did not push for redistributive land reform in Ethiopia through its overseas development arm, the USAID, even if it was the country’s biggest lender and supporter of its military and educational spheres and even if it was by then using land reform as a tool to curb the expansion of socialism to third world countries. William C. Thiesenhusen (1985), “National Security Implications of Land Reform in Third World Countries”, *Oklahoma Law Review*, vol. 38; see also, Donna J. Henderson (1981), “Land Reform and the New International Economic Order”, *Pub. L. Forum*, vol. 1. The Derg’s ‘anti-imperialist struggle’ was synonymous with their anti-US policy and, during this period, the USAID restricted their involvement to humanitarian assistance in connection with the recurring droughts and famines of the time.

²⁷ ELTAP was launched in 2005 in two phases: the first phase ran between 2005 and 2008, and the second stage started in 2008 and continued until the end of 2013.

²⁸ Broadening Access and Strengthening Input Market Systems: Ethiopia Land Policy and Administration Assessment Final Report with Appendices, 2004, p. 10 & 24. Thomas Staal, a former USAID Ethiopia Country Director, says “[This land certification program] was something that the government was concerned about because they have a very strict policy about no private land ownership. But we showed them that land certification was still working within their system.” See Karol C. Boudreaux, note 36.

full land ownership is the goal. But, I also see there is as an important intermediary step in providing security to the farmers, and therefore, it can bring real benefits to the country.”²⁹

The starting point for ELTAP is that the constitution grants general security of land rights to peasants without granting specific plot security.³⁰ It is provided that, insecurity of land tenure in Ethiopia restricts access to land..., reduces productive investment in land, and severely limits land transactions...these limitations undermine the agricultural sector, preventing the development of larger, more commercial farming operations and medium small-holder enterprises, and it locks small-holders into subsistence production.³¹

The core aim of projects on land tenure in Ethiopia should support land tenure reforms to “confer robust and enforceable land tenure security to landholders”³² through land registration and certification which will:

Increase farm investment, improve farm productivity and hence increase food security, increase farm income and hence reduce rural poverty, provide incentives for better land management and hence improve rural environmental conservation, encourage labor mobility and off-farm employment.³³

An expert working for the USAID said that the ultimate aim of the land registration and certification project is to enable peasants to market their land use rights, for example, via collateralization.³⁴ Another expert who was involved in an aspect of ELTAP observed that the strategy of donors such as the USAID is:

To gradually erode the people’s ownership conception by expanding peasants’ bundle of land rights to include land collateralization and long term land rentals; this course is being followed when donors have realized that the state is unwilling to privatize land in the sense of full private ownership.³⁵

Impact assessment of ELTAP by the USAID concludes that “small farmers now feel more secure, thus... less border disputes, less natural resource degradation and more agricultural productivity” and “yields have increased between 11 percent and 40 percent per acre with no other inputs...”³⁶ Myers said, “We know in our own programs that there are significant productivity jumps when men and women have secured rights to property.”³⁷ The USAID claims

²⁹ Tamrat G. Giorgis, “Where Mission Man Goes Missionary”, an interview with Thomas Staal, former Director of the USAID Ethiopia, *Addis Fortune News Paper*, July 1, 2012 (accessed June 20, 2013).

³⁰ Strengthening Ethiopian Land Tenure and Administration Program: Rural and Agricultural Incomes with a Sustainable Environment (2005), USAID, p.7.

³¹ *Ibid.*

³² *Id.*, p. 11.

³³ *Id.*, p. 31.

³⁴ Ayenew Haileselassie (2004), “Ethiopia’s Struggle over Land Reform”, *World Press Review*, 51:4, <www.worldpress.org/Africa/1839.cfm> (accessed July 10, 2011)

³⁵ Interview 44 with a land law expert, August 20, 2012.

³⁶ Karol C. Boudreaux (2012), “A Powerful Piece of Paper”, <<http://ethiopia.usaid.gov/node/326>> (accessed July 20, 2014).

³⁷ Gregory Myers, note 2. The issuance of first level land certificates, to the USAID, has contributed to an increase in small holder productivity because the certificates have increased the ‘sense of ownership’ of the land in the minds of beneficiaries. For this, see Karol C. Boudreaux, note 36.

that its rural land certification program has produced early benefits that include positive contribution to tenure security, an emergence of the perception that having this certificate reduces the risk of eviction from the land as well as increases their chance of being paid compensation upon expropriation, overall improvement of the efficiency of the land rental market and increased investment in land improvement.³⁸ Thus,

the rapid, participatory nature, and low cost of Ethiopia's land certification, together with the positive results from this process and the absence of bias in favor of the wealthy or lack of access to information by the poor demonstrate that, contrary to what one might be tempted to conclude from experience in other countries, large-scale and rapid delivery of land certificates in a participatory way is possible.³⁹

Further,

Users' positive assessment of the process, readiness to pay to replace lost certificates, high demand- and willingness to pay- for a spatial reference, and their positive assessment of likely impacts suggest that the way in which Ethiopia implemented land certification responded to local needs.⁴⁰

However, it should be noted that the massive land certification program in Ethiopia being supported by the USAID is not without criticisms. The countryside has witnessed mushrooming of post-certification land disputes which perhaps arise out of the variable and imprecise land measurement systems used, the program's individualistic underpinning and due to the haste with which the program was carried out.⁴¹ Nor has the certification program enabled peasants to collateralize their holdings as the law which prohibits land collateralization still stands. And the land certification project cannot impede the state from taking land in respect of which a certificate is issued. And by officially confining peasants to their private landholdings, the certification program runs counter to peasants' customary rights over communal lands, which remain unregistered and uncertified.⁴²

The USAID further wants to see the opening up of agricultural inputs market by helping the country privatize seed and fertilizer markets that are now under state control. The USAID is

³⁸ See note 21.

³⁹ Eyob T. Tolina (2007), "Agricultural Development Led Industrialization Strategy of Ethiopia", <<http://www.law.drake.edu/centers/docs/intlAgLaw/tolina.pdf>>, pp. 20-24 (accessed 13 November 2010); Myers said, land certification program in Ethiopia run by the USAID 'helped people there secure property rights and productivity increased between 19 and 40 percent, for this, see note 2..

⁴⁰ Eyob T. Tolina, note 39. Based on these findings on the 'success' of the land certification program in Ethiopia, the USAID has concluded that a universal second level land certification (i.e., more accurate and scientific land measurement and certification) is not necessary; what is needed is this second generation rural land certification in high value lands such as in areas where land is economically more valued. See Ethiopia: Strengthening Land Administration Program Annual Report (August 1, 2010 – September 30, 2011), p. 3.

⁴¹ Focus Group Discussion 02 with land administration experts, September 14, 2012 and court statistics gathered during fieldwork visit in September 2012

⁴² Focus Group Discussion 09 with regional land administration experts, September 21, 2012.

yet unhappy about the scale and speed of ‘opening up’ of Ethiopia’s agricultural sector including transferability of land rights of peasants. Asked whether he is satisfied with the speed of the opening up of Ethiopia, Staal put the matter in a broader policy perspective,

I think it could be faster definitely! If you look at the last 20 years, when this government came to power, there was no private sector. At last count, I think there is something like 45,000 or 50,000 private companies operating in Ethiopia. It is opening, but I think it could go faster. However, I also understand that it cannot be so fast that it is out of control and causes chaos. I understand the government’s concern about moving forward. It is an issue of equality and fairness. You do have a lot of small-scale farmers, close to 20 million. If it opens too fast, then, many of them may suffer. It is hard to say. It is a difficult question that the government is wrestling with. But, we think it could go faster without becoming chaos.⁴³

C. An intersection of their role?

Despite the WB’s apparent recognition of diversity in land tenure forms, its position on land tenure still shows a stint of private ownership as manifested in its hierarchical conception of the sticks in the bundle of rights in land and suggests superiority of private ownership of land when backed by formal title.⁴⁴ And in relation to restrictions on land sale markets, the WB says “there is little to recommend such restrictions as an effective tool for policy.”⁴⁵ From the standpoint of the WB, land tenure reform is to be achieved through state law and the main role of the government in respect of land tenure being “to provide secure land rights...”⁴⁶ The state is expected to play the role of making judicious interventions in the course of evolution of land tenure towards privatization by rectifying imperfections in such evolution or building on or adapting existing institutions rather than opting to “modernize’ them.”⁴⁷ Patrick McAuslan says,

There is a great temptation for agencies like the World Bank to try and prescribe a standard model in its programmes of legal reforms: design one, sell it often. Unfortunately the World Bank’s new land policy document

⁴³ Tamrat G. Giorgis note 29.

⁴⁴ *Ibid*; Thomas Bassett and Donald Crummey (eds.) (1993), *Land in African Agrarian Systems*, (Madison: The University of Wisconsin Press). According to the 2003 WB Land Policy, tenure to land can be made secure through: first, legal recognition of customary land tenure with minimum conditions (instead of opting for premature formal titling of such lands) by demarcating communal lands, determining membership, defining conflict resolution rules, the rights and obligations of members regarding management and assignment of rights among themselves and the manner in which outsiders could get access to communal land; second, regularization of the land rights of those who occupy state land by giving them legal rights, which means either full private rights (which the WB deems to give a higher form of tenure security) or at least by committing itself to give users “secure, transferable, long-term lease rights;” third, as full private ownership of land backed by formal title alone does not make such right automatically secure, putting in place efficient land administration institutions, which demarcate boundaries, register and keep land records, adjudicate rights and resolve conflicts, and be able to make the land registration system sustainable and comprehensive, widely publicized, impervious to land concentration by elites, inclusive of women and the poor. Klaus Deininger, note 7, p. xxviii and pp. xxviii-xxix.

⁴⁵ *Id.*, p., 28-29 and 36.

⁴⁶ *Id.*, p. 233.

⁴⁷ *Id.*, p. 232.

[i.e., the 2003 land policy paper] and the first steps in the direction of acting on it suggests that it is going to go down that route again despite the evidence that it does not work.⁴⁸

The USAID wants to see customary land rights of peasants and agro-pastoralists recognized by state law including customary dispute settlement.⁴⁹ As indicated above, so is the WB. For example, a working paper for the WB asserts that “The root of the insecurity of rural landholders lies in the fact that much of the land they hold is considered State-owned land, and National Government does not recognize the right under customary tenure.”⁵⁰ A similar research paper by the Australian Aid for International Development (AusAID) says the heart of tenure insecurity in many developing countries is lack of recognition on land held by communities under customary tenures by respective Governments.⁵¹ Thus, the removal of such land tenure insecurity hinges centrally on the recognition of customary land tenures by governments.⁵²

I think the WB’s and the USAID’s stance on customary land tenure reform echoes the vitality of the improvement perspective popularized in de Soto’s conception of property. De Soto’s central idea rests on the need to ‘raise capital’ on customary land through the creation of formal property which means individualization of land. His view offers incentive to those who unilaterally privatize the commons when he urges policymakers to convert the dead assets of those living under extralegal into formal tenure systems supported chiefly by titling programs. De Soto makes this quite clear when he documents the history of land squatting on “largely vacant outlying territories” in the US.⁵³ He does not see these squatters or improvers of land in the public domain as people with financial and political clout nor are they land speculators; instead, they are ‘poor people’. He hails land squatters as improvers of ‘vacant land’ or the ‘wilderness’. He praises these enlightened men for constructing their own informal property

⁴⁸ Patrick McAuslan (2005), “Tensions of Modernity: Law in Developing Land Markets”. In *Modern Studies in Property Law* Vol. III (E. Cooke, ed.) (Oxford: Hart Publishing), p. 315.

⁴⁹ USAID (2012), “The Future of Customary Tenure”, <http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_2012_Liberia_Course_Module_1_Future_of_Customary_Tenure.pdf> (accessed December 3, 2014).

⁵⁰ Rogier van den Brink *et al* (2006), “Consensus, Confusion and Controversy: Selected Land Reform Issues in Sub-Saharan Africa”, the World WB Working Paper No 71, p. 14.

⁵¹ AusAID (2008), “Making Land Work: Reconciling Customary Land and Development in the Pacific”, Vol. 1, and II, Commonwealth of Australia, AusAID.

⁵² Leila Chirayath *et al* (2005), “On Customary Law Policy Reform: Engaging with the Plurality of Justice System”, <http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Customary_Law_and_Policy_Reform.pdf> (Accessed December 3, 2014).

⁵³ Hernando De Soto (2000), *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York, NY: Basic Books), p. 118.

arrangement in open defiance of the formal property system.⁵⁴ He urges the sensible politician to be in ‘touch with reality’ to recognize these local arrangements regarding improved land. He advises poor countries to mimic the genius of the US in bringing about economic prosperity attributable to its accommodation of the squatters’ interest.⁵⁵ The recognition of customary titles on the part of influential international institutions appears to be subordinate to the overall unchanging objective. McAuslan concludes,

The new globalization has followed the old one in its involvement with land law and its attempts to develop land laws that displace local laws and put in place laws based on ‘best practice’ or international norms that can be used to justify such displacement and continue the practice and ideology of strong central government in land management.⁵⁶

McAuslan also states,

... there is a push from the international community to bring about a homogenization of national land laws based on the Anglo-American legal model to facilitate an international land market...[in case of departure] the full weight of the World Bank and the international community has been brought to bear to ‘correct’ the aberrant departure from pristine market principles.⁵⁷

In addition to free transferability of land, the institutions advocate for commercialization of agricultural inputs and outputs in the peasant sector; this means green revolution for Ethiopia.⁵⁸ This however raises objections in light of lessons from other developing countries.

Myatt of the Johannesburg-based African Center for Bio-safety says,

If India’s experience is anything to go by, a Green Revolution would leave Africa’s farmers as dependent on World Bank’s and seed and fertilizer companies as they are now on seasonal rains. The Green Revolution, under the guise of solving hunger in Africa, is nothing more than a push for a parasitic corporate-controlled chemical system of agriculture.⁵⁹

Myatt also remarks,

With Bill Gates also pumping funding into biotech research at bodies such as the African Agriculture Technology Foundation, AGRA [Alliance for a Green Revolution in Africa] might end up as the unwitting Trojan horse that eases GM crops—and Western corporate interests—into Africa. It will go a long way toward laying the

⁵⁴ *Id.*, p. 129.

⁵⁵ *Id.*, pp. 156-159.

⁵⁶ Patrick McAuslan (2007), ‘‘Land Law and the Making of the British Empire’’. In *Modern Studies in Property Law* Vol. 4 (Elizabeth Cooke (ed.)), (Oxford: Hart Publishing) p. 240.

⁵⁷ Patrick McAuslan (2012), ‘‘50 Years of Land Law Change in Eastern Africa: Transformative or Traditional? A Preliminary Assessment’’ (on file with the author) p. 128.

⁵⁸ This is being attempted through the financing of the Agriculture Transformation Agency, a newly established federal agency, working towards raising agricultural productivity through use of scientific inputs by farmers in Ethiopia. It is funded by the Bill Gates and Melinda Foundation with support from USAID and WB. There is also an effort to revise strict provisions of the Ethiopian Bio-Diversity and Seeds Proclamations to allow importation of genetically modified seeds into Ethiopia.

⁵⁹ Barry Malone, and Ed Croyley, ‘‘Is Africa selling out its farmers?’’, *The Reuters*, November 12, 2009.

groundwork for the entry of private fertilizer and agrochemical companies and seed companies and, more particularly, GM seed companies.⁶⁰

D. The World Bank and the USAID, and large-scale land transfers in Ethiopia

Support for large-scale farming? In regard to large-scale farmland acquisitions, the WB follows the regulatory approach which is embodied in the Principles of Responsible Agriculture Investment (PRAI) and is fleshed out in the WB's 2011 research report on the global state of large-scale land transfers. As discussed in Chapter 8, the regulatory approach means ensuring "good governance and establishing robust institutions, so that land deals are concluded responsibly and investors are held to account. ...the approach assumes that large-scale land deals can be reformed to produce win-win outcomes"⁶¹ if agricultural land deals comply with seven principles, namely:

Principle 1: Existing rights to land and associated natural resources are recognized and respected. Principle 2: Investments do not jeopardize food security but rather strengthen it. Principle 3: Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment. Principle 4: All those materially affected are consulted and agreements from consultations are recorded and enforced. Principle 5: Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value. Principle 6: Investments generate desirable social and distributional impacts and do not increase vulnerability. Principle 7: environmental impacts of a project are quantified and measures taken to encourage sustainable resource use, while minimizing the risk/magnitude of negative impacts and mitigating them.⁶²

These principles are developed to address problems regarding "...extremely negative consequences associated with the recent surge of land grabbing: the displacement of local populations; a reduction in food security; environmental damage; loss of livelihoods; social polarization and political instability..."⁶³

⁶⁰ *Ibid.* Even if the Green Revolution carried out through,

the dissemination of industrial agriculture ... primarily through the introduction of "high yielding variety" seeds, intensive irrigation, and chemical fertilizers and pesticides" resulting in "the great upsurge in yields of rice and wheat" was proclaimed "an unqualified success... one quickly encounters an increasing, unmistakable and brutal pattern of farmer suicide across the state [Punjab]. The links between the Green Revolution and this suicide epidemic are found in a web of interconnected crises that have enveloped rural Punjab over the last several decades; crises born of the same processes that so greatly increased rice and wheat yields" led to "increasing rates of rural inequality, ecological collapse both in soil and water systems, and skyrocketing levels of debt among Punjabi farmers. See Bryan Newman (2007), "A Bitter Harvest: Farmer Suicide and the Unforeseen Social, Environmental and Economic Impacts of the Green Revolution in Punjab, India" (Development Report No. 15, Institute for Food and Development Policy) p. 1.

⁶¹ DFID (2011), "Land Grabbing in Africa and the New Politics of Food", Policy Brief No. 41, p. 7.

⁶² FAO *et al* (2010), "Principles of Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources", <<http://archive.unctad.org/Templates/Page.asp?intItemID=6123&lang=1>> (accessed 26 June, 2012).

⁶³ Phoebe Stephens (2011), "The Global Land Grab: An Analysis of Extant Governance Institutions", *International Affairs Review*, 20:1, p. 6-7.

The WB, in particular, recognizes that “Few countries in Africa have both good land laws and good land administration implementation capacity.”⁶⁴ And land policies do not clearly define land rights nor do they provide for transferability of such land rights.⁶⁵ In cases where there are good land policies and laws, there is a lack of a firm political commitment to implement them.⁶⁶

The WB states that “ultimately, the goal of the PRAI is to be translated into an agreement on codes of good or best practices” and “actions for investors, governments, donors and international agencies, at different levels.”⁶⁷ The research report states that for poverty reducing growth in agricultural productivity to take place, there is a need to: “integrate large farms with smallholder agriculture, enhance the capacity of host countries, recognize the customary land rights of the local population through clear definition of the rights, demarcate the land and put in place effective enforcement mechanism and educate the local population about their land rights.”⁶⁸

The regulatory approach is also applicable to the case of Ethiopia. According to the USAID and the WB, the country’s ongoing large-scale agricultural land transfers should take place in the context of secure land rights, which includes granting the right to transfer land right to peasants and agro-pastoralists, collateralization and recognition of customary land right and issuance of land certificates. In *Awakening Sleeping Giant*, the WB mentions, as positive steps, Ethiopia’s attempt in the 1960s to establish agricultural universities meant to help introduce US style medium scale and mega commercial farms, its recent agricultural commodity exchanges market and its low cost and participatory land certification program mentioned above.⁶⁹ This

⁶⁴ The World Bank (2009), *Awakening Africa’s Sleeping Giant* (hereafter *Awakening*), (Washington DC), p. 183ff.

⁶⁵ *Id.*, p. 16.

⁶⁶ *Id.*, p. 183.

⁶⁷ *Ibid.* The research report further documents that governments in target countries, investors, civil society, and international institutions must be actively incorporated into the decision-making process in order to achieve positive outcomes with respect to land grabbing. The WB calls on recipient countries to improve administrative structures, provide infrastructure, clarify and secure local rights, and protect critical natural resources. Investors are considered to be highly sensitive to reputational risk and are thus expected to engage in activities that minimize social dislocation and environmental destruction. Industry-driven initiatives that promote best practices are deemed desirable in this context; however, the involvement of host states is also perceived as necessary to ensure the initiatives operate effectively on the ground. Civil society organizations... are called upon to educate local communities on their rights; provide specific assistance in negotiation and monitoring; and perform a watchdog function to draw attention to non-compliance with existing policy or “globally agreed norms.” Finally, the WB regards international organizations as performing a bridging function that encourages stakeholders to agree on a standard set of principles.

⁶⁸ Klaus Deininger and Derek Byerlee (2011), “Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?” (The World Bank).

⁶⁹ The World Bank, note 65.

report would like to see the country recognize customary land rights and allow collateralization and transferability of land rights.

The 2011 research report, in particular, has given attention to Ethiopia's agricultural development. In this report, following the WB's categorization of Ethiopia as "little land available, and high yield gap", it advises the country to free its people from poverty by increasing the productivity of existing land being cultivated by smallholder farmers, advising the country to avoid the danger of large farms pushing farmers off the land given the country's little non-agricultural sector.⁷⁰ The WB suggests the country bridge its considerable yield gap per hectare in the smallholder agriculture especially in relation to crops such as maize in existing land expansion for this crop.⁷¹ Given the fact that Ethiopia falls within the WB's classification of countries with little available land and high yield gap, massive small agricultural sector and underdeveloped industrial and service sectors, the available options for the country are to boost smallholder agriculture productivity and to encourage well-governed agricultural investment mainly through contract farming taking care not to push people off their land.⁷² Kalus Deiniger, the WB's Chief Economist, says that large-scale farming in Ethiopia,

Is an opportunity but it definitely won't be the main development opportunity for its smallholder population... it can draw in some private investment but it needs to be done in a strategic way... Ethiopia...[has] ended up with a very fragmented approach to land lease that fails to provide any infrastructure benefits and is in contradiction to smallholder rights.⁷³

Thus, the WB appears to envisage balanced development of small holder commercial agriculture and contract farming based large-scale agriculture in Ethiopia even if it appears to be critical of the way the government is conducting large-scale land transfers.

On its part, the USAID is working towards the enhancement of economic development, which it seeks to achieve through its multi-billion dollar five year plan named USAID/Ethiopia Country Development Cooperation Strategy 2011-2015 (CDCS). The CDCS is claimed to be a device to transform the work of the USAID in Ethiopia from a provider of a humanitarian aid into a contributor to Ethiopia's economic development with a central goal of contributing to

⁷⁰ Klaus Deininger and Derek Byerlee, note 69, p. 89.

⁷¹ *Id.*, p. 84.

⁷² *Id.*, p. 89.

⁷³ Ed Butler, "Land Grab Fears for Ethiopian Rural Communities", *BBC News*, December 16, 2010. (accessed December 3, 2014).

increased economic growth⁷⁴ following “the up-tick in interest by the donor community in economic growth in Ethiopia”.⁷⁵ The CDCS seeks to promote a concentrated effort to achieve sustained agricultural productivity through market-based agricultural development.⁷⁶ The CDCS states that “with the increasing “land give always” to private, foreign agricultural investors, policy efforts will be undertaken...to support land use planning and natural resources management that avoids displacement of existing communities and helps ensure balanced development.”⁷⁷ Staal, under whose leadership CDCS was developed, said: “we are not completely against commercial agriculture. I think it is a good thing. I do think commercial agriculture is an important part of moving forward here in Ethiopia....”⁷⁸ CDCS also states,

The GoE (Government of Ethiopia) clearly needed to shift its agricultural policy in order to make effective use of its vast amounts of fertile land, and the agricultural policy mix being implemented is viewed by most experts as a step in the right direction. However, that evolving policy is a long way from proving its worth as a vehicle for achieving the GoE’s stated goals of modernizing the sector, generating foreign exchange reserves, and increasing the domestic food supply.⁷⁹

To Myers, the main purpose of the USAID agricultural development strategy is formulated “so that both investors can invest with some kind of certainty that their investment will be secure and, at the same time, those people who hold the resources or the assets...will also have some certainty that they will be able to benefit from the investments that are made.”⁸⁰ The same Myers argues that “...on one hand encouraging the private sector, and on the other hand, supporting smallholder farmers...is really at the heart of our (feed the future) strategy.”⁸¹

Comments: The regulatory approach however is not persuasive. First, the regulatory approach to large-scale agricultural land transfers is couched in broad and vague terms, which in practice would allow powerful business elements and government elites to work out the details in their favor and it would have the effect of marginalizing those actors opposed to the project of

⁷⁴ USAID (2012), “Ethiopia Country Development Cooperation Strategy (2011-2015)” (hereafter CDCS) <www.usaid.gov/sites/default/files/documents/1860/Ethiopia_CDCS.pdf>, (accessed March 10, 2013) p. 5.

⁷⁵ *Id.*, p. 20.

⁷⁶ *Id.*, p. 21.

⁷⁷ *Id.*, p. 19.

⁷⁸ Tamrat G. Giorgis note 29.

⁷⁹ See note 75.

⁸⁰ See note 2.

⁸¹ *Ibid.*

land commercialization in favor of the powerful.⁸² “It is evident that powerful agri-businesses or hedge funds will likely opt to support the principles espoused by the World Bank.”⁸³

Second, the PRAIs would also create enclaves of smallholder agriculture, without integrating the two worlds:

It is stated that the only way smallholder agriculture might support the large-scale one is the supply of seasonal labour where employment is insecure and the wage it earns is meager. In this modern versus traditional smallholder approach, the two would compete for land and water resources. The regulatory view emanates from the thinking that the local people have nothing to bring to the table except the land they use in common might have been shared by the investors.⁸⁴

If the ultimate goal of Bretton Woods institutions is,

as they claim, increasing smallholder productivity and improving local livelihoods...they must engage in an honest assessment of the situation. This would involve taking global power dynamics into account and addressing the systemic factors that are placing the development prospects of local communities at risk. Such an approach would require supporting alternatives to neoliberal governance models.⁸⁵

Third, the PRAIs are based on the notion of secure property rights, which focuses on transferability and collateralization of land rights. Against this commodity notion of land, it is stated that “There must be detailed, robust and effective international rules and standards based on a conception of the value of land, not as a commodity but as a “lifeline for the poorest rural households.”⁸⁶ This transformative conception of land rights should inform “the direction of emerging governance institutions around land grabs.”⁸⁷

Fourth, in the Ethiopian context, the regulatory approach does not take existing power relations into account because the approach assumes that it is possible to put in place the conditions required to effectively implement the seven principles. As described in Chapter 8, the present land laws are too weak to ensure the touted balance between smallholder agriculture and corporate farming and such balance would tip in favour of large scale-mechanized farming. In particular, in the Ethiopian context, given the State is no longer a neutral actor in relation to land because of historical inertia inscribed in state land laws and policies discussed in Chapters 2 and 3, it is difficult to see a balanced agricultural development happening. Under these contexts, the suggestion by the WB and the USAID of balanced agricultural development would in practice

⁸² Phoebe Stephens note 63.

⁸³ *Ibid.*

⁸⁴ *Id.*, p. 15.

⁸⁵ *Id.*, p. 18.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

gravitate towards large-scale commercial agriculture to the detriment of the smallholder agricultural population.

Finally, preliminary evidence shows Ethiopia's recent experiment with large-scale farming is taking place contrary to the WB's seven principles of responsible commercial agriculture. The non-compliance with these seven principles is manifested in terms of lack of demarcation or improper land expropriation or lack of recognition of the customary rights by the state, lack of consultation with the concerned community and lack of mechanisms to ensure the accrual of the benefits from large-scale farming. The WB's findings in this connection are reinforced by the government's recent admission on the deficiencies related to large-scale farming; this self-assessment, as discussed in the previous chapter, has led the government to 'cool down' its land grants for commercial agriculture in order to assess whether development is taking place on the lands already transferred to investors.⁸⁸ This contradicts with the government's claim (discussed in Chapter 8) about the existence of legal and institutional means to effectively regulate corporate farming. And there exists a contradiction in regard to the international institutions as well: in its latest report, the WB has shown some preference to speedy takeover of land by the government for private investment purpose.⁸⁹ This pro-business tone of the WB is contrary to what the proper enforcement of its seven principles of responsible agriculture would entail.⁹⁰

E. The extent of the World Bank's and the USAID's influence over Ethiopia's land policy

There are two main views on the extent to which Ethiopia's land policy is influenced by international institutions chiefly the WB and the USAID. The first view is that Government policies including land policies in Ethiopia are dictated by international institutions. Philippa Bevan writes that the current regime in Ethiopia is dependent on aid funds in implementing its

⁸⁸ Wudineh Zenebe, The Ministry of Agriculture puts Moratorium on Transfers of Land to Re-assess itself, the Ethiopian Reporter, March 14, 2012 (accessed 30March, 2012).

⁸⁹ Klaus Deininger and Derek Byerlee, note 69, p. 104.

⁹⁰ The WB also observes that the lands given and readied for agricultural investment in Ethiopia are located in remote and inaccessible parts of the country. *Id.*, p. 83. This assertion is inaccurate as shown in the previous chapter land for large-scale farming of different sort is also being taken from populated highland areas. The WB's report states that if the landholding of a given family is between 1 to 2 hectares or less and grow staple foods such family would remain in poverty implying that such landholding needs to be consolidated in favour of large commercial farming. *Ibid.* The WB has further stated that in large-scale mechanized farming even food staples can be produced. For this, see World Bank note 65.

social policies, which include land policy. Bevan asserts that social policy in current Ethiopia “is not the result of political settlement between government and citizen, demand for it being led by an international development social movement rather than organized collective action by the insecure.”⁹¹

The second view is that such policies are internally driven because international institutions have been unable to push through policy agendas their way meaningfully. Davies states,

It is easy to observe various ways in which donors have come to occupy an enfeeble position. The Government has proved itself quick to respond to criticism with fiery rhetoric and even expel dissenting foreigner from the country with little provocation. Donors cannot credibly retaliate to such aggression, e.g., by threatening to leave the country, because their presence is only tolerated by the regime-as opposed to having been sought out-and both parties are well aware of this fact. Much of what they do in Ethiopia and Africa more broadly is propelled by their

⁹¹ Philippa Bevan (2006), "Poverty and Social Policy in Developing Contexts: Ethiopia's Insecurity Regime" Paper presented at the annual meeting of the American Political Science Association, Marriott, Loews Philadelphia, and the Pennsylvania Convention Center, Philadelphia, PA, Aug 31, 2006, 16 <http://citation.allacademic.com/meta/p151216_index.html> (Accessed December 3, 2014) p. 27. It seems correct to assert that peasants and agro-pastoralists are not leading the course of land policy in Ethiopia. Nevertheless, Bevan's argument that the Ethiopian state is merely executing the policies of international actors is unfounded because there is evidence to suggest that the source of government funds does not necessarily control policy directions... Deiniger also has remarked that Ethiopia is “letting investors determine the government strategy...” in regard to large-scale farming. For this, see Ed Butler, note 74.

Shepard Daniel thinks the deciders are international institutions chiefly the WB and its affiliates. In connection with the ongoing large-scale agricultural land transfers in Ethiopia, the International Financial Corporation (IFC), has since 1997 facilitated the opening up of the country for foreign investment. To this end, the IFC has initially acted through delegates and team of experts occasionally travelling to Addis and then followed by the opening of an office in Addis. The IFC in particular has facilitated situations so that private investors obtain land for corporate farming in Ethiopia by reviewing the country investment laws, land lease law, policies and institutional setting, by giving capacity building training to public servants working at the Ethiopian investment agency and by giving special attention to export-oriented investments. Daniel Shepard (2011), “The Role of The International Finance Corporation in Promoting Agricultural Investment And Large-Scale Land Acquisitions”, Proceedings of the International Conference on Global Land Grabbing, Land Deal Politics Initiative, p. 17.

The IFC's technical assistance and advisory services exclusively focus on numerical economic growth indicators but not on community consultation in projects, land rights of communities, and number of quality jobs created and impact of projects on the environment. On a more general note, Shepard Daniel sates that:

IFC/FIAS Technical Assistance and Advisory Services have not only facilitated large-scale land investments but have deeply influenced the legislation and policy agendas of developing countries, directly shaping social and economic outcomes that affect local livelihoods and food security. In providing both advice to country governments and facilitating investment opportunities for private investors, IFC and FIAS seek a “win-win” solution: that investors turn a profit while governments develop their economies and infrastructure and improve their investment climates. *Id.*, p. 16.

It seems that Daniel's presentation of land transfer for large-scale farming as externally driven emanates from a lack of proper appreciation of internal developments in the country. One might say in the Ethiopian context that international institutions such as the IFC have facilitated large farm acquisitions in Ethiopia in the sense that they have encouraged the country to pave the way for the inflow of foreign direct investment through financial, technical and advisory services. But there is no direct evidence showing that they have influenced the actual decision making process. As argued in Chapter 8, this is the more so especially when one sees the fact that Ethiopia's interests, as embodied in its policies and laws, to attract investors in the agricultural sector predates the global factors which triggered the so called land ‘rush’.

own humanitarian and organizational imperatives, and so their bargaining power with government is minimal. Hence it is apparent that the mindset many foreign organizations have adopted is simply to toe the line in order to be allowed to continue their work.⁹²

Davies cites as an example ELTAP, the land certification project discussed above, which he thinks is “somewhat of a Frankenstein-like endeavor, in which different agendas such as conservation, tenure security, diplomacy, image building, authority enhancement and appeasement have been haphazardly cobbled together on a small budget.”⁹³ Like Davies, Lavers who considers land policy as part and parcel of social policy, states:

the social policy strategy is rooted in Ethiopian politics and is part of the GoE’s [Government of Ethiopia] attempt to take a leading role in managing social and economic processes, including migration and structural transformation...in several cases, the GoE and donors support the same policies but for different reasons.⁹⁴

Lavers explains the reason for the state’s unwillingness to share the policy arena with other forces such as international actors as a historically intertwined nature of the objective of land policy and political control imperative:

Under Haile Selassie, modernisation was hindered by the need to retain the support of the landed elite that stood in the way of land reform. Under the Derg, redistributive motivations in favour of the peasantry were undermined by internal and external military threats, and the need to cater to potential threats of discontented urban populations. This led to ever greater levels of exploitation of the peasantry and to their alienation.⁹⁵

Staal has recently criticized the present government’s gravitation towards control in the name of promoting equality and fairness, when he says,

I think the government is still concerned about control...we think it [change] could go faster. Certainly, it is a government that likes to maintain control and move the process forward at a pace they can control, both economically and politically.... That has been some of my frustrations here, both on the economic side and on the political side, frankly.⁹⁶

Staal has acknowledged the failure of the USAID’s endeavor to expand the transferability of land rights of small farmers. Hence, the USAID, finding itself unable to influence policy change on transferability of land rights as much as it would like to, intends, in the coming four years, to work towards strengthening the Government policy that allows peasants and pastoralists to lease out their lands themselves. In the situation where there is a government which is

⁹² Steven Davis (2008), “The Political Economy of Land Tenure in Ethiopia” (PhD Thesis, University of St. Andrews), <research-repository.st-andrews.ac.uk/.../580/3/StevenJDaviesPhDThesis.pdf>. p. 231 (accessed December 3, 2014) and Cf. Catherine Boone (2007), “Property and Constitutional Order: Land Tenure Reform and the Future of the African State”, *African Affairs*, 106/425, where she presents the issue of land in Ethiopia as “land reform and property rights ... are subject to considerable negotiation” between state and society....

⁹³ Steven Davis note 92 p. 242.

⁹⁴ Tom Lavers (2009) “Competing Visions of Social Policy in Ethiopia” (MA Dissertation, University of Bath, Faculty of Humanities and Social Sciences) p 80 and 82.

⁹⁵ *Id.*, p. 80-81.

⁹⁶ Tamrat G. Giorgis note 29.

reluctant to concede policy changes at the desired speed and scale, the USAID has chosen to ‘stay engaged’ and offered the reasons for the government to want to remain in control of key policy matters. Staal says,

The best way to do that is to stay engaged with the government. I think Ethiopia is a country that is very proud of its heritage, its history, and its culture. It does not take kindly to foreigners coming in and telling them in public what they should or should not do. I sympathize with that.⁹⁷

Staal says that the USAID seeks to “influence policy change” even if “the policy in environment in Ethiopia is notoriously difficult.”⁹⁸ He considers the USAID’s attempt to influence policy change in regard to land certification to peasants as a partial success because he thinks that even if on this issue the USAID has not obtained policy outcomes it would like to see: their inability to see the legal restrictions attached to marketability of rural land use rights are lifted.⁹⁹

A land law expert said that the USAID is following the bottom-up approach, i.e., gradually expanding land rights of smallholders, when “it has realized that a change in policy towards full private ownership of land is a non-starter for the government.”¹⁰⁰ This ‘bottom-up’ approach means endeavoring to influence land legislation to gradually and imperceptibly expand the marketability of land use rights so that such rights expansion resemble ‘privately owned land’ for all intents and purposes.¹⁰¹ Writing on land policies of developing countries, McAuslan has concluded that “there is an extreme reluctance on the part of governments to ‘let go’. It is not so much that there is an antipathy to markets but an antipathy to a perceived loss of control over the polity and its main resource-land.”¹⁰²

The USAID on its part is encouraging, but not in a position to determine, Ethiopia’s strategy for corporate farming including its associated land rights of smallholders, which is rather being driven by internal dynamics. This observation is in line with Richard Dowden’s general remark about the late Prime Minister Zenawi’s “absolute determination to control his country and its destiny, free of outside interference.”¹⁰³ A US diplomat observed that “It’s Mubarak

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ See note 35.

¹⁰¹ *Ibid.*

¹⁰² Patrick McAuslan p. 313, note 48.

¹⁰³ Richard Dowden, “How Meles Zenawi rules Ethiopia, May 21,” 2012, <<http://africanarguments.org/2012/05/21/how-meles-rules-ethiopia-by-richard-dowden/>> (accessed May 20, 2013).

syndrome... We only talked to Mubarak about Egypt's role in the region, never about what was happening inside Egypt. It's the same with Ethiopia.”¹⁰⁴ One finds a further confirmation from Tibor Nagy, former US ambassador to Ethiopia, who told the Voice of America that “there were philosophical issues that were difficult to bridge...”¹⁰⁵ Ethiopia, under the leadership of the late Zenawi, “unconvinced by the prescriptions of the I.M.F. and the world Bank, held back on accepting international loans until [its] conditions were met...”¹⁰⁶ In this context, the late Zenawi's address to the UN General Assembly meeting that, “we have taken full charge of our destiny, devised our own strategy and maximized the mobilization of our domestic resources... we made the best use of international assistance to supplement our own efforts... without towing the line of the donor community...” cannot be brushed aside on the ground that no leader can ever admit that their policies are dictated by external forces.¹⁰⁷

The question then would be why is the country getting significant funding, which is to the tune of 4 billion USD per year, without fully accepting their policy prescriptions? It appears that the reason lies in one or more of the following: aid organizations have other goals such as security which the country fulfils; aid money is often spent to good effect; and the astute leadership of Zenawi who had been confronting the donor community to adhere to their own much propagated idea that the era of prescriptive development policies is long gone. On a related discussion, Julio Faundez says,

It is often the case that governments make use of externally funded projects to further their own party political agendas showing little regard for the objectives of the project. In these situations multilateral agencies are caught in a difficult dilemma: either withdrawing on the ground that the government is not seriously committed to the project; or continuing on the expectation that despite the government's behavior the project will, in the long run, benefit the country as a whole.¹⁰⁸

Ian Gough confirms that there is external influence but its extent is disputable suggesting that “The government of Ethiopia sees for itself a major role in harmonizing these numerous aid flows, and can pursue and implement policies in ways contrary to the wishes of donors, but the

¹⁰⁴ *Ibid.*

¹⁰⁵ He explained this to mean on the issue of the government's reluctance to relinquish control over telecommunications and allow foreigners to invest in banks in Gabe Joselow, “Meles Zenawi Leaves Mixed Legacy After 20 Years in Power” <<http://www.voanews.com/content/meles-leaves-mixed-legacy-after-20-years-in-power/1491998.html>>, August 21, 2012 (accessed July 20, 2013).

¹⁰⁶ Abdul Mohammed and Alex De Waal, “Meles Zenawi and Ethiopia's Grand Experiment”, the New York Times, August 22, 2012, <http://www.nytimes.com/2012/08/23/opinion/meles-zenawi-and-ethiopias-grand-experiment.html?_r=1>.

¹⁰⁷ It refers to his speech at the UN General Assembly Meeting, in September 2010.

¹⁰⁸ J. Faundez (2001), “Legal Reform in Developing Countries”, *Law, Social Justice & Global Development Journal (LGD)* <<http://elj.warwick.ac.uk/global/issue/2000-1/faundez.html>> p. 10. (accessed March 9, 2013).

extent to which formal social policy is shaped inside and outside the country is disputed.”¹⁰⁹ Thus, promotion of mixed and conflicting objectives by the international community and the invocation of the same by the state apparatus as the need arises weaken the former’s push for land tenure reform. Similarly, the state invokes reasons not to embrace reform from the international arena as witnessed in banking, insurance and the telecommunications sectors wherein while the state formally accepts the latest international standards and claims to set up appropriate regulatory institutions, it avoids full implementation by arguing that capacity building should precede full liberalization of these services with actual mild form of service liberalization.¹¹⁰

This resistance against wholesale adoption of the international reform agenda has historical roots. For example, the Imperial Government of Ethiopia signed a technical assistance agreement called Point Four in 1951 with the US Government dedicated to transplant the American “experiment” with development to Ethiopia and,

Although the United States was clearly the stronger partner in the relationship, its ability to effect change in Ethiopia was always limited by the emperor’s authority. Bringing point four into the contemporary historical discourse on development, then, requires bringing in the perspective of at least one “other” side which played a crucial role in determining the types of changes that American development aid was able to make.¹¹¹

In Point Four, however, the US’s confidence and faith in their development abilities seemed to have made them “overlook the possibility of a nation importing America’s economic and scientific advances while rejecting its political ones.”¹¹²

The above discussion assumes there is a unified position on land policy within the WB. But some contend that there is a conflict within the people in the WB, for example, on how to deal with land policy within the new poverty agenda between the Land Policy Division and the Macroeconomic, and Environmental and Sustainability Division.¹¹³ There in fact exist

¹⁰⁹ Ian Gough (2010), “Wellbeing and Welfare Regimes in Four Countries”, <<http://www.bath.ac.uk/soc-pol/welldev/conference2007/final-papers/5-irg/gough.pdf>> p. 11 and 17 (accessed December 23, 2014).

¹¹⁰ Yazachew Belew (2013), “Regulatory Implications of Telecommunication Services Liberalization in Ethiopia”, *Journal of Ethiopian Law*, 27:2.

¹¹¹ Amanda Mcvety (2008), “Pursuing Progress: Point Four in Ethiopia, Diplomatic History”, *Diplomatic History*, 32: 3, p. 374.

¹¹² *Id.*, p. 373.

¹¹³ Chikosa Silungwe (2010), “The Land Question in Malawi, Law, Responsibilization and the State” (PhD Thesis, Warwick University) <wrap.warwick.ac.uk/53165/> (accessed December 4, 2013).

pp; 169-172. Patrick McAuslan note 58, p. 128; see also J. Ngugi (2006), “The World Bank and the Ideology of Reform and Development in International Economic Development” *Cardozo Journal of International and Comparative Law*, vol. 14, 313, 328. Also supervision feedback, Professor Abdulhusein H. Paliwala, June 20, 2013.

differences of opinion among professionals who regard land as a welfare asset for the poor and those who treat land as a site for raising capital but the former are more of an aberration than the dominant force. The WB's recent papers fit the underlying position maintained since 1975 Land Policy with some shift, for example, from the notion of full individual ownership over land towards a bundle of rights approach, the latter permitting multiple individuals to have different parcel of rights over the same piece of land.

These tensions among the WB can be observed in the-World Development Report 2006, which seems to support the conclusion that “[U]nequal distribution of assets, opportunities, and political power give rise to a circular flow of mutually reinforcing patterns of inequality”.¹¹⁴ As Benda-Beckman suggests, the Report

seems to be torn, however, between this political-economic analysis and a lingering belief in the eventually benevolent functions of land markets and tradable land rights. It continues to express the beliefs that poverty is caused by bad law (both state and extra-legal), extra-legal property is an obstacle to development, and good property law will bring about development.¹¹⁵

Benda-Beckmann was led to make this remark as the 2006 World Development Report says that the “imperfect unsaleability of land... hurts anyone who owns it.... The rural poor probably have more of their wealth in land than most people, so making land unsaleable might be particularly harsh on them.”¹¹⁶ Benda-Beckmann further says,

This sounds like an echo of de Soto's neo-liberal mystification of ownership titles. There is no doubt that formal law has been, and can be, an important means of shaping and expanding the development of elites and emerging middle classes by harnessing the capital potential of property, but it is hard to see how this law ameliorates the economic conditions of the poor. The evidence suggests the contrary: that the unsaleability, or better yet, the “unbuyability,” of land is probably much harsher on the rural rich than on the rural poor. It is wishful thinking to contend that formal property and a free market in which it can circulate will work to the benefit of the poor under conditions of great economic and political inequality.¹¹⁷

This currency of the dominant position of the state over land is in line with the observation of Murphy that “...not everything can change at once (even in revolutions)”.¹¹⁸

In sum, even if it is not persuasive to put the extent of influence of international institutions in Ethiopia's land policy in black and white, it seems unreasonable to argue that such institutions which contribute significantly to Ethiopia's annual budget have no influence over

¹¹⁴ The World Bank (2005), *The World Development Report 2006: Equity and Development* (The World Bank), p. 21-22.

¹¹⁵ Franz von Benda-Beckmann (2006), “The Multiple Edges of Law: Dealing with Legal Pluralism in Development Practice”. In *The World Bank Legal Review: Law, Equity, and Development* Vol. 2 (Caroline Sage and Michael Woolcock, eds.) (The World Bank, 2005, Martinus Publishers) p. 71.

¹¹⁶ The World Bank note 115, p. 92.

¹¹⁷ Franz von Benda-Beckmann note 116, p. 72.

¹¹⁸ Tim Murphy (2002), “Include Me Out”, *Journal of Law and Society*, 29:2, p. 347.

land policy at all even if its extent is complex and vague. Some tenets of ADLI such as land policy as a tool to reduce poverty and small holder commercial agriculture are strikingly similar to the WB's 2003 Land Policy. These include acceptance of legalizing land rentals, land use collateralization for agricultural investors and establishment of customary dispute resolution methods and land certification programs without however conceding fundamental aspect of land law. The USAID's involvement in drafting Ethiopian current Federal and regional rural land laws under ELTAP has led to the inclusion of some of these changes therein.¹¹⁹ Tolerating or even facilitating the phenomenon of quasi-informal land markets that are taking place in the form of *kontract* with some administrative and judicial backing could also be another example. This finding is in line with the underlying position of other scholars in regard to the external outcome of land law reforms in Eastern Africa because they acknowledge that external pressures may not have a decisive role as domestic political and bureaucratic interests may lessen its magnitude.¹²⁰

F. Reiteration

The position of the WB and the USAID is that Ethiopia's development requires effective agricultural development: a 'balanced' form of smallholder and large-scale farming can be the right direction and a key contributor to such agricultural development is an intermediate land policy that entails granting property rights to small landholders including land rentals, land collateralization, a moratorium on land redistribution and preferably letting land privatization evolve. For the two development agencies, the government should also subject agricultural inputs to market forces to push smallholder agriculturalists to commercialize themselves.

Yet, the WB's position on land grabs is contradictory. While its 2003 Land Policy advocates for a social welfare based approach to land policy, its 2011 report supports land grab.¹²¹ The WB's support of transfers of large-scale land in sub-Saharan Africa context is

¹¹⁹ As Documents on "Comments on draft Federal and Regional Rural Land Use and Administration Laws" (on file with the author) gathered for this thesis show, the USAID's 'consultative comments' provided in the course of drafting federal and regional rural land laws to see to it that various transferability restrictions are lifted.

¹²⁰ Ambreena Manji note 1 and Patrick McAuslan note 48.

¹²¹ As stated in Klaus Deininger and Derek Byerlee note 69, Ethiopia is under the category of poor countries with "little excess cultivable land and high yield gap", suggesting there is no prospect for large-scale land transfers in the country without displacing small farmers. If the WB were to stick to this 2003 pro-poor land policy narrative, it could not promote displacement of smallholders; it would rather opt to support projects augmenting small farmers' to undertake commercial agriculture as in its opinion smallholders who possess up to 2 hectares of land cannot be food secure if they are confined to food production rather than production of commercial crops. Also supervision feedback, Professor Abdhusein H. Paliwala, June 20, 2013.

documented in the 2009 report entitled *Awakening Sleeping Giant* that states that there is a vast “... underused land reserve, constituting one of the largest underused agricultural land reserves...”¹²² Moreover, the overall tone of the 2011 research report promotes large-scale commercial farming in Ethiopia even if it apparently says there is no room for large-scale farming in the country. The 2008 World Development Report also suggests that small farmers who are unfit to compete shall renounce agriculture in favor of more ‘productive users’ and become wage laborer.¹²³ But more telling in this connection is a WB report dedicated to Ethiopia that categorizes the country into four zones and points out the existence of a vast amount of land suitable for large-scale commercial agriculture.¹²⁴ The USAID followed suit in its latest five year strategic plan meant to make interventions in the agriculture sector. The plan classifies Ethiopia into three zones and indicates areas where large-scale farming is viable.¹²⁵

The WB and the USAID have strived to influence the course and direction of extant land policy in Ethiopia through their general and country policy research reports and through their funding to various government plans and projects such as land certification programs. The relationship between the Government and these institutions is more subtle than the one assumed by the two views examined in this chapter; the donors’ role in land policy of Ethiopia is neither deterministic nor is it devoid of any influence.

Ethiopia has so far subscribed to some of the prescriptions of these international actors by allowing peasants to rent out a portion of their land for a limited period of time and permitting them to engage in joint agricultural development programs with investors using their land use rights as a contribution. The government has also permitted donors to engage in land certification programs in a manner which does not erode aspects of its land policies, i.e., prohibition of land alienation, retention of the power to redistribute existing peasant landholdings as it pleases as well as land expropriation in the context of loosely stated public purpose.

However, as shown in the preceding eight chapters, the Ethiopian state is pursuing state-led marketization of land in contrast to market-led land tenure system sought by the WB and the

¹²² World Bank note 65.

¹²³ This is inferable from the underlying recommendation of the World Development Report note 21.

¹²⁴ World Bank (2004), “Background Report: Four Ethiopias, A Regional Characterizations: Assessing Ethiopia’s Growth Potential and Development Obstacles” (Unpublished, on file with the author); and Charles Geisler (2012), “New *Terra Nullius* Narratives and the Gentrification of Africa’s “Empty Lands””, *American Sociological Association*, 28:1.

¹²⁵ See CDCS, note 75.

USAID. The essential ingredients of this state-led land marketization are transfer of or facilitation of transfer of land to ‘better land users’ using different devices chiefly quasi-recognition of informal land alienations, expropriation laws and non-recognition of communal lands as wells as their treatment as sites for raising capital. In this scheme, non-state actors including peasants can transfer their land use rights under strict conditions and only with the ultimate blessing of the Government. The concluding chapter will further elaborate on these elements of state-driven land alienation, the exposition of which has been the underlying aim of this thesis.

* * *

Conclusion

The thesis has examined two sets of narratives about land law and policy in Ethiopia; namely, the official narrative of people's ownership of land which purports to maintain a 'land for all' principle, on the one hand, and three theoretical discourses that in common prescribe for property rights in land, on the other. The contention here, is that both the official and the theoretical perspectives fail to reveal an emerging trend - state-driven land alienation - which manifests itself through certain land appropriation schemes that are anchored on notions of economic growth and of improvement. The defining, but not so patent script in the trend is a shift away from the 'land-to-the-tiller' ideal to 'land-to-the-improver' principle. Moreover, the tendency is not uncontested. It exhibits fundamental tensions as well. The objective of this concluding chapter is to consider these themes and the accompanying tensions in the context of the thesis as a whole. It reiterates the major conclusions that have arisen out of each chapter, to envisage how the elements of Ethiopia's land question emphasized in the thesis, fit together, from which general conclusions can be derived. Much of the chapter is devoted to the latter task since many pertinent separate points from the chapters will inevitably be reiterated in so doing. The chapter ends with a call for taking the Constitutional principles of land seriously.

A. Land for all

The 'land for all' theme is an official discourse under the people's ownership of land perspective that regards land as a livelihood asset for the rural masses. The overall emphasis is an equitable land policy which pledges inalienable use rights over agricultural land free of charge to Ethiopian peasants and herders who want to live off agriculture. The State has assumed a constitutional duty neither to dispossess people of land itself nor to let others evict peasants and pastoralists. As discussed in Chapter 4 (Section f), these constitutional clauses are in principle hard to amend and have been fleshed out in land legislation that contains land transfer restrictions to protect small rural producers from their own follies as well as envisages room for land re-distribution.

The State justifies the people's ownership of land discourse. First, there is the correct invocation of the fundamental nature of agricultural land in a country of peasants and herders and thus the need for putting the bulk of this crucial asset in the hands of these people for the

sake of social justice and political stability. For this, the official narrative conforms to McAuslan's perspective that points to the contribution of land policy with an equity orientation that makes "fair and reasonable resources of society, in this case, land, available to all members of society and that a corollary of that, [takes] steps to ensure that this is done and that the position is maintained" on efficiency and poverty reduction grounds.¹ This is in essence an expression of faith in the land improvement capacity of small farmers and pastoralists and thus amounts to an endorsement of a bottom up vision of rural development.

Second, the State points a finger to the Derg's unsuccessful experimentation with socialist agriculture to justify the present agricultural development strategy that is presented to hinge upon smallholder production with a view to making judicious use of land to raise the much desired and scarce capital. Also invoked are the findings of land reform studies in a sub-Saharan African context which reveal principles of effective land tenure that consist in smallholder production with land access and control by smallholders, with less emphasis on land markets and Government provision of appropriate complementary supports, particularly those inputs which are based on local knowledge together with physical infrastructure.²

Finally, as discussed in Chapter 4, the people's perspective of land ownership is tied to ethnic self-governance, which is presented to permit ethnic groups that have forged the Ethiopian federation to administer land found within their territory on their own terms.

Hanging on to this storyline – the people's ownership of land paradigm with its conception of land as a socially embedded thing not up for sale - is crucial for the incumbent government because the bulk of the power elite's present political support comes from small farmers; the latter's backing enabled the incumbents to seize state power in 1991 after conducting seventeen years of rural insurgency against the Derg.³

Beyond a subscription to the people's ownership of land narrative, people at the pinnacle of state power have pronounced time and again that a change in it would take place only 'over the

¹ Patrick McAuslan, p. 190, note 21, Chapter 1.

² Other principles of effective land tenure include: customary land tenures and meaningful popular participation in local and national politics. For this, see Steven Davis note 93, Chapter 9 and The Report of the Commission of Inquiry note 15, Chapter 3.

³ As discussed in Chapter 4, Section B (b) (ii), this is as opposed to the contested nature of the incumbent's power in major urban areas of the country as revealed in the results of the May 2005 national elections.

dead body’ of the ruling party. They have even equated opting for change in the land policy by some forces with unlawfully altering the constitutional order. The late Zenawi said,

I would not scratch my head if some provisions of the Constitution were tabled for amendment ... but the land policy element of the Constitution is non-negotiable for it is one of the pillars of the Constitution; those who press for change in this regard are crossing a red line for that tantamount to destroying the constitutional order through the use of the Constitution. That is a non-starter!⁴

This is similar to what Sam Adelman terms hegemonic ideologies which ‘seek to naturalise’ themselves ‘‘as a form of common sense to which there is no alternative.’’⁵

B. Property rights in land

However, there has been a reaction to the ‘land for all’ discourse from scholars and international institutions that promote the principle of bestowal upon the rural masses of property in land. As discussed in Chapter 1, the three approaches seek to delink land from the State (the privatization perspective) or see the power of the State over land curtailed by granting transfer of use right (the revisionist perspective) or allow local people to trade with their land resources subject to community regulation (the associative ownership perspective).

These views, thus, privilege the market as a solution to the land question in the country. Especially, according to the privatization perspective, there is too much equality in land allocation in rural Ethiopia and the country has to move away decisively from the people’s ownership narrative by bringing about peasant differentiation, if not ‘peasant disintegration’. Serbeh-Yiadom *et al* say,

The attempt to use land to promote social equality has not only failed everywhere, overwhelming evidence supports the thinking that a community is far better off when total aggregate production grows from the entrepreneurial efforts of the few. The welfare of the poor is better served and guaranteed by good governance which includes progressive taxation of the successful developer.⁶

Stephen Devereux *et al* attribute the ills of current land policy of Ethiopia to ‘too little inequality’ in land allocation.⁷ Rural Ethiopia is already ‘imploding’ from within because the amount of land left under the possession of peasants is a ‘starvation’ rather than a ‘survival’

⁴ See Current Affairs note 68, Introduction.

⁵ Sam Adelman (2009), ‘‘Rethinking Human Rights: The Impact of Climate Change on the Dominant Discourse’’ in Humphreys Stephen (ed.) *Human Rights and Climate Change* (Cambridge, Cambridge UP.) p. 170.

⁶ K.C. Serbeh-Yiadom *et al* note 175, p. 26, Chapter 4.

⁷ Stephen Devereux *et al* note 175, Chapter 4.

plot.⁸ The suggested solution is to trigger self-dispossession of peasants' landholding through the market along the De Soto path.⁹

The above perspectives ignore and obscure the ongoing trend towards land marketization in the country. This inability to capture the ongoing development in regard to land might have arisen (on top of the much propagated Government's land for all rhetoric reiterated above) from the perspectives' failure to mark and give full effect to the shift in ideological orientation within the ruling party away from their endorsement in the 1980s of the Albanian socialist model following the collapse of the socialist block.¹⁰ And it might also emanate from their inability to fully appreciate the country's regaining of the West especially the US as external patron and some policy influence attendant to it.¹¹

At the bigger level, it is also suggested that socialist influences continue to linger, giving as examples post-socialist Ethiopia's 'foot dragging' approach to privatization of state owned enterprises, its refusal to open up the financial and telecom sectors to foreign investment and even its tendency to set up new government enterprises.¹² Besides, the constitutional and some legislative frameworks and official actions (e.g., occasional land redistribution and resettlement) that imply social dimension of land might have contributed to the creation of a kind of make-believe world of equity in land matters. This is to some degree captured by what Noam Chomsky in another context has described as "What is important is "symbolism and narrative to shape what the public thinks about".¹³

However, when one reads between the lines, one realizes that some commentators have spotted the existence of the shift towards land alienation in Ethiopia. Expressions like 'a slow progress' and 'refusing to let go' speedily due to equity reasons have been used.¹⁴ Others have

⁸ Dessalegn Rahmato note 59, Chapter 1; and Tsegaye Tegenu note 175, Chapter 4.

⁹ Hernando De Soto note 61, Chapter 1.

¹⁰ The ideological orientation referred to applies more accurately to the Tigrayan People Liberation Front (TPLF) which is one of the members of the EPRDF.

¹¹ The US was an ally of the Imperial regime; the Derg's affiliation with the Eastern Block led to a dramatic disengagement of the US from Ethiopia and post-1991 Ethiopia witnessed a vigorous revival of the post-revolutionary US-Ethiopia relations. See Amanda Mcvety note 112, Chapter 9.

¹² Note that Ethiopia has privatized 365 state owned enterprises for the last two decades, earning 18.7 billion Birr, and out of which 12.2 billion Birr was collected and that there are many state owned enterprises not yet privatized.

¹³ Noam Chomsky (2011), *Hopes and Prospects*, (UK: Penguin Books) p. 101.

¹⁴ See Tamrat G. Giorgis note 29, Chapter 9.

described it as a country that “has only partially shed its Marxist heritage yet is attracting industrial companies”.¹⁵ In similar vein, it is remarked that “Ironically, the policy framework for a virile market is either in place or underway”.¹⁶ Still others recognize developments in the direction of transferability of land rights but incorrectly subscribe to the division of the country into *mehal ager* (highland) and *dar ager* (lowland) arguing that the State still takes the peasant security doctrine seriously in *mehal ager* while aggressively encouraging commercial agriculture through land dispossession in *dar ager*.¹⁷

The underlying analysis of these writings is nevertheless unclear because it is doubtful whether the commentators are referring to a general “shift toward a reliance on market indicators in the formulation of economic and development policies” or a particular change of direction in Ethiopia’s land law.¹⁸ Finally, those who observe the existence of a ‘virile market’ for land have neither analyzed the winds of change in land policy nor considered its implications.

Generally, the literature on land perspectives has failed to pay due attention to the existence of disparity between official pronouncements in relation to the story of people’s ownership of land and what is tending to happen to land on the ground.

C. State-driven land alienation

The State has set in motion a perceptible trend towards land alienation under the veneer of the people’s ownership of land narrative. As considered in Chapters 4 to 8, this noticeable trend in Ethiopia’s existing land policy is driven by the State through land laws and historical land conceptions and practices. Centrally-driven land alienation crucially depends on the State’s claim of land ownership or trusteeship over land and invocation of the ideology of a developmental state.

It should be noted however that the claim of this study is not that massive peasant dispossessions have already taken place in the country. It is instead, that the ingredients for peasant dispossession have been put in place and that some land dispossessions have already

¹⁵ The Economist, “Manufacturing in Africa: An Awakening Giant”, 8 February 2014, <<http://www.economist.com/news/middle-east-and-africa/21595949>> (last accessed March 13, 2014).

¹⁶ K.C. Serbeh-Yiadom *et al*, p. 25 note 175, Chapter 4.

¹⁷ Fouad Makki (2014) note 72, Chapter 8; Tom Lavers note 154, Chapter 8; and Felix Horne note 17, p. 49, Chapter 8. The idea of land commercialization confined to lowland areas is inaccurate, as shown in Chapters 7 and 8, such lowland-highland dichotomy seems to have been taken uncritically from the State rhetoric is unfounded.

¹⁸ Fouad Makki (2014) note p. 8, note 72 Chapter 8.

occurred in sedentary areas and substantial dispossessions have taken place and are occurring in lowland areas of the country. The State-led land alienation trend is clearly different from state interventions, for example, for the purposes of regulating transfers, balancing the interests of *nebar* (indigenes) versus *mete* (newcomers) and correcting imbalances that emerge from traditional power and gender disparity in regard to land.

As the preceding chapters make clear, state-driven land commercialization manifests itself through some land alienation mechanisms, the concepts of economic growth and of improvement to be discussed in that order in the current section. Its contested nature and the accompanying basic tensions shall be discussed in Sections D and E, respectively.

i. Land appropriation mechanisms

State-controlled land commercialization is underway through four appropriation mechanisms. As examined in Chapter 4, one such device is regulated land alienation, where land law allows peasant-peasant and peasant-investor land rentals but privileges the latter. The entry point for this differential treatment is the Constitution itself which permits leeway for the legislature to enact land legislation provided such legislation does not permit private ownership in land, i.e., as argued in Chapter 4, it implicitly empowers the lawmaker to bundle and unbundle land rights short of full ownership.

As shown in Chapter 5, an additional economic-driven land taking avenue is expropriation which is founded upon public purpose, with the term taken to mean virtually any kind of project so long as the implementing organs designate it to be so, inclusion of factors which lead to payment of a paltry amount of compensation due to confinement of compensation to “unexhausted improvements only and not for the use of the bare land” and limited judicial recourse for aggrieved parties. This loose expropriation legislation is being used to take land from ‘lesser improvers to give it to greater improvers’. A parallel legislative development is the rise of unchecked administrative discretion on land matters witnessed in relation to agricultural land taking if and when it is ‘unused’ for two to three years or ‘improperly used’ by small farmers. A focus group discussion underlined this point: “Failure to attend meetings called by local government functionaries, purchase fertilizer and seeds and cultivate land is visited with a threat: ‘you shall return the land to the government.’ We do not think it is a bluff.”¹⁹ The

¹⁹ FGD with Sidama intellectuals, December 22, 2012.

constitutionality of this administrative power cannot be challenged in the regular courts because the power to adjudicate constitutional disputes is given to a political organ, the House of Federation. As was discussed in Chapter 5, regrettably, undue executive discretion is deployed sometimes with the blessing of the Federal Supreme Court that has held that decisions rendered by administrative agencies are not subject to judicial scrutiny.

Still another land alienation form is *kontract* which begins as a private land deal for a specified period of time but ends up with a permanent transfer with endorsement by administrative and judicial authorities who justify such validation on the ground of non-eviction of improvers. As considered in Chapter 6, administrative ratification of such deals are contrary both to the Constitution that bans land alienation and land laws that permit land rental only under limited conditions.

As considered in Chapters 7 and 8, the State under the tragedy of the commons, *tef meret* ('empty land') and 'underutilized land' concepts channels communal lands to agricultural investment claiming to bring jobs, technology and infrastructure. The story line adhered to is: "The land has been empty for thousands of years. If it is not developed now, it will continue to remain idle forever. It is better to improve it than leave it like this."²⁰ The concept of *terra nullius* invoked in connection with *dar ager*, as argued in Chapter 8, suggests the need for the transformation of the pastoral mode of life by undertaking village clustering programs.²¹ As the material in Chapter 8 demonstrated, land dispossessions are occurring in *mehal ager*, too, stimulated by much better security, labor force availability and physical infrastructure.

ii. Economic growth

While the focus of regulated land use right transfers, expropriation and *kontract* is on private land, government-induced communal land transfers have their foundation on land law's failure to recognize communal lands and its conferment of undue legislative discretion on the State to "change communal land to private holdings as may be necessary." Allowing the Government to have full powers to deal with communal lands according to whatever administrative policy might be adopted from time to time is not incompatible with the country's

²⁰ Mohamed Vall, "Sudan Farmers Fear Land Grab by Foreigners", *Al Jazeera*, January 1, 2012.

²¹ See Chapter 8, Section D, for the details.

history of land relations, as described in Chapter 2; this is exemplified particularly by the State's annexation of land belonging to the southern populations by labeling it as an empty space.

The idea of state controlled land alienation is driven by the imperative of economic growth linked to commercial agriculture.²² This necessity of registering sustained growth in turn informs the Country's present agricultural development policy that hinges upon commercialization of agriculture which is thought to be possible through actors who are able to acquire economically viable land size and purchase the necessary scientific inputs. The current regime unwittingly concedes the existence of dispossession when they occasionally state that people's ownership of land approach has enabled them to supply land for investment activities with ease, without hold up issues witnessed in other jurisdictions where private ownership of land reigns.²³ As Chapters 2 and 3 indicate, this is reminiscent of agricultural commercialization ventures pursued by investors and Government during imperial times and a similar process of socialist agricultural modernity via state farms and producers' cooperatives during the Derg era, demonstrating greater official faith in raising agricultural productivity through actors deemed land improvers, thus, directing land and other investment incentives to these actors as opposed to peasants and pastoralists who were viewed as improvident and shackled by backward agricultural techniques and practices.

Ethiopia's state-driven land commercialization and signs of change in land law towards land use rights transferability have correlated with a decade long stellar national economic growth with significant positive effects on roads and power plants, and social services such as health and education.²⁴ There is yet no strong reason to believe that state-driven land transfers in favor of developers strongly correlates with economic growth. First, growth in Ethiopia's agriculture is attributed not only to increase in productivity but also due to an expansion of cultivable land stimulated by a rise in global commodity prices.²⁵ Second, the Country is a donor darling, leading to the receipt of development aid worth 26 billion USD since 1991 largely from the USA, the EU and the UK due to its ability to carry out effective counter-terrorism campaigns,

²² See Chapter 4 note 116 for details.

²³ See Our Land Policy, note 29, Chapter 4.

²⁴ See Introduction, Section A.

²⁵ Kassahun Berhanu note 8, Chapter 4.

maintain stability in the troubled Horn of Africa and effective use of aid.²⁶ High economic growth is further stimulated by external debt which jumped from 4.35 billion in 2008 to 11.17 billion USD in 2013.²⁷

Even supposing that there is a strong correlation between state-controlled land transfers to improvers and economic growth, one would ask whether economic growth is a noble achievement.²⁸ Ethiopia's economic growth, even though such labels as 'equitable', 'inclusive' and 'broad-based' have been attached to it, is nevertheless beginning to widen the gap between the rich and the poor in the country.²⁹ The idea of trickle-down effect of economic growth behind state-driven land alienations and those who advocate for land privatization of one sort or another is largely a mirage: those who would lose their land in this process could, but no one would tell that they would, benefit from efficiency gains from land marketability or state-driven land transfers.

Nobel Laureate Joseph Stiglitz says "Trickle-down economics is a myth."³⁰ Amartya Sen's formulation of development as expansion of capabilities instead of GDP and national average per capita income drives home this message.³¹ Timothy Mitchell's interrogation of 'fixing Egyptian economy' tells us the fact that growth fails to capture the full pictures of winners and losers by excluding, among others, negative externalities of economic growth.³² And a recent study in Ethiopia's flower sector shows the illusive character of the much touted economic and social benefits due to "a race to the bottom to attract unsustainable 'investment

²⁶ BTI 2014 Ethiopia note 114, Chapter 4, p. 36-37, where it is correctly stated that external aids keep flowing despite the fact that "the government is regarded by some Westerns as a 'partner' resistant to advice in economic and developmental affairs" and that negotiation with international institutions on policy formulations is 'often tense'.

²⁷ According to the National Bank of Ethiopia, note 155, Chapter 4, external debt constitutes 39 percent of the GDP.

²⁸ The desirability of growth can be sought where it pushes millions above 1.25 USD per day mark and if infrastructure and social services are improved as a result. Yet as the 2014 Oxford University Global Multidimensional Poverty Index <www.ophi.org.uk> Global MPI (accessed December 4, 2014) shows, Ethiopia is named the second poorest nation on the planet next to Niger.

²⁹ Alemayehu Geda note 31, Introduction.

³⁰ Joseph E. Stiglitz (2014), "On the Wrong Side of Globalization", *The New York Times*, (last accessed March 24, 2014); see also Joseph E. Stiglitz (2010), *Freefall: Free Markets and the Sinking of the Global Economy* (England, Penguin Books).

³¹ Amartya Sen (2001), *Development as Freedom* (Oxford: Oxford University Press) and Amartya Sen (2010), *The Idea of Justice*, (England, Penguin Books).

³² Timothy Mitchell (2002), *Rule of Experts: Egypt, Techno-Politics, and Modernity* (Wing, NJ USA: University of California Press).

tourism.”³³ Rolf Steppacher has also stated that while formalized property rights or privatization has brought about,

high growth rates for some property-based economies since World War Two, one must not forget that this material success benefits only a minority of the world population living in property-based economies... Even for this minority, the economic growth path has proved to be non-sustainable.³⁴

iii. Improvement

The concept of improvement underlies the ongoing state-led land commercialization. The State's imperial expansion to the South in the nineteenth century had been accompanied by the use of notions such as *tef meret* and *maqnat* (improving a vacant land) suggesting the need for improvement of hitherto unimproved resources. This history is still alive in Ethiopia. Current land laws render terms such as ‘public purpose’ and ‘permanent improvements’ found in the Constitution to mean transfer of land to more efficient users.³⁵ An informant said, “They [the Government authorities] say *maresha yalnekaw meret* (land untouched by a plough) belongs to the State to be assigned to *almiwoch* (developers). They consider every open area as undeveloped. They say we must return land that is undeveloped to their land bank, which is due for investors.”³⁶ To another informant, the official meaning of improvement means “making natural resources such as land better economically, adding value to land; producing significant concrete results on it that can be seen.”³⁷ Informants emphasized the logical conclusion of the improvement thesis – inequity:

If this concept of improvement is taken seriously in the Ethiopian context, peasant and pastoralist except the few rural elites lack in improvement as is the case with their ancestors and they have been using their land for centuries; they yet still find it difficult to eke out a living. They are either bad improvers or are incapable of being improvers; in both cases, they ought to be dispossessed and hand over their land to real improvers.³⁸

The improvement thesis magnifies the inability of small farmers to develop their plot as they are depicted to possess *ye bere genbar meret* (literally, land equivalent to an ox's forehead) and lack modern agricultural skills and capacity to use scientific inputs. It means they are unable

³³ Elias Nour note 55, p. 21, Chapter 8.

³⁴ Rolf Steppacher note 73, p. 340, Chapter 1.

³⁵ Similar connotations are implied by reports of international institutions such as the WB that use the terms ‘yield gap’ and ‘underutilized land’. These expressions are repeatedly used in Klaus Deininger and Derek Byerlee note 69, Chapter 9 and in The World Bank Awakening note 65, Chapter 9.

³⁶ Interview 46 with a land law specialist, July 13, 2013.

³⁷ FGD 13 with land law specialists, judges and administrators, July 13, 2013.

³⁸ Conversation the author had with Supreme Court judges of Oromia Regional State on 29 April, 2013, in Bushoftu Town, Ethiopia.

to close significant yield gaps, between 70-75 percent. This would in turn suggest a process that ultimately leads to dispossession by subjecting the input side of agriculture to market conditions that could push poor peasants to enter a process of debt and of land alienation.

Past agricultural policies and practices which incrementally depleted successive generations of small farmers are not factored in. Nor are the advantages of small farming in tackling poverty and comparative efficiency accounted for.³⁹ Moreover, positive spillovers emanating from largely organic agricultural practices of small farmers who undertake multiple cropping and use of limited amount of chemicals are shunned as there is an inclination to overlook negative externalities in connection with uses of chemicals and mono cropping by large-scale farmers as well as investment incentives provided to them. Finally and generally, the extent to which a person should improve a given land before they are regarded as an improver proper so that property over land can get recognition is disputable. In John Locke`s thinking, unimproved land is “possibly not worth a penny”⁴⁰ while in De Soto`s scheme improvers are those with property rights in land and build “barrows rather than ... stalls made with proper building materials.”⁴¹

³⁹ One notes the advice of Adam Smith who says,

A small proprietor knows every part of his little territory, views it with all the affection which property, especially small property, naturally inspires, and who upon that account takes pleasure not only in cultivating but in adorning it, is generally of all improvers the most industrious, the most intelligent, and the most successful [provided a society gives to a small proprietor the freedom and security to] enjoy the fruits of his labour [in respect of land - the critical resource in an agrarian society]. Adam Smith, *Wealth of Nations*, (Kathryn Sutherland, ed.) (Oxford University Press, 2008) p. 268 & 336.

⁴⁰ Locke rather exaggerates the degree of improvement linked to labor when he says, “I think it will be but a very modest computation to say, that of the products of the earth useful to the life of man, nine-tenths are the effects of labour. Nay, if we will rightly estimate things as they come to our use, and cast up the several expenses about them- what in them is purely owing to Nature and what to labour- we shall find in most of them ninety-nine hundredths are wholly to be put on the account of labour.” John Locke, *An Essay Concerning the True Origin, Extent and End of Civil Government*, <http://www.bookwolf.com/Wolf/pdf/JohnLockeessayConcerningTheTrueOriginalExtenet.pdf>. p. 34.

⁴¹ Hernando de Soto, p. 162, note 61, Chapter 1. George Meszaros (2000), “Taking the Landless into their hands: The Landless Workers` Movement and the Brazilian State,” *Journal of Law and Society*, 27:4, p. 528, in relation to ‘productive property’ found in the 1988 Constitution of Brazil, where the question is how to redistribute land from the rich to the landless and the land hungry, says, “... one landowner took a plough, churned up some long abandoned land and scattered seeds there. Whether the crop survived or not was not immaterial. What counted was that it could be argued in a court of law.” This observation, though made in the context different from the Ethiopian case, shows the fluidity of the concept of improvement (productive property).

D. The contested nature of land alienation

The State's land alienation policies and practices have not been without contestation. There was 'counter-conduct' on the part of the people in the past.⁴² In feudal Ethiopia, resistance to unpopular land policies came in the form of peasant rebellions and during the Derg periodic counter-conduct against government agricultural policies became both more subtle (getting expression in couplets)⁴³ and blunt (support for armed groups that brought about the eventual downfall of the Derg). As Chapter 2 reveals, the Imperial period's attempt to raise finance through land dispossession and compulsory fruit appropriation contributed to the fall of the empire. Similarly, land dispossession together with a compulsory grain quota system during the Derg regime caused peasant disaffection, contributing to regime overthrow as rural people withdrew their initial support for the 1975 land policy.⁴⁴

Current resistance to the land alienation practices comes in different forms: through articulation of the social and cultural notion of land, "confronting government authorities using their own rhetoric of transparency and accountability,"⁴⁵ unilateral takeover of land assigned to improvers as well as actions forestalling land expansion,⁴⁶ blockage of streets in protest against land taking "for better development activities," such as those which occurred recently in the Northern district,⁴⁷ and occasional acts of violence such as the one that took place in the Gambella region in the south west and setting ripe crops belonging to corporate farmers on fire in same region. Note should also be taken of the violent popular resistances occurred in the aftermath of the announcement of the 10th Integrated Urban Development Master Plan of Addis

⁴² On the underlying nature of contestation, see Michel Foucault note 128, Chapter 8; J. Abbink note 127, Chapter 8; and Christopher Clapham (2006), "Ethiopian Development: The Politics of Emulation," *Commonwealth & Comparative Politics*, 44:1. The Renewal Path p. 107, note 128, Chapter 8 and Assefa Fiseha note 128, Chapter 8. Even if the ideas behind such ideologies were natural, one would join with Gilbert Rist who observes, "...it is never right to claim that what is true in the natural order is also true in the social order." See Gilbert Rist, p. 152, note 129, Chapter 8. Other scholars have critiqued claims of this sort whose foundation lies in the supposed discovery of 'the true public interest'. See Joseph Schumpeter (1950), *Capitalism, Socialism and Democracy* (3rd ed.) (New York: HarperCollins Publisher).

⁴³ See Fekade Azeze note 129, Chapter 8.

⁴⁴ Katherine Verdery (2003), *The Vanishing Hectare: Property and Value in Postsocialist Transylvania* (USA, Cornell University Press).

⁴⁵ FGD note 37

⁴⁶ *Ibid.*

⁴⁷ Sisay Mengiste and Alemu Kassa note 141, Chapter 8.

Ababa and the Surrounding Towns of the Oromia Regional State.⁴⁸ All these create some “feeling of insecurity to move around and do business beyond a certain radius of the capital.”⁴⁹ In addition to a repeat of past political instability and inequities, if the ongoing land dispossession trend is pursued vigorously, it could produce a class of laborers and landed elites, which could mean reversing what remains of the land to the tiller tradition retained in the Constitution. This thesis has nevertheless merely touched upon the question of counter-conduct in respect of land policy in the country, an issue that merits separate research.⁵⁰

E. Tensions

Certain dissonances (economic versus social conception of land rights, centralization versus decentralization and uniformity versus plurality) underlie Ethiopia’s tilt towards state-controlled land alienation.

The conceptual tension arises out of the pursuit of social equality in land encapsulated in the ‘land for all’ motto and state-led land appropriation. The focus in the ‘land for all’ ethos is peasant and pastoralist security to avoid social dislocations and ensure food security whereas privileged in the idea of state-driven land appropriation is the “Ethiopia must sell itself” motto that capitalizes on ‘cheap and abundant arable land’ backed by tantalizing investment incentives to rapidly accumulate capital and catch up with advanced countries.⁵¹ There is a fundamental difference in the conception of land rights under these two narratives. In the ‘land for all’ paradigm, land is not a commodity; it is rather a survival asset that is prevented from entering the world of market and the possessor of it is prevented from capturing its enhanced economic value. However, in the state-led land alienation approach, land becomes a commodity once land transfer mechanisms put land in the hands of ‘efficient users’. Gilbert Rist’s distinction between land’s mere economic utility as opposed to its social aspect is relevant here:

... a farmer who used to have enjoyment of a field and grew wheat or potatoes on it, and who then became its property owner and mortgaged it for a capital sum, finds himself faced with the new problem of how to farm the field in the most ‘profitable’ way, so that he can meet his new obligations. Since his traditional crops threaten to

⁴⁸ See Negaso Gidada note 5, Introduction.

⁴⁹ FGD note 37.

⁵⁰ On top of forms and nature of contestations of the people against gravitation towards centrally-driven land alienation indicated above, there is a need to research the implications of such tendency for land tenure security, food security, political stability and the environment.

⁵¹ Anthony Payne and Nicola Phillips note 13, Chapter 4.

be insufficient, it will be preferable to rent out the field or to build something on it; not only will the resource be allocated to different uses, but these will now be determined by the logic of profit.⁵²

Similarly, Steppacher refers to the transition from possession to property, the former, being the feature of possession-based economies, relates to physical control over, management of, and withdrawal of the fruits of a valuable asset such as land while the latter, being the hallmark of property-based economies, enables a person to enter into credit by encumbering the valuable resource with a debt.⁵³

The three perspectives on Ethiopia's land policy discussed in Chapter 1, however, neither enable one to capture the ongoing state-driven land alienation trend nor realize the tensions that underlie it. The privatization approach is founded upon a rather narrow conception of property over land namely, a suggestion for a shift from land use right for livelihood scenario to land alienation under which rights holders themselves are permitted to trade with land without the guiding hands of the state authorities. The revisionist perspective opts to see juridical restrictions on use rights transferability eliminated whereas the associative ownership paradigm wants to empower individuals to commercialize land use rights under the stewardship of their community falling under the same rubric of land privatization, though in a different way. And these three prevailing discourses color what is happening to land on the ground in Ethiopia and hence prevent one from analyzing ongoing land alienation dynamics by fixating one on formal or evolutionary land privatization.

The ongoing trend towards government-centered land transferability identified and analyzed in this study is founded upon the power elites' interpretation of the constitutional clauses pertaining to land, which they, as custodians of land, understand to allow legislative space to expand land rights in favor of improvers. The constitutional requirement of holding and deploying land on behalf of and for the 'common benefit' of the people by the government is at times reinterpreted to mean 'indirectly benefiting' the people generally from growth and

⁵² Gilbert Rist, note 42 p. 125.

⁵³ Rolf Steppacher, p. 323-54, note 73, Chapter 1, says, credit with its requirement of solvency, profit and timeframe in property-based economies "allows, 'seduces' and 'pushes' for growth, imposes growth as a result of the conditions of credit."; van Griethuysen P. (2009), "Why Are We Growth-addicted? The Hard Way towards Degrowth in the Involutionary Western Development Path," <doi:10.1016/j.jclepro.2009.07.006> (accessed December 4, 2014).

particularly through jobs generated and taxes collected from improvers, i.e., without the State being required to give access to arable land to the poor.⁵⁴

The land commercialization trend has been accompanied by federalization of normative and administrative powers of regions over land in order to uniformly and speedily deliver land to developers in a manner which contradicts devolution of power envisaged to address the country's age-old struggle for regional autonomy.⁵⁵ This has triggered a timid counter-legislation from regional states particularly in regard to land expropriation power as explained in Chapter 5.

In addition, the state-driven land right commercialization trend is taking place through land law that sidelines non-state land rules and institutions which embed socio-cultural and agro-ecological diversities.⁵⁶ Land law homogenization is not a novelty: pre-1975 Ethiopia largely disregarded pluralism on land matters as did the Derg regime as state land law broke kinship based access to land. This approach assumes that “modernization is impossible with customary tenures” and thus advocates the need to fight off the ‘tyranny of custom’ and promote Ethiopia’s reception of the ‘European mind.’⁵⁷

The above tensions are pregnant with contradictions between the market and state control, and between central and regional power as well as between economic gains, and normative and institutional commitments to environmental concerns uncovered in recent studies.⁵⁸ More broadly, these contradictory visions are part of general dissonances in Ethiopia’s wider political economy: party and government practices that nurture democratic centralism versus constitutional commitments to democracy, and the ideology of developmental state

⁵⁴ See Chapter 5, Section D, and the Urban Lands Proclamation note 174, Chapter 4 and the idea of indirect benefit is also visible in connection with other laws governing natural resources chiefly water and minerals.

⁵⁵ As discussed in Chapters 4 and 5, this tendency is observed in the three main pieces of legislation: the Rural Land Proclamation, Urban Land Lease Holding Proclamation and the Expropriation Proclamation. As discussed in Chapters 7 and 8, concentration of power over land issues is also witnessed in the recent upward delegation of agricultural land allocation equal to or more than 5,000 ha (even less than this if the concerned region desires so) to the Federal Government through its Ministry of Agriculture.

⁵⁶ Art. 9 (1) and Art. 39 (1) of the Constitution.

⁵⁷ Mesfin Wolde-Mariam note 45, Chapter 1.

⁵⁸ Dawit Alemu (2010), “The Political Economy of Ethiopian Cereal Seed Systems: State Control, Market Liberalisation and Decentralisation”, Working Paper 017 ((Future Agricultures).

implying state control over economic processes and policy homogeneity versus regional devolution of economic and social policies envisaged in the Constitution.⁵⁹

As Chapter 9 reveals, the contradictions stated above are not confined to the national level because the global institutions have also run into a contradiction in prescribing for land rights to the poor as a strategy to reduce poverty in Ethiopia and at the same time in encouraging large-scale land grants under the fashionable idea of responsible agricultural investment.

F. Affirmation of the Constitutional principles

There lies a potential in an affirmation of the fundamentals of the Constitution as a way out of the tendency revealed in the thesis - state-driven land alienation. These fundamentals, as outlined in Chapter 4, are that land rights are disaggregated into ownership and use rights. While land ownership is exclusively vested in the People and is inalienable, Ethiopian peasants and herders are given: use rights for free for a living, immunity against eviction, full ownership over the fruits of their land and the right to demand commensurate advance compensation upon expropriation. In a sharp departure from past regimes that engaged in agricultural production grabs, it pledges farmers and pastoralists the right to receive fair prices for their products. Implied is the possibility of land redistribution to meet new demands from the land poor and the landless. Also envisaged is land for investors with payment with a clear proviso that doing so must not trump the first priority rights of small-scale rural producers. The Constitution further empowers the Government as a trustee of land “to hold land on behalf of the People and to deploy [it] for their common benefit and development;” it envisages local and plural land administrations with “direct [popular] democratic participation” and implies a bottom up approach to agricultural development.

More importantly, there is a crucial element of the Constitution that goes with the underlying suggestion of the thesis. It is the idea of multiple conceptions of land rights.⁶⁰

⁵⁹ Contrast Art. 8 (3), Article 31 and Art. 38 of the Constitution that encapsulate basic principles of political liberalism with the EPRDF praxis which appears to postpone any serious democratization until the country meets the conditions necessary for liberal democracy, which may take up to half a century. For this see, the Renewal Path note 128, Chapter 8. In the economic arena, as per the IMF Country Report No. 13/308, October 2013, “The public investment rate of Ethiopia is the third highest in the world, while the private investment rate is the sixth lowest; the private sector is being crowded out, in particular by a credit crunch.” For discussions on contradictory processes in the political arena, see Jon Abbink, *Discomfiture of Democracy*, note 152, Chapter 4; Jon Abbink, *The Ethiopian Second Republic*, note 152, Chapter 4 and Dereje Feyissa note 156, Chapter 4.

Diversity in land rights is foreseen when the Preamble of the Constitution brings to the surface the framers' wish for the peoples of Ethiopia to continue to live with their "... cultural legacies ... and forms of life..." and vividly expresses their commitment to build a community "founded on the rule of law" which arguably is not restricted to state legal norms and institutions. The need for taking into account diversity of life forms is readable from the contrary reading of Article 9 (1) - any law, customary practices or decision that does not contravene the provisions of this Constitution shall be given a legal effect. So is Article 39 that bestows local autonomy to people to use their own laws and institutions so long as they are compatible with the Constitution. The Constitution goes beyond a mere recognition of different forms of governance (by extension forms of land tenures and institutions) when, in Article 91 (1), it provides that "Government shall have the duty to support ... the growth and enrichment of cultures and traditions..." These constitutional texts are an admission on the part of the makers of the Constitution about the weakness of state laws and institutions including those of land laws and institutions. It further constitutes an acknowledgment at the level of the supreme law of the land that the State "does not have a monopoly of the legal world."⁶¹

The call for a return to the Constitution means moving away from the status quo that aspires to reduce land into a simple economic resource to be defined and governed predominately, if not solely, in accordance with state law. As discussed in Chapter 2, the unitary land right notion was behind the Imperial period agricultural modernization policy that put an accent on agricultural productivity through medium and large-scale farms held by actors other than the rural poor. The one factor notion of land rights, as revealed in Chapter 3, also informed the socialist agricultural modernization project which privileged state farms and producers' cooperatives to the prejudice of rural people. Likewise, current state-centered land alienation, as the combined reading of Chapters 4-8 show, is tending to work through legislative and administrative practices in favor of 'developmental investors' and 'model farmers' on the

⁶⁰ Vision for plural forms of life are envisioned in James Scott's 'local knowledge', see James Scott note 90, Chapter 3; the notion of 're-embedding [land] in society', see Gilbert Rist, p. 186 note 129, Chapter 8; and Shivji's land reform idea that enables plural 'paths of development', see the Report of the Commission of Inquiry note 2, p. 135-141 and 158. Inspiration also comes from Gordon Woodman's argument for the need to "look for ways of producing social change which do not rely on the effectiveness of state law and institutions", p. 34, note 59, Chapter 2.

⁶¹ Gordon Woodman, p. 29, note 59, Chapter 2.

presumption of better productivity at the expense of small producers who are deemed least land improvers.

What has been reflected in these successive government agricultural development policies of Ethiopia is a misguided faith in the modern farmer that privileges model and large-scale farmers in regard to access to arable land and other inputs. The cult of the modern farmer and the economic centered land rights conception that accompanies it have, for instance, led to large-scale land grabs that are being implemented even without adherence to the WB`s so called principles of responsible agricultural.

The proposal to break with the unitary conception of land rights behind Ethiopia`s agricultural modernization projects in favor of multiple conceptions embraced in the Constitution reflects the way people have historically used land. This is especially the case with pastoralists whose mode of utilizing land is being undermined as well as with highlanders whose interests in the commons are being similarly harmed. Yet, a vision for plural legal regimes in the craft of land rights should neither signify glorification of customary land tenure rules and institutions nor should it count out the State whose aid is required for provision of land to outsiders and elimination of undesirable faces of plural land relations. Plurality of land rights as enshrined in the Constitution can promote food security, development and people`s rights provided a proper form of constitutional review mechanism is put in place and that the notion of the State being trustee for the peoples` interests in land is given effect by properly considering those interests in political, administrative and legal procedures in the event of expropriation. Generally, it is a call for rethinking the entire policy in the context of food security, notions of economic development, popular participation and provision of proper compensation and other forms of economic measure such as provision of meaningful alternative basis for livelihoods for people involved.

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¹ In relation to Ethiopian authors, it is conventional to use first name followed by middle name; it is uncustomary to include last name. That convention is adhered to here.

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Annexes

Annex 1: Interview and focus group discussion guides

<p><i>Kontract</i></p> <ul style="list-style-type: none"> • Meaning of <i>kontract</i> • Who is the transferor? Who is the transferee? • Approval by family members of the transferor or by the appropriate government authority? What about regular courts? • Is it compatible with government land law and policy? With the customary land tenure rules of the area? • Any consequences of land transfers in this way? • Relationship between agricultural support schemes and the prevalence of <i>kontract</i> (availability of fertilizers, seeds, pesticides, loans and agricultural extension services? Which category of farmers is targeted most: small or medium, model farmers? In relation to which crops? Why? Frequency and quality of the services?)
<p>Land redistribution</p> <ul style="list-style-type: none"> • When did it take place? How many times? • Its criteria? • Who involved in the redistribution process? Was it participatory? • Any compensation for the property on the land? • Its effects? • Any future prospect? • Is power (social or political) important in the process?
<p>Rural land expropriation</p> <ul style="list-style-type: none"> • Public purpose? • Notification? Adequate period? • Participation? • Timely and adequate compensation? Who? • Rehabilitation package? • Post-expropriation development of the land, investor ability and government monitoring capacity? • Complaint handling? • To what extent producers` cooperatives led to land expropriation? • To what extent villagization led to land expropriation?
<p>Farmland acquisitions by agricultural investors</p> <ul style="list-style-type: none"> • How do they get land (private, communal or government land)? • Amount of land transferred? • Corps grown or promised to be grown? • Local benefits? • Investor`s ability to develop the land and government follow up capacity? • Local people`s reactions?
<p>Communal rural lands</p> <ul style="list-style-type: none"> • For what purpose people use communal lands? • Who owns communal lands? • How are communal lands governed? • Are there demarcations of state lands? How did the state obtain these lands originally? Can people have access to state lands? For what purpose? • Does the state take communal lands? For what purposes? Any compensation to the concerned villagers? • Do local people take part in the management of these state lands? How? According to which rules?
<p>Rural land Certification</p>

<ul style="list-style-type: none"> • Type of land certification? Who is financing the land certification project? • Who was involved in the registration and certification process? • Objectives for the peasants? Objectives for the government? Objectives for the funders? • How many households have obtained it: first level and/or second level certificate? • Post-certification land disputes? • Certification and land transactions? • Certification and long term investment in land? • Any means of updating the land certification? • Certification and sense of `ownership`/ belongings of one`s land holding? • Administrative grievance hearing mechanism? How does it work? Can people go to the regular courts if aggrieved by the process of registration? • Trainings in land laws for land administration experts in this office? Rights awareness campaign for peasants? • Are there unregistered and/or uncertified landholdings? How many? Why?
<p>Landless and the land hungry</p> <ul style="list-style-type: none"> • Their life stories in particular the manner in which they eke out a living • As to why they did not get land from the authorities in the past or how they lost their lands • Their use and access to, if any, to communal land • The manner in which they get farmland from other peasants • Their attempts to get land from the authorities, whether they demand for land redistribution
<p>Influence of the USAID and the WB over Ethiopia`s land law and policy</p> <ul style="list-style-type: none"> • Involvement in attempting to influence land policy change by the government: towards complete privatization or a tenure system short of that, a change in position over time? • Involvement in drafting land laws • Involvement in land registration and certification? • Involvement in training government land administration experts in land laws? • Involvement in community land rights awareness campaign? • Is there a convergence/divergence of objectives between these institutions (especially USAID) and the government in regard to land certification? • More emphasis on production of food or cash crop by small scale farmers or medium farmers or large agricultural investors or a mixture of the three? Is there an attempt to pave the way for secure land rental markets for agricultural investors?

Annex 2: A note on fieldwork

The research for the thesis was conducted between 31st March 2010 and December 30, 2014 in two places: in Coventry, England during my four short residency periods between 2010 and 2013 and mostly in Ethiopia. In Coventry, I searched for library, internet and archival sources from The Warwick University library and attended methodology and thesis write-up seminars. In Ethiopia, I was based at The Addis Ababa University and carried out library, internet, archival searches from the university`s various libraries and other libraries in Addis Ababa as well as fieldwork through focus group discussions, key informant interviews, observations and collection of documents from visits to different institutions as described below.

Data Gathering: The materials for the desk research collected at Warwick and in Ethiopia encompassed federal and regional land laws of Ethiopia, federal and regional constitutions, background documents, government strategic plan documents, literature on land reform and research reports of international institutions. This exercise mainly focused on documentary sources and led to an intensive analysis of primary and secondary data on land reform literature generally and Ethiopia particularly with the twin aim of gaining a deeper appreciation of land reform literature and of situating land reform in Ethiopia in international context. The preliminary findings of the research were presented at a workshop in April 2013 in Ethiopia.

In regard to the empirical data, I collected and studied materials relating to Sidama, a district in the Southern Ethiopia, since the start of my PhD research in early 2010. My familiarity with the area is traceable to three prior visits in 1995, 2007 and 2011, such visits were unrelated to this PhD research but I made the last one

conveniently related to my ongoing research. I nevertheless started in-depth preparation for the fieldwork as of 2012. Advance preparations entailed reading documents and research reports already gathered and conversing with some colleagues who have recent experience of rural fieldwork in Ethiopia. These preparatory efforts have enriched my fieldwork plan and especially so in regard to refining my check list of interview topics. Further, pre-field visit calls to my Sidama contacts helped me recruit a field research assistant closely familiar to the site, serving as a gateway to informants there.

The fieldwork was done in three parts namely, the Wondo Genet, the Hawassa and the Addis Ababa. The style preferred in data gathering was a bottom-up approach, i.e., gathering information from diverse sections of the local people first and then moving up to seek information from public officials, indigenous experts and intellectuals from lowest to highest administrative echelons.¹ This approach enabled me to refine my questions and confront public authorities with certain questions where it appeared that they were following official lines.

I was able to carry out the actual data collection task in connection with the countryside and the Hawassa parts from 12 to 27 September 2012. I arrived in Wondo Genet in the afternoon of 12 September 2012 and my stay there ended in the morning of the 20th of September. In the course of my stay for eight days, I held sixteen individual interviews and two focus group discussions. Included in the individual and focus group discussions were those categories of informants indicated in the Introduction. I held individual interviews with two woreda court judges and seven woreda (a district) and kebele (sub-district) officials. I also did six focus group discussions with woreda and kebele officials in charge of agriculture, of land administration and of women's affairs.

I reached Hawassa in the morning of the 20th of September. In the course of eight days in the city, I conducted an individual interview with one high court judge, an expert working in land administration office, an official in charge of the justice office, an expert working in the investment office and two legal experts working in the legal aid clinic. I also held a focus group discussion with three experts working in the women's affairs office and a second focus group discussion with three experts working in another legal aid clinic. I held individual interview sessions with four Supreme Court judges, one expert working for women's affairs, a Commissioner of Ethics and Anti-corruption Commission and three lawyers and one focus group discussion with three land administration experts. I tried to gear my Hawassa interview sessions towards understanding the state of land tenure in sedentary parts of Sidama as a whole as well as gaining the overall picture of the settled parts of the Southern Region. Moreover, documents and statistics were obtained.

I completed the Addis Ababa part between September 2012 and July 2013. This segment of the fieldwork involved in making informal conversations and focus group discussion with intellectuals based in Addis Ababa, individual in-depth interviews with experts in land law and experts working for international institutions. This portion also encompassed visits to the Federal Supreme Court, the Ministry of Agriculture and the Federal Investment Agency.

Interview topics included those themes indicated in the Introduction and Annex 1. Interview sessions ranged from 20 minutes to 3 hours and were held face-to-face and conducted personally. Informal conversations with local people helped to understand the area better.

Key informants were involved because they are presumed to have greater knowledge than other research participants as a result of their age, experience and standing in society. Focus group interviews were a valuable source of data on shared perceptions, views, and opinions about land reform, particularly existing state of affairs in their respective localities. Interviews and focus group discussions were semi-structured and open-ended discussions.

Some logistical and methodological difficulties encountered in the course of data collection were dealt with successfully. When some sources were unavailable at Warwick, they were available in Ethiopia and vice-versa. Some arranged interviews failed to take place. I think the interviews which could not proceed were compensated for with those that went ahead. My skills gap in conducting empirical research posed a challenge initially, which I tried to bridge by Warwick methodology seminars mentioned above and consulting research methodology literature and learning by doing in the actual process of conducting the empirical research.

A sensible concern in respect of focus group discussions is whether the information that was obtained was not rehearsed in order to suit my research investigation. This is plausible in the absence of a feedback workshop with relevant research participants especially in Sidama. A process of reflection has made up for this.

Data Management and Analysis: Note-taking served as a key instrument for data collection during the interviews and focus group discussions. Field note of visits to and observations of farms, institutions and local markets was taken. Interviews, discussions, notes, observations and documents were analyzed between 2012 September and December 2013. A summary of each interview and focus group discussions was done mostly immediately after each session. Data reduction was accomplished at different levels that involved editing, categorizing, in the process taking caution not to lose important information. Data analysis was made after reducing and thematizing information on the basis of the core issues of the thesis: methods of state-led land alienation, land reform history, and competing interest of actors over land matters: the post-1991 Ethiopian state, the landless, the land poor and rich farmers, large-scale farmers and global institutions. The data analysis was followed by data interpretation in conjunction with secondary sources.

Sampling and Selection: The study adopted a purposive sampling technique to locate information-rich informants and the research site.² In particular, the rationale for selecting purposive sampling procedure relates to the objective of the thesis that intends to collect and analyze the data by purposefully choosing informants “that will best answer the research question” without attempting to randomly select informants.³ The selection of informants from different strata of the peasant population of the Sidama area, agricultural investors, state court judges, government officials and land law experts working both for government and international institutions and scholars had been purposive and was based on a mix of a prior list and a referral system. Besides, these key informants and participants in focus group discussions are actors which reflect different interests in land reform of the country, that is, the post-socialist state, landless, land poor and land rich farmers as well as global institutions. The Sidama area in the southern Ethiopia was selected as the study site because it had historically been one of the sites for implementation of land laws and policies of various regimes and it is still the site for different constituencies of land reform in the country since the second half of the 19th century.

Access and Ethics Issues: A case-by-case basis access to a research field was preferred as an entry point.⁴ I consequently presented myself as a person teaching at The Addis Ababa University doing a PhD research or a student conducting a PhD research at a university in the United Kingdom or a post graduate student doing a PhD at a university in the United Kingdom or a former academic staff at the Ethiopian Civil Service University doing a PhD at a university in the United Kingdom or a person conducting a PhD referred to the informant by a friend or acquaintance or a combination thereof depending on the approach that would be more effective. This situation-based introduction to informants was followed by clarification of my main objective: to find out facts, their knowledge and experiences on my research questions. Unassuming questions throughout the interview and focus group discussion sessions were posed.

Key tenets of the ethical rules of The University of Warwick the thesis adhered to are: free and informed consent which refers to the right of participants to be informed about the nature of the research on the basis of full and frank disclosure by the researcher and that they must agree to take part in the research voluntarily on the basis of confidentiality and of avoidance of deception.

Annex 3: A partial list of profile of agricultural land lease agreements

	Origin	Investment type	Land area (ha)	Region
Contract 1	Local resident	Cotton, sugar cane and oil seeds	18,516	SNNPRS
Contract 2	Local resident	Cotton, oil seeds and cereals	5,000	SNNPRS
Contract 3	Local resident	Cotton and oil seeds	3,000	SNNPRS
Contract 4	Diaspora	Cotton and grains	2,137	SNNPRS

² Keith Punch Keith, Punch (1998), *Introduction to Social Research: Quantitative and Qualitative Approaches* (London, SAGE Publications), p.193; Jenny Cameron (2003), “Focusing on the Focus Group”, in Iain (ed.) *Qualitative Research Methods in Human Geography* (Oxford, Oxford University Press) p.83.

³ John Creswell (1994), *Research Design: Qualitative and Quantitative Approaches* (Thousand Oaks and London, SAGE Publications) p.148.

⁴ Satnam Choongh (2007), “Doing Ethnographic Research: Lessons from a Case Study”, in *Research Methods for Law* (Mike, McConville and Wing Hong Chui (eds.) (Edinburgh University Press) p.74.

Contract 5	Indian	Soybean and other crops	25,000	Gambella
Contract 6	Diaspora	Cotton, sesame and soybean	1,000	SNNPRS
Contract 7	Indian	Cotton	10,000	SNNPRS
Contract 8	Indian	Cereal crops, pulses and edible oil crops	27,000	Gambella
Contract 9	Indian	Rice and cereal crops	10,000	Gambella
Contract 10	Indian	Tea	3,012	Gambella
Contract 11	Indian	Pongamia (agrofuel) and other value added crops	50,000	B/Gumz
Contract 12	Diaspora	Cotton, sesame and horticulture	431	B/Gumz
Contract 13	Indian	Cotton and subsidiary crops	25,000	Gambella
Contract 14	Indian	Palm, cereals and pulses	100,000	Gambella
Contract 15	Saudi Arabian	Rice	10,000	Gambella
Contract 16	Chinese	Sugar cane	25,000	B/Gumz
Contract 17	Diaspora	Oil seeds and sugar cane	3,000	B/Gumz
Contract 18	Local resident	Cotton, soybeans	5,000	SNNPRS
Contract 19	Local resident	Cotton	3,000	B/Gumz
Contract 20	Local resident	Cotton	5,000	SNNPRS
Contract 21	Local resident	Cotton	4,003	SNNPRS
Contract 22	Foreign	Bio-fuel	50,000	B/Gumz
Contract 23	Local resident	Sesame and beans	5,000	B/Gumz
Contract 24	Local resident	Cotton and soybean	5,000	B/Gumz
Contract 25	Local resident	Cotton	5,000	B/Gumz
Contract 26	Foreign	Sugar cane	22,000	Oromia
Contract 27	Foreign	?	22,000	Afar
Contract 28	Foreign	Sugar cane	25,000	Oromia
Contract 29	Foreign	?	50,000	Gambella
-----	Government	Sugar cane	150,000	SNNPRS

Source: Ministry of Agriculture and Rural Development of Ethiopia (2011) and fieldwork

Annex 4: Re-centralization of large-scale agricultural land transfers

Steps	Before 2009	After 2009
1.	Obtaining an investment license	Obtaining an investment license
2.	Identify appropriate land in the target area	Identify appropriate land in the target area
3.	Submit project document to regional investment office for verification of capital and project feasibility	Submit project document to the Ministry of Agriculture & Rural Development (MoARD) along with business plan
4.	Negotiation with community elders and the investor submit the agreement of the community members to the regional investment office	No negotiation, but MoARD checks if the land proposed by the investor lies in the land bank
5.	Signing of lease agreement with the regional investment office	The MoARD will then prepare a lease contract and arrange for proof of ownership and a map of the plot. Then lease agreement signed.
6.	Land is transferred to the investor	The MoARD write a letter to the regional investment office to demarcate and hand-over the land to the investor

Source: Maru Shete (2011, p. 11)

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