

Land Use Legislation in Ethiopia: A Human Rights and Environment Based Analysis

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Abstract

As far as the history of land tenure of Ethiopia is concerned, it can be analyzed in terms of the northern Ethiopia rist system and southern Ethiopia communal land use system. Both traditional tenure systems did not encourage efficiency in land use rather the northern rist system had subjected land to fragmentation by making land hereditary use right only and the southern communal system encouraged free ride by making the land communal owned common property to all. Also, the 1975 land reform in Ethiopia seemed to have solved the problem of the poor finally compared to the massive exploitation of the tenants by landlords. However, the exploitation continued by making the government a new ‘landlord’ in place of the feudal landlords. Currently, by inserting the land policy in the Constitution, the current government has effectively eliminated the possibility of flexible application of policy and implementing laws. One has to wonder why this is being done.

1. Introduction

‘The challenges in rural areas are just as formidable. Deforestation and desertification are threatening ecosystems, biodiversity, and food security. Nearly 2 billion hectares of land are affected by human-

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induced degradation of soils, putting the livelihoods of nearly 1 billion people at risk.' Kofi A. Annan¹

The above assertion and facts made a few years ago still holds true. In light of this concern; therefore, it is appropriate to analyze land policies and issues in terms of the implication it has on environmental degradation and food security. It is often claimed, land is everything in the context of developing country in general and Ethiopia in particular. It is a source of livelihood; it is a measure of identity and a measure of personhood in some cases. It is believed in the cultural context of Ethiopian society, especially among the northerners to have no land or to be landless is to be subhuman or socially unimportant and unnoticed.

Hence, the issue of land use law and policy in Ethiopia has to be analyzed in terms of cultural values, human rights standards and environmental matters. The core issues to be tackled are subjects of land policy in place vis-à-vis the right to food, the right to shelter, the right to adequate standard of life, the right to clean & safe environment, the right to development and even the right to life ultimately. Respect for these rights and ensuring the same calls for the exposition of the land legislation and policies in place, and its connection to the environmental degradation and livelihood deprivation or food insecurity as the case may be.

The customary practice and the subsequent modern socialism oriented laws in Ethiopia have frustrated the environmental integrity and made any effort at protecting the environment an insurmountable task. The harm on the environment has eroded the potentials of the land and hence endangering many of the rights that matter most to people

¹Nathali J. Chalifour, PatriciaKameri-Mbote and et seq., ed., *Land Use Law for Sustainable Development*,(Cambridge University press, 2007), pp. preface.

including the mother of all rights, the right to life. Many have lost their life to the starvation that has ensued from the wrong land legislations & policy directions, and customary practices in Ethiopia among other factors. The *rest*² system, which subjects the land to continues fragmentation by making land a hereditary use right and the subsequently augmented by socialist rule of land use which subject the entire population to subsistence agriculture; immensely contributed to deforestation and the subsequent washing away of top soils by erosion and the diminution in size of fresh water.

Consequently, the customs as well as the socialist oriented modern laws in place have had taken a massive toll on the environment at least in terms of forest resource depletion, and dwindling in water & soil resources. The subsistence agriculture, which tied the majority of the rural population to farming, has caused massive poverty, and it is in turn an environmental disaster if one recalls the notion that ‘poverty is the biggest polluter’ of the environment. The environmental disaster in turn has resulted in aggravation of the poverty level, which has resulted in the natural consequence of imperiling the right to food and adequate standard of life, and other fundamental human rights.

In case of Ethiopia’s situation, 83% of the population live in rural Ethiopia and are either peasant or pastoral society. The population according to recent census is well over 95 million.³ The ever-increasing population number in the absence or scanty available alternative economy is taking a toll on natural resources and the majority is forced to live on farming or farming related activities. As a

²*Rist* is an Amharic word and can be defined as hereditary land use right derived from an ancestral right who has occupied a plot of land perhaps centuries ago and hence this right continues to devolve to his descendants. Hence, as generations expand that same plot is subdivided among eligible heirs.

³ Federal Democratic Republic of Ethiopia Population Census Commission, Addis Ababa, 2007 and subsequent forecast.

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result, each available piece of land has to be put in use in a fragmented way and user operating small scale agriculture is the mainstay of livelihood to everyone since the land can be accessed for free.⁴ The land fragmentation is beyond the imaginable scale and the national average size of an individual land holding is getting less than one hectare.⁵ Hence, land in rural Ethiopia is made into subsistence (lifeline) than other means of production. The reason behind the land fragmentation and consequential environmental disaster is attributed to the customs that have been operating in the nation for centuries and the socialist ethos pursued after the 1974 revolution, which toppled the then feudal regime.

Both northern Ethiopia *rist* system and southern Ethiopia communal land use system, the traditional tenure systems, did not encourage efficiency in land use. Moreover, the northern *rist* system had subjected land to fragmentation by making land hereditary use right only and the southern communal system encouraged free ride by making the land communal owned common property to all thereby proving the theory of ‘tragedy of commons’.

The subsequent socialist land policy which purported to abolish the customs in place has also by ensuring access to rural land to all for free have subjected the land to further fragmentation. Given the population boom and subsequent frequent redistribution of land holdings; the land policy proved disaster for both environmental protection efforts and reduction of poverty. Hence, in some places the

⁴ Article 40(4) of the Federal Democratic Republic of Ethiopia Constitution, 1995 provides, Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law. (Since everyone is entitled to the land free of charge; the land meant for agriculture is subdivided to all as the need arises.)

⁵ Ethiopian Land Tenure and Agricultural Productivity, Research Report by Ethiopian Economist professional Association, (Addis Ababa, 2002) p. 58, (Amharic Version)

fragmentation level has resulted in the non-exploitability of the land in a meaningful and economically feasible level and scale acquiring the infamous nickname ‘starvation plots’.⁶ Why this happened? What are the underlying factors? What is the position of the law both past and present? How is the environment affected in the process? Moreover, what is the implication for the human rights ethos enshrined in the constitution of Ethiopia itself?

In an effort to answer these questions, first the paper shall give an overview of the Ethiopian land tenure system from the historical point of view. As such, the different land tenure systems that were there for centuries and have had impact on the present system shall be examined. What were the land tenure systems and how the present land tenure system evolved? How did the custom and policies in place impact the environment? These questions and related ones shall be answered in here. Second, issues surrounding the current land policies and the tenure system attendant to it shall be discussed. Accordingly, land ownership rights pertaining to the rural and urban land in the nation will be sufficiently encompassed under the title, current land legislation and policies in Ethiopia. Third, the effect of the land system in place on environment and development shall be highlighted in terms of human right ethos. Finally, conclusion will be drawn and subsequent recommendations shall be suggested as improvement and in some cases even change of the laws and policies in operation.

⁶DesalegnRmato, researcher at Forum for Social Studies, Addis Ababa, have coined the name for the plots of land currently visible in all over the nation except in the lowlands of Ethiopia where pastoral society live.

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1.1. Overview of Ethiopia's Land Tenure System: Historical Perspective

The land tenure system in Ethiopia dates back to the time immemorial and can aptly be studied in terms of the South/North dichotomy where the north has lived through the *rist* system and the south has lived under the communal system till the beginning of the 20th century. The Southern communal tenure has been disturbed immensely when the northerner started expanding their empire to the south and had won and included almost half of the present day Ethiopia. It is to be noted that before the time of Menelik II⁷ the present-day southern Ethiopia was largely under the tribal communal land system where each tribal leaders controlled and ruled over the land and the people. On the other hand, the northern part of Ethiopia lived under the age-old *rist* land tenure. Hence, the question, what is tenure in land to begin with?

Land tenure can be defined as “as the relationship among people, as individuals and groups, with respect to land and other natural resources’.⁸ This being the oversimplified definition of land tenure, the completeness of the definition can be achieved by adding the dimension of regulation i.e. land tenure more probably is that aspect of law which governs the relationship of people to the land they either own or hold. Accordingly, if one ventures to the question of land tenure system in Ethiopia, she/he has to see it with respect to two eras: the era before the modern legislation and the era after the modern legislations i.e. pre 1960 and post 1960. The defining moment with this respect was 1960 where all customary laws have been abolished to the extent that they are inconsistent to matters provided within the

⁷Menelik II ruled the new Ethiopia he forged out by conquering different kings and rulers of tribal kingdoms from 1881-1913.

⁸ FAO, Access to Rural Land and Administration after Violent Conflict, (2005) Land Tenure Studies, 8, 19; as cited in the Ethiopian Business Law series, Vol. III, page 2.

new Civil Code, which was enacted at the same year.⁹ One of the central matters addressed by the Civil Code was, of course, land and land tenure issues. However, issues pertaining to land have been administered as per the customary laws and the modern legislation had limited applications. The modern legislation was not operating in full force by the time it was again clouded and in some cases repealed by legislations following regime change in 1974. It was in fact short-lived. The 1974 popular revolution with the famous slogan 'land to the tiller' had changed the land ownership system from feudal to public land ownership.

Coming back to the imperial regimes'¹⁰ land holding system, there were three kinds of rights over the land until it was abolished in 1975 via Proclamation. *Rist*, *Gult* and private land ownership. *Rist* was the right to claim a share of the chief father's land based on descent from him. *Gult* was the right, normally non-hereditary, to all or part of the tribute ordinarily due from the occupant of land to the ruler. The assignee of this tribute has not only the right to revenue, goods or services, but also the responsibility to perform certain judicial and administrative functions. He is known as "the governor of the *gult*,".¹¹ *Rist* and *Gult* largely operated in the northern part of Ethiopia and the occupants (rulers from the north) were also possessing private land in

⁹ In 1960, the Emperor promulgated a new Civil Code for Ethiopia. This enactment ostensibly marked the end of the application of customary law throughout the empire, Article 3347 (1) of the code states: unless otherwise provided, all rules whether written customary or previous in force concerning matters provided for in this code shall be replaced by this code and are hereby repealed.

¹⁰ The Modern Ethiopia took its present territorial shape with the administration of king Menelik II (1889-1908) and was subsequently ruled by Emperors, Haile Sellassie I being the last and he ruled from 1930-1974. During these periods, the land holding system was largely governed by customary rules defining the nature of the feudal landlords' rights especially in the newly occupied southern part of Ethiopia.

¹¹ Read Richard Pankhurst, *State and Land in Ethiopian History*, (Oxford University press, 1966)

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the southern and south western part of the country where people were subjected to extreme form of exploitation by the landlords.¹² Before 1975, particularly in the southern part of Ethiopia, land was concentrated in the hands of often-absentee feudal landlords, tenure was highly insecure, and arbitrary evictions were a serious threat.¹³ Hence, Private land tenure system operated in the southern part of Ethiopia. This fact and ensuing exploitation created popular resentments which erupted in the form of revolution and ended up not only with the demise of the imperial regime but also with new advent: land proclamations¹⁴ making land the property of the government which came to power by then. The socialist regime prohibited alienation of land in any manner be it by sale, mortgage, antichrists, and so on. Hiring labor to work on a farm was also made illegal. Priority is given to the government to buy farming produces at a price fixed by the government itself.

The promise of the slogan (land to the tiller) did not come out nice with the progress of time for the actors of the military junta and even the people. The revolution, of course, succeeded in toppling the exploitative feudal regime yet it did not cure the economic cancer of the society, which was and is poverty. The extreme poverty was in turn largely attributable to the land policy. According to Destin and Eyob¹⁵ the failure in the agricultural policy of the military regime came from:

¹² The owners of the land were royalties, nobilities, retired soldiers, governors, and the Orthodox Church.

¹³ See generally, Hussein Jimma, *The Politics of Land Tenure Ethiopian History: Experience from South*, (Center for Environment and Agriculture studies, Trondheim, Norway, 2004.)

¹⁴ Public ownership of Rural Land Act Proclamation, No. 31, (Ethiopia, 1975) and Government Ownership of Urban Lands and Extra Houses Proclamation No. 47 (Ethiopia, 1975).

¹⁵ Dustin and Eyob, 'Land to the Tiller Redux: Unlocking Ethiopia's Land Potential, (2008) Drake Journal of Agricultural Law, 13

“... Numerous restrictive regulations imposed including price fixing, forced creation of cooperatives, and preferential treatment to cooperatives and state farms at the expense of small holders.”

Such was the end of the military regime’s land policy, which brought into picture extreme form of land fragmentation, small productivity and overall economic disaster to the nation. The land fragmentation and the attendant meager productivity was the consequence of the policy, which put in place public ownership of land and the prohibition thereof to sell, mortgage or transfer rights overland in any manner. Accordingly, many scholars, business men, even politicians hoped that the current government¹⁶ would change the land policy of the nation; however, to the surprise of many it has continued (with slightest modification) the public ownership of land policy of the government it did succeed.

1.2. Current Land Policies in Ethiopia

1.2.1. Ownership Issues

As mentioned herein above, land was/is a public property in Ethiopia. The government has administered it since the 1975 radical land reform. The same is true with regard to the EPRDF¹⁷ government, which took power in 1991. Against popular odds and expectations, the present government continued the relic of much detested government of *Derg*¹⁸ as far as land policy and land ownership rights are concerned.

Immediately after the downfall of the *Derg*, no one was certain what course the new government would take regarding land tenure. The

¹⁶ The *Derg* military government was toppled via force in 1991.

¹⁷ Ethiopia’s people Revolutionary Democratic Front, which is a ruling party in Ethiopia since its grab of power via force in 1991.

¹⁸ *Derg* is an Amharic word for either committee or System which was a self-assumed name of the socialist military regime which ruled Ethiopia from 1974-1991

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Transitional Government¹⁹ of Ethiopia had declared that the issue of land tenure (then defined as a choice between private and public ownership) would be settled in the process of developing the new federal constitution.²⁰ When the new constitution of the Federal Democratic Republic of Ethiopia was adopted in 1995 (herein after the FDRE Constitution), the issue was settled in favor of public ownership of land and this policy was made available in one of the articles of the Constitution.²¹ In so doing, the government effectively eliminated land policy as a variable instrument that could be used to address the changing circumstances that affect the rural economy and the policy is contradictory to the free market policy of the government itself. In other words, the room for trial of another workable land policy was legally and completely clogged.

Thus, by inserting the land policy in the Constitution, the current government has effectively eliminated the possibility of flexible application of policy and implementing law. One has to wonder why this is being done; despite the fact that the public ownership policy of the ex-regime from which the present government took power by force ended in fiasco. Some of the reasons forwarded by the government justifying this policy can be collected from the minutes of the

¹⁹ The transitional government stayed in power from 1991 to the time of the ratification of the FDRE constitution.

²⁰ Nega and Adnew, et seq., *Current Land Policy Issues In Ethiopia*, 2002 (Ethiopian Economic Policy Research Institute, Addis Ababa, Ethiopia), accessed from www.fao.org, on 12.01.2011

²¹ Article 40 (3) of the 1995 Constitution (which concerns property rights) provides that the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the state and in the people of Ethiopia. "Land is a common property of the Nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or other means of exchange". Sub Article 4 also states, "Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession."

constitutional debate ²² pending its ratification: the present government's position appeared dominant and won a place in the constitutional arrangement.

The arguments forwarded for the public ownership of land goes as follows in contrast to the free hold system: the first argument comes from fear of rural- urban migration: the idea is if we allow peasants to sell their lands, the next thing they do is to sell the plots of land they hold and move to the cities. This really creates a problem where readily available industries are not there to take up the massive work force migrating to cities. The migrants could not only be unemployed but also be dangerous for the security of the nation or more appropriately to the security of the urban population. Secondly, they argue that if land is to be made private property; those "relics of feudal' will buy all the rural lands and subject the mass to the same old cycle of exploitation or at least they would make the mass landless. The 'relics' are said to be beneficiary of the feudal system toppled by *derg* regime or their descendants believed to be with the capital power or urban dwellers in general who might hold capital power. Thus, those people who argue for private ownership of lands are to use their capital to re-establish the dominance, which has been removed through 'popular struggle'. Third, and most importantly public ownership of land is the underlying factor for equality in Ethiopian context. Accordingly, making land the domain of public ownership and ensuring equitable distribution thereof is the trademark of Ethiopian notion of equality. Simply put, public ownership of land gives free access to land to the majority of people, especially to the rural people on egalitarian bases.

²² Minutes of the Ethiopian Constituent Assembly, (November, 1995) Volume 4, Pages 23-51

(the assembly and other related assemblies ratified and approved the present Constitution of the Federal Democratic Republic of Ethiopia, 1995)

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However, on the other hand, those who were/are arguing against public ownership of land come from the angle of development or efficiency, environmental protection and human rights in general. If we see the argument that comes from the development angle, one cannot be in difficulty to figure out its merits. If we make land privately owned property so much so that we accord the right to the peasants to sell, mortgage or lease their land, as they like; this would automatically deal with the problem of land fragmentation and fragmented unsustainable small-scale farming. Since no one is in a position to deny that land fragmentation²³ with ever-increasing population number is exacerbating the poverty level of Ethiopian, the only way out, it seems is to resort to the new policy as against a policy that proved unable to break the poverty cycle in Ethiopia. Second, once a person thinks that the land is to stay with him or her as a private property its sustainable use would be a private agenda as well. In other words, private ownership of land gives incentive for the owner to continually invest on it, keeping its fertility and so on in a way serving the environmental cause as well and above all expediting efficiency.

Third, in terms of the freedom of choice as well; where a person is given full ownership rights alternative economic activities can be entertained by selling or leasing the land that belonged to him or her. The human rights based argument is best illustrated in the indirect

²³ It is not uncommon to hear arguments these days that as renting rural land is allowed, the problem of land fragmentation can be dealt with since investors can take land on rent and farm on large scale. The arguments is weak in a sense that the renting is for fixed duration , which is a maximum of 25 years in some regions and this rent status can't create full confidence to the investing body i.e. insecurity is the real issue still. In fact, the government can only do rural land lease since peasants are not allowed to rent their land completely. A farmer can only rent his land in a manner that does not displace him, hence the peasant is supposed to retain minimum size holding define by the law. Given that the national average land holding is below one hectare one is not in a position to lease his land to an investor rather to fellow farmer in this case it must not be for more than three years as per the regional laws.

implication of the policy in place. The land use policy by making access to all has distributed poverty and hence poverty has become the trademark of Ethiopian rural community. Where poverty is rampant, respect for human rights stands no chance. There is no right that is not violated by poverty. To name just a few : the right to food, the right to health, the right to shelter, even in extreme case of poverty the right to life can be violated. Moreover, the government has absolute control over the life of the peasants as it is the giver and taker of land, thereby affecting their freedom. The system simply encourages despotism.

Now the question here is which position is tenable given Ethiopia's present situation. This is a very subtle question requiring subtle answer. There are obvious merits and demerits in both side of the argument. The merits with respect to the argument for public ownership of land or better said the advantage is that the government can push any genuine development plans like putting infrastructures in place (e.g. constructing road) easily without much hassle or disputes with private owners just by giving compensations as demanded by law.²⁴ Moreover, investors can also secure land from the government very easily and in a more centralized manner. Plus, it can easily ensure social equity with regard to access to land. On the other hand, the disadvantage is that the government is obviously restricting freedom of choice of the farmers and is using land for political ends. As it can be witnessed from the outcry of the opposition parties in the country,

²⁴ The Ethiopian constitution, under article 40(8), puts an obligation on the government to pay, in advance, compensations "commensurate to the value of the property" expropriated. The Ethiopian civil code on its part has the following to say , under article 1474(1) " that the amount of compensation or the value of the land shall be equal to the amount of the actual damage caused by expropriation." However, the most difficult question in here is, given the absence of market price for land and that land being the property of the government, how are we to assess the actual value? The problem is being addressed in practice by giving the person, whose land is taken away another land somewhere else. These practices have so many consequences, which needs separate treatment and study.

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which has got elements of truth, the government has a way of manipulating the votes of the farmers in such a way that if a farmer is pro-government, credit facilities are extended to him or her to get fertilizers and other inputs for farming. Land is allocated more easily to pro-government farmers (discriminating those who dare to hold different positions), and new agricultural packages are accessible as well. The public ownership of land being in place has obviously resulted in a land fragmentation and that the scale of fragmentation in some regions is so immense that it resulted in a scanty productivity adding fuel to the existing problem of poverty. It is just enough or even less than enough in some cases for subsistence itself.

With respect to the advantage and disadvantage of the issue of private ownership of land, the following can be said. Of course, private ownership of land gives freedom of choice, yet what is there to be chosen from, ought to be the burning agenda. How far they have also researched that such ownership advances the causes of the environment and human rights is a point for concern? But from practical experience of other countries, private property in land advances efficiency in land use and boosts productivity. However, in our context: What if the middle position in terms of long lease can be tried which does have the merits of both state ownership and private ownership of land. Multiple ownership system (the one which combines public, communal and private as found appropriate) and versatile policy has to be tried out in Ethiopia.

The most workable policy mix as a solution to the present predicament ought to be a mix of at least three kinds of ownership or land holding systems: Public and Communal holdings, and private ownership. The private ownership can suitably operate in areas where land is so fragmented and that there is over population against the arable land available. People need to own their lands, freely engage in the land transactions and look for the alternative economic roots, as available;

for in a way the productivity return is so scanty that in some cases it cannot sustain life anymore. This policy practically helps also for the re-healing of the land and avoids fragmentations thereof. An investor or the government itself may invest to regain the fertility of the land and may give a breath for the land to re-heal acquiring the land under free market policy. Those areas where the community uses them collectively needs to be owned communally with use rights extended to everyone as the circumstances allow specially among the pastoral society of Ethiopia or in areas where indigenous communities live with their way of life still intact. As far as pure public ownership of land is concerned; it would be very suitable with regard to unused lands often available in the lowland parts of the country and of course with further research of its effect, as well. The government can lease to investors these lands for large-scale production and organized youth (or people from overcrowded highland areas) by resettling them at the lowlands with credit access, transferable and secured tenure. This kind of ownership gives big capital investors an easy chance to do so in the lowlands of the country where unused lands are available and there is a need to put up infrastructures for production.

1.3. Rural Land Legislation and Policy

There are many poor people in the world. Poverty is a persistent problem. Poor people often live in so-called less developed countries and the poorest of them live in rural areas of those countries. Mass media regularly remind us that these people live with continuous livelihood insecurity. However, for the people in these poor rural regions, livelihood insecurity is part of daily life. It seems, it is never to dawn from the eclipse of poverty especially for Ethiopian rural poor. The land policy, however, is largely to be blamed for the horror of these predominately majority section of the society in every developing nation.

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The 1975 land reform in Ethiopia seemed to have solved the problem of the poor finally compared to the massive exploitation of the landlords against the tenants. In hindsight, one can easily see that the exploitation continued by making the government a new landlord in place of the feudal landlords. Undeniably, the reform abolished the tenant-landlord relationship. However, it was unable to solve the livelihood insecurity of 83% of the Ethiopian rural poor. Agriculture being the dominant economic activity of the nation, the sole sources of export and massive source of employment, the policies crafted to govern it needs to be developed with care and extra wisdom.

Ethiopia is considered to have one of the best agricultural lands in Africa. Yet its people are languishing under the yoke of poverty. The problem partly has to do with the land policy. The policy practically has not changed since 1975. This policy stagnation has hindered the overall development of the nation and the peasants in particular. Many praised the 1975 land reform yet to the surprise of many; it did not bring change in terms of poverty alleviation. It is the question of every sensible person in Ethiopia; why the present government is also clinging to the policy, which proved unworkable.

The present government worked hard putting agricultural development at the front point. It has declared that land is the property of the nations, nationalities and people of Ethiopia.²⁵ On the other hand, the present government made slight modification to the *derg* proclamation²⁶ with regard to rural land and administration thereof. The first federal law enacted pursuant to the constitutional direction was the federal rural land administration proclamation no. 89/1997. If one sees the proclamation at a glance, it confirmed the constitutional

²⁵ The Constitution of the Federal Democratic Republic of Ethiopia, article 40 (FDRE Constitution, 1995)

²⁶ Proclamation no.31/1975, (Ethiopia. 1975)

principle of land ownership by the nations, nationalities and people of Ethiopia i.e. public ownership of land. It gives power to administer land to the regional governments.²⁷ This proclamation practically amended the existing laws on one area only; that it enabled the right to rent out²⁸ land in addition to bundle of property rights in land provided for under proclamation 31/1975. Under the recent proclamation, bequeathing land to family members²⁹ is allowed in a conflicting manner to the civil code of Ethiopia.³⁰

Confirming once again the power of regional governments on land, proclamation 456/2005 provides for the rural land administration and use framework law; pursuant to this law states are allowed to enact their own laws with regard to land administration and use.³¹ The framework legislation has also authorized regional states to fix duration of rural land rent out.³² The rent right extended to the holder of land is of two categories depending on the identity of the lessee: to fellow farmer or investor the later enjoys lots of privilege. Usually rent to fellow farmers or rent to anyone who would farm in traditional method is given for short term, maximum for three years with no right to give it as a collateral. The rent is also to respect minimum holding

²⁷Article 4-5 of the Federal Rural Land Administration Proclamation no. 89/1997, (Ethiopia. 1997)

²⁸ Id, Article 2(3); However, the renting is with limitation. Rent is allowed in a manner that does not displace the farmer. Distinction is also made on the duration of the lease period depending on the identity of the lessee and hence if the lessee is a farmer the maximum duration is 3 years while up to 25 years is allowed to an investor.

²⁹ A family member is defined as any one permanently living with a person having holding rights by means of sharing the livelihood of the later. Id, Article (5)

³⁰ Both modification were informally and customarily, there in the society, renting and inheriting land were and are common phenomenon for Ethiopians.

³¹ On the morrow the big states, Regional States of Oromia, SNNPR, Amhara, Tigray, have enacted their own land use and administration proclamations as per the framework federal legislations and regulating areas left onto them.

³²For instance, Amhara Regional state has given up to 25 years, Oromia up to 20 years, SNNPR up to 25 years, Tigray up to 20 years.

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size fixed by the regional government and such renting must not be displacing the rent giver. Thus, the right is basically unavailable given in most densely populated areas the land holding is already to minimum holding size fixed by regional states. The regional laws also purport to have prohibited redistribution of rural land which has to be seen in light of the constitutional rights of the landless to get land for free and as they demand.

However, with ever-increasing population number the issue of land redistribution³³ is a business that states might venture to now and then. This phenomenon has reduced the sizes of rural land holdings per to the framers ratio in such way that the fragmentation robbed the land of its capacity to yield. Of course, the regional laws prohibited in some cases further redistribution of land,³⁴ yet this fact seem to have a bearing on the constitutional provision which makes access to rural land a right.³⁵ The FDRE constitutions clearly states that everyone is entitled to free access of rural land for farming and hence where is the land to be sourced if redistribution is to be prohibited. The prohibition endangers the constitutional right of the younger generation. It is also provided in the regional laws enacted as per the framework federal law that there will be minimum holding size³⁶ below which holding is prohibited as lessee or original holder of the land.

³³ Redistribution is prohibited under some of the regional laws, however, its constitutionality is questionable since the constitution grants a right to everyone to access land for free as long as one chooses agriculture as the main livelihood.

³⁴For instance, article 8 of the *Amhara* land proclamation no. 133/2006, (Ethiopia, 2006)

³⁵Article 40 of the FDRE Constitution

³⁶According to the *Oromia* land proclamation the minimum rural land, holding size shall not be less than 0.5 hectare for annual crops and 0.25 hectare for perennial crops. The SNNPRS Land proclamation has used different criteria to fix the minimum land holding size; if the land is to be used for, the rain feed agriculture its size shall not be less than half hectare. However, if the land is irrigable land, its size must not be more than half hectare. On the other hand, the *Amhara* land proclamation simply stated that such holding ceilings should be decided by

1.4. Urban Land Legislation and Policies

Following the land reform of 1975, all urban land and extra-houses became state property. Urban dwellers and enterprises had the right to rent the property from the government. The rental transactions were registered by the *kebele*'s³⁷ administration of land and houses. However, the present government has adopted lease system for urban landholding and administration since 1993. Proclamation no.80/1993 governed the lease system and it was adopted before the constitution came into picture. The FDRE constitution seemed to have accepted the lease system by not altering and even more appropriately by escaping the issue. The 1993 lease proclamation has been replaced by proclamation No.272/2002.³⁸ This proclamation applies to land held by the permit system³⁹, or by leasehold system⁴⁰, or by other means. 'The other means' includes giving land via negotiation, lots and even grant by the concerned governments administering the land. The proclamation has established principles, which fix the duration of the lease⁴¹ and rights of the lessees to use it as collateral or use it as a capital contribution.⁴² The period of lease is also subject to renewal⁴³ as per the requirement of the law. The lease system is the area where least complaint runs against the land policy of the nation

regulations to follow the proclamation. The *Tigray* land proclamation is a bit subtle on the issues, it affirms that redistribution is not a likely and hence the existing holding size of the peasants are respected despite odds; however, if land is to be given in the future the minimum land holding shall not be less than 0.25 hectare.

³⁷ *Kebele* is the smallest administrative organ in Ethiopia even by today's standard.

³⁸ A Re-enactment of Urban Land Lease Holding proclamation no. 272/2002

³⁹ Permit system or rent system is adopted by the *derg* regime.

⁴⁰ There are three mechanisms of allocation of urban land to the recipients: by auction, negotiation, and grant by the concerned region or city government, article 3(2) of proc.272/2002

⁴¹ Pursuant to article 6 of the Lease proc. No.2727/2002, period of lease is up to 99 for housing, 80 for industry, 50 for commerce, and 50 years for others (lands in the capital city). It also provides different period for other town and land in other towns meant for different purposes all over the nation.

⁴² Article 13 of the Proc. 272/ 2002

⁴³ *Id*, Article 7

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save the duration of the lease in some cases. However, in a recent controversial lease proclamation⁴⁴, transfer of lease right is further restricted.

2. Confronts to the Current Land policy

"..there was a consensus that the current system, because it does not guarantee security of tenure and undermines incentives, has detrimental effects on agricultural productivity and natural resource conservation... current land policy does not give farmers secure rights over the land they use, does not maintain equitable access to land over time, does not provide incentives for investment in improvements or conservation, and does not encourage farmers' entrepreneurial and experimental efforts to better their lot. From a policy perspective, it does not foster agricultural intensification, improved environmental management, accretion capital formation, or rural development."⁴⁵(Emphasis Added)

The above quote summed up the challenges to the present land holding system and the policy underlying it. The challenges include but not limited to: tenure insecurity, fear of land redistribution, fear of expropriation, and issues pertaining to maladministration. Let us examine each item by item and find out how these matters are challenges to the existing land policy of the nation. Are these real or perceived problems coming from fans of private ownership of land rights?

2.1. Tenure Insecurity

The major sources of tenure insecurity in the present Ethiopia is fear of land redistribution and expropriation. The FDRE Constitution (under article 40) gives, "peasants the right to free allotment of the

⁴⁴Urban Lands Lease Holding Proclamation No. 721/2011, (Ethiopia, 2011)

⁴⁵Nega and Adnew, as quoted in Supra note 20.

land and not to be evicted there from”. The constitution guarantees the right to free access of land and at the same time security not to be evicted there from. However, given the ever-increasing number of Ethiopian population though the law may guarantee against eviction; it cannot guarantee against the re-sizing of the land as the new generations come to picture. Redistribution is inevitable at given intervals. The downsizing can be justified by the same constitutional rights of the younger generation to get land for free.⁴⁶ As the territory of the nation is not expanding, redistribution is a brute fact to confront. These facts again contribute to the existing fragmentation of arable land problem, which ultimately exposes the land to the status of non-viable source of livelihood and environmental degradation.

The eviction may come also from the angle of expropriation though expropriation is only for public purposes alone that too after adequate compensation are given in advance.⁴⁷ Nonetheless, difficulties in getting precise definition to phrases like “Public Purpose” and “Adequate Compensation” are not easy to solve given the shaky status of our judicial independence and the heavy hand of the government. Moreover, mistrust also run around, the ability and impartiality of the regional states while making redistribution of the lands as needs arises. If one pays attention to the print media often-carrying messages belittling the government, one may not escape to confront the often-talked issues of favoritism towards party members and sympathizers, massive corruptions with regard to urban land allocations and so on. With regard to land redistribution issues as well; the accusation runs with full momentum.

⁴⁶ Article 40 of the FDRE Constitution

⁴⁷ Article 40 of the FDRE Constitution

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2.2. Restriction on Transfer of Land Rights

One of the major problems with regard to the present land policy of Ethiopia is that landholders are unable either to sell their lands or mortgage the land to get some credit from financial institutions thereby handicapping them not to [both] look for alternative economic means and/or continually invest on their own land and improve the quality thereof. Such restriction is also the major problem, which holds back the active farmer not to expand beyond his small plot of land.

Alienation, or the ability to transfer land, is one of the major issues in the public versus private ownership debate. Public ownership errs on the side of restricting the ability to transfer land, which was true under the *Derg regime*, where land could only be transferred privately through inheritance. (Emphasis added)⁴⁸ Such restriction entails the following consequences:

- Where land is publicly, owned alternative economic activities cannot be easily sought for initial capital (to venture on entrepreneurship) that would have been available by selling or mortgaging land is forfeited at the same time.
- Such ownership right which limits transferability creates tenure insecurity; land can be taken away under the guise of redistribution or public purpose.
- The restriction robs the land of its natural value, it makes the land to have no practical market value and hence a property worthy of no protection.
- The policy also plays major part in land fragmentation and degradation of the environment. Where land gets scarce people automatically venture to clearing nearby forests and even over using the land available to the extent that the land no more could be used for any meaningful farming activity.

⁴⁸Dutin and Eyob, *Supra* Note 15, p. 13

- The restriction on transfer discourages the active farmer and the investor. The policy also discourages modern farming using up to date technologies, as such, technology usually cannot operate in small-scale farming.
- The administration aspect of this policy is never free from corruption and opens up room for abuse of the land that would have served the causes of much desired development.
- Thus, the policy by enabling farmers to farm for subsistence only, it brought about the same level of income for rural society thereby contributing to the overall national poverty.

3. Prospects to the Current Land Policy

The positive aspects of the current policy come partly from the policy it inherited and the modification it made there from. Lifting up the restrictive regulations put in place by the *derg* regime as far as price fixing and quota contributions are concerned; are welcomed by the Ethiopians in general and rural poor in particular. Dropping that socialist agenda of the ex- regime at least with respect to selling the products of the land, is one giant step to right direction. Thus, market liberalizations are a point for thumbs up to the policy of the current government. Accordingly, the following strong sides of the current policy can be talked of:

- Equality of access to rural land including protection of women right via land access; yet urban land is not based on the principle of equality of access to land.
- Market liberalization, which enabled farmers to sell their produces for better and competitive price, is another opportunity thereby relatively improving their income of the rural poor;
- The granting of the right to rent out land though for limited duration and permission to pass it over to families through inheritance. However, there are many limitations to these rights, as well;

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- Lease system for urban land where least complaint is coming from suggesting the workability of the policy. Yet, the recent lease proclamation of 2011, had deleted the merits of the lease proclamation that has allowed free transfer of the rights under the lease;
- Handing out title deeds at least in some regions abating the fear of tenure insecurity temporarily until further redistribution is to take place; and,
- Agricultural extension services though for limited areas have also improved productivity.

4. Land Use, Human Rights and the Environment in Ethiopia

Land is an important factor of production in Ethiopia and so is the case everywhere else. The land use policy must foster sustainable development. The fact of the matter in Ethiopia is the land use pattern put in place by the law fosters environmental degradation and exacerbates the condition of poverty in the nation. The policy in place is contradictory to the notion of human rights enshrined in the constitution itself. All human rights standards are included in the FDRE Constitution: the right to health, the rights adequate standard of life, the right to life, the right to clean & safe environment and above all the right to development.⁴⁹ Ethiopia is also member to International Convention on Economic, Social and Cultural rights, herein after, ICESCR, which sanctions these rights. Moreover, under article 2 of the ICESCR, the nation is under obligation to realize these rights progressively. However, the single most important means of realizing those ideals and obligation using land potential is being contested on its policy and ownership line. The policy in place instead of favoring the realization of these rights tied the people to poverty and is subject to criticism from all angles. Land ownership laws and policies have an impact on the progressively enjoyment of economic, social and

⁴⁹ Articles 43 of the FDRE Constitution

cultural rights. Yet, the laws governing land issues in Ethiopia work the other way round. It progressively denied the right to have adequate standard of life by making the land public property and exposing it to degradation, fragmentation and ultimately rendering it unusable.

Human rights are interdependent and indivisible and the violation of one right is the violation of all. The violation of the right to food results in poor health, which in turn is the violation of the right to health. The violation of the right to health if persists results in the violation of the right to life and the destruction of human life destroys all the right meant for that person. If so, how is the life of rural Ethiopian affected by the land policy in place.

4.1. The Right to Food

What does the right to food mean? The UN Special Rapporteur on the right to food in 2002 defined the right to adequate food as follows:

“Right to adequate food is a human right, inherent in all people, to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear.”

To begin with, right to adequate food is a human right and hence there is an obligation on the part of the state to respect and fulfill this right at least progressively. Second, everyone is entitled to have adequate food both in terms of quantity & quality, and in terms of acceptability to one’s culture. Hence, any government is obliged to do its best level to fulfill this right. However, it is not necessary that the government should ration food. The idea in here is in all economic rights the first obligation lies with the individuals yet all condition that enable the

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individual to fulfill his need must be set in order by the government in power.

The right to adequate food is at the core of the right to adequate standard of living as there is no life without food or life is shorter and more prone to mental or physical ill health with hunger, malnutrition, or under-nutrition. Thus, the right to adequate food is indivisibly linked to the inherent dignity of the human person.⁵⁰ For people in rural Ethiopia starvation or hunger is no strange phenomenon. Often it is argued that the phenomenon of hunger is the result of land policy in place. The land policy by making land accessible to all robbed its meaningful potential to be a development factor especially with the drastically population number increase. The policy of public ownership of land was implemented in 1974 for the first time and since then the population number has nearly tripled yet the land did not naturally expand. Hence, all have to redistribute and distribute the available land and such fact has a bearing on food insecurity, which is a recurring phenomenon in Ethiopia.

The reasons for declining food production include: the overwhelming reliance on highly variable, erratic rainfall; frequent severe droughts; rising population pressure accompanied by declining farm size; falling soil productivity and land degradation; and the failure so far to tap the substantial irrigation potential.⁵¹

Given a doubling Ethiopia's population of every 25 years with little room to expand cultivated area and given the fact that land area is fixed, mobility of farm households and increasing productivity of both labor and land are critical to transform agriculture. Land reform is a

⁵⁰ Ben Chigara,ed.: *Reconsidering Property Rights in the New Millennium: Towards a New Sustainable Land Use*, (Routledge, 2012), P. 15

⁵¹ECA/SDD/05/09 - Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa, (ECA Print shop in Addis Ababa, 2004)

key entry point to play this role.⁵² If so, what ought to be the nature of the reform. The reform must achieve development that ensures freedom from fear of starvation for the people. Where the land policy is failing, it is the obligation of the government to try out new policies that serve the cause of much needed development. The government is under obligation by the law of human right to put best effort in place to get out the people from the yoke of poverty.

4.2. The Right to Development and Safe Environment

Environmental security is inextricably linked with human security, with some writers stressing environmental security as the capacity of humans to live harmoniously with nature or to maintain a sustainable environment, while others stress the human security element of individuals and groups being able to meet their basic needs from a sustainable environment.⁵³

However, the environment is at peril because of the land policy that has caused forest clearing and has intensified desertification. Land shortage has caused rural farmers to clear forests and use every piece of land for farming; and absence of alternative energy source has taken a toll on the forest as well since biomass fuel is the primary source of energy. Clearing forests for fuel or farming has devastated the environment and has caused massive erosions that robbed the land of its potential for production. The devastation in the environment has intensified poverty in the rural Ethiopia, which has a bearing on the right to adequate standard of life. Hence, well-crafted land policy, which can effectively deal with these mentioned perils, must be developed and implemented in Ethiopia if the danger is to be averted

⁵² GetnetAlemu, The Challenges of Land Tenure Reform to Structural Transformation of the Economy: Lessons from Country Experiences, *Proceedings of the 16th International Conference of Ethiopian Studies* (Trondheim 2009), pp. 763

⁵³ECA, *Supra* note 51

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from getting out of control. Land fragmentation and the ensuing soil erosion must be given priority in the order of things.

5. Conclusion and Recommendations

Public ownership of land has been anchored in Ethiopia since 1975 when the feudal regime was removed by popular revolution under the slogan “land to the tiller”. The present government took power in 1991 (via force) from the *derg* military junta. The transitional government (1991-94) prepared a way for the ratification of the current constitution. The constitution was ratified in 1995 and answered the question (which land regime to endorse: private or public ownership?) in favor of public ownership of land policy. Many have immediately reacted as to the merit of the policy by citing the failure of the military government by pursuing the same. However, the current government has made plenty of modifications to the policy of the regime it succeeded. Such changes were lease system as far as urban land is concerned and in a restricted form for rural land; market liberalization which has enabled farmers to sell their produces in an open market; allowing rent out of rural land in a limited manner, and legally recognizing the right of landholder to inherit it to their family members. Many have also claimed that the government has closed the door for development by preferring a failed policy to a workable one i.e. private ownership of land. The author on his part would like to recommend the following.

The land policy is a critical issue in every country and especially it is more critical in the developing countries. Such is also the circumstances of Ethiopia where 83% of the populations depend on agriculture for livelihood and employment. The sector is also the source of the bulk of the country’s export earnings. Hence, the land regime requires thoughtful policy, which brings overall development to the nation without even impairing the environment and over all human rights ethos. Accordingly, the policy given the present situation

of Ethiopia needs to be the mix of the following as deemed appropriate.

First, land use rights needs to be converted to freehold or private ownership where land is so fragmented, the area is over populated and small-scale farming cannot sustain life anymore. If one sees, the present reality in cooler-highland areas of Ethiopia the land is not only so fragmented but also over exploited so much so that unless recovery plan is there it cannot be of economic interest at all in the near future. Such is the hard truth in the northern, central, and some parts of southern Ethiopia (cooler-highlands) where over 85% of the people live encompassing less than 40% of the landmass of the nation. Thus, if land tenure is converted to freehold system in these areas; investors would take up interest and may invest on the recovery of the land and increase its productivity and use. Principally, the steeper slopes could be used for highland fruit production, tea plantation, forage (towards cut and feed system) and timber among others. Such freehold system underlying free transfer may even help farmers themselves to consolidate their land and work on it where credit facilities can be arranged from financial institutions. On the other hand, farmers by getting initial capital may think of alternative livelihood and the workforce may fill up the human power needs of the booming construction sector and emerging industries in the nation. In-total, freehold can fetch the following advantages in Ethiopia:

- The benefit from the land transactions can help the farmers to look for alternative economic base and better his or her lot;
- Such arrangement boosts tenure security over the holding right and mitigate the state stewardship which typified the land ownership issues in Ethiopia;
- Breaks off from the legacy of *derg* and socialist ethos which subjected the mass to extreme form of poverty and caused land

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fragmentation leading to the environmental degradation, food insecurity and subsistence farming;

- It is in harmony with the idea of liberalization and free market policy endorsed by the government and hence brings ideology consistency for the government itself;
- It can potentially deal effectively with land fragmentation since investors or even the government can take land via sell or lease from the farmers to improve the fertility of the land or fight land fragmentation;
- It encourages investment with respect to land; and aids population movement towards creating one economic community thereby strengthening the polity.
- It can provide access to land to the most active farmer and the capital holder. It can also ensure access to the youngsters short of land redistribution;
- It may facilitate credit access and bank mortgage, thereby embolden property right.
- It can boost productivity and effective land administration
- It is consistent with the rights of liberty and freedom of movement⁵⁴;
- It increases transferability of land holding which in turn ensures tenure security, property right and boost productivity;
- Hence, brings overall development and ensures respect for human rights, which can be easily imperiled owing to poverty.

Second, Public ownership of land policy needs to be implemented in areas where unoccupied land is there and population is sparsely available; especially in the lowland parts of the country where 60% of the nation's land mass is there and less than 15% of the people live.

⁵⁴ The laws in place now prohibit leasing land and settling somewhere else. Lease can only be done by farmers in a manner that does not displace the holder of land from the farm sight and ties the right to permanent residence on the spot.

Huge potential of the country in terms of arable land resides here too. Thus, the identification of available land for investment can be done easily by government and can be better administered by it. The present realities of the lowlands of Ethiopia shows that they lack infrastructures like road, water canals and so on and hence the government has to put in place these necessary infrastructures to utilize the land for farming. The government can negotiate also with investors on the price of lease having into consideration the investor's contribution for infrastructure development. It is often claimed by the current government that there are huge chunks of land available in the lowlands for investment and such land needs to be administered by the government itself. Moreover, people from overcrowded highland part can also settle in these places and get land from the government via lease. The secured and transferable lease rights can encourages the youth to organize and do agriculture for profit.

Third, Communal land ownership policy would be adopted as a temporary remedy and it will be a workable policy in the areas where indigenous pastoral societies live. Until such time that, their life style changes to sedentary life as the present government is working for it; communal land use ought to be preferable. Development has to come to these society and they need to settle in a permanent manner to benefit from infrastructures like school and health. Until then, their land needs to be communally owned with use rights fairly extended to all.

Therefore, in a country where 83% of the people depend on agriculture and that this same sector is 90% of the employing sector and that, it is also the single most important source of export earnings; the policy governing this sector and the land policy on which the sector totally hinges on needs to be wisely crafted and be resilient to the realities of the nation.. The policy needs to be developed in the interest of development and environmental causes only and nothings

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else. Since the current land policy carries with it plethora of problems, it has to be revisited and corrected in a manner that would serve the causes of overall development, in line with different agro-ecological zones and environmental protection.