

Ethiopian land law

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Revision

- The differences between the derge and current regime's rural land tenure system can be associated with their respective economic system.
- Derge : socialism (command)
- FDRE: free market

Legal and institutional frameworks

- Legal framework refers to the available legal instruments governing the subject matter at hand
- Institutional frameworks refers to the available formal institutions entrusted with the power of administering the subject matter at hand
- Regional states rural land legal frameworks include their respective constitutions.

Some tips about the current regime's rural land administration

- It has a **constitutional base**
- We do **not have single** policy **document** on land
- Land ownership is reserved to the state and the people in common
- Private individuals, local communities and the state can have a holding right
- It is in favor of **social equity and land tenure security (guarantees against eviction)**
- Is against **illegal holding** of land.

Nature and Scope of land rights (current regime)

❖ What are land rights? What is their nature? What is their scope?

Land rights are of two types:

1. Ownership
2. Non ownership (land holding right or possession)

❖ Ownership is reserved for state and the people in common. (article 40 of FDRE constn.)

❖ ***Non ownership rural land related rights can be (private, communal and state)***

Nature of land rights

- **Constitutional**
- **Perpetual** (guarantee against eviction) (lease is exception)
- **Exclusive**

Scope

- ❖ Non ownership land related frights are generally called **holding right** or **possession (See Oromia rural land proclamation no. 130/2007 art. 2(7) , art 2(8) of 133/2006 and 2(4) of 456/2005**
- ❖ So, what is the scope of holding right?

it is a broad right containing the following elements

- The right **to use** rural land for legally intended purpose
- **Lease and bequeath** it to members of his family or other lawful heirs
- The right to **not to be displaced** from his holding
- The right to acquire property produced on his land by using his labor or capital and to sale, exchange and bequeath the same. (article 2(4) of procl. 456/2005, art. 2(7) of 130/2007 cum. Art.2(8) of 133/2006

All in all, holding right is a wide right with exception of sale and mortgage (using them as collateral)

Contnd...

- Hence, **holding right and possession** refers to the same thing
- **Lease Vs Rent** ?see the Amhara rural land proclamation art. 2 (25 and 26) of 133/2006
- Rent: by Farmer,
- Lease: by government

Types of rural land holding

- We have three forms of rural land holding:
 1. Private holding 2(11)
 2. Communal holding 2(12) and
 3. State holding 2(13) of proclamation no. 456/2005

Questions to be answered in this class!

- **Who** can get, **How** and **what** right in relation to land for **how long**?
- Can a person **transfer** his/her/its holding? If yes, what ***size, to whom*** and ***for how long***?
- Can a person lose **his/her/its** holding right? if yes, why?
- What is the difference between **legal and illegal holding** (occupation) of land and their consequences?

Who? Article. 5 of procl. 456/2005

- **Peasants (farmers)**
- **Semi-pastoralists**
- **Pastoralists**
- **Local Community**
- **State**
- Private investor that engage in agricultural development activities
- Governmental and non governmental organizations
- Social and economic institutions

NB. ***the law gives priority for the first three.***

What right?

- Non-ownership land related rights or land holding rights.
- But, the ***scope of the land holding*** right **may vary from one category of individuals to another.**
- For instance, **peasants and pastoralists** are ***not allowed to use their holding as a collateral*** while investors can

How? Methods of acquisition

❖ Legal Vs. illegal holding of land?

- ❖ The constitution and all other relevant subordinate laws **recognize and protect only legal holding** of rural land.
- ❖ Legal holding is a ***holding acquired through the legally recognized procedures*** article 2(3) of Oromia procl. 130/2007
- ❖ So far, none of such instruments have defined illegal holding
- ❖ But, cassation decisions and the accontrario reading of the laws gives us some clue

- Accordingly, illegal holding is ***any holding of rural land which is not made in accordance with*** the legal procedures.
- Example:
 - Land acquired through ***contract of sale***
 - Land occupied ***by force*** and etc
- ❖ What is the consequence of legal and illegal holding?
 - Legal holding: ***protection and free enjoyment***
 - Illegal holding: ***no protection***, liability (civil and criminal) ***article 33 of oromia regulation No. 151/2005***

So, what are the legal procedures?

Article 5 of 456/2005

Two ways: **original and derivative ways of acquiring land holding**

- Original: land grant by competent authority
- Derivative: **donation, inheritance, acquisitive prescription (unique to Oromia regulation no. 151/2005)**
- Derivative acquisition can be of two types: **acquisition by the operation of the law (intestate inheritance) and acquisition through the act of the person** (will and donation)
- It can also be intervivos (donation) and mortiscausa (inheritence)

For how long? Duration article 7 of 456/2005

- ❖ Peasants, pastoralists and semi-pastoralists: for unlimited time
- ❖ What about others? It is left to be determined by regional states rural land laws

The right to transfer article 8 of 456/2005

- ❖ Remember elements of rural land holding right (possession)
- ❖ The difference between **use right and holding right**? see art. 15-18 of the Amhara proclm. 133/2006
- Use right is only one component of land holding right
- Land holding right can be: **granted by authorities, inherited or donated (it cannot be rented)**
- Land use right: **can be rented and donated** :
- ❖ What can be rented as per the Oromia rural land proclamation no. 130/2007? article 9-10
- ❖ **Compare it with the abovementioned provisions of amhara procl. 133/2006 and reflect on the concept of use and holding right**
- NB. use right is a **subset** of holding right

❖ What to transfer?

□ The **holding right in Toto**

□ The **use right only**

□ **Products from the land**

❖ Ways of transfer?

- Commercial (Rent) Vs non commercial (bequeath)
- Intervivos Vs mortiscausa
- Temporary Vs perpetual

Article 8

- ❖ Conditions of transfer!
- ❖ Specific conditions are found in the respective rural land laws of regional states
 - But, generally,
 - Rent **only to other farmers and investors**
 - **Donation and Inheritance only to family members**(art. 2(5) and other lawful heirs
 - Sufficient **size of their holding for the intended development**
 - In a manner that **shall not displace them**
 - For a **legally determined period of time**
 - **Consent of all members** who have the right to use land
 - **Approval and registration** by the competent authority

Rights and obligations of land holder article 10 of 456/2005

- ❖ **Duty to use and protect** his/her/its land up on pain of losing it(compare the two versions)
- ❖ Duty **to allow construction of canals and irrigation lines** crossing his/her/its land
- **Cooperate** with **competent authorities**
- **Duty to notify the competent authorities** when he/she/it abandons at will

NB. the maximum sanction for violation of this obligations is losing the holding right.

Restrictions and **loss** of rural land holding rights

- Restrictions are all about the **legal conditions imposed on the enjoyment** of land holding right
- See article 13 of 456/2005 and regional states rural land laws
- Art. 19 and ff. of 130/2007

Loss

- ❖ Even if rural land right **is perpetual in its nature**, there are certain conditions of extinction
- ❖ These are grouped in to two as **compulsory and voluntary**
- ❖ Compulsory:
 - **Expropriation** FDRE const. 40(8) cum. 7(3) of 456/2005
 - **Loss of holding as a sanction** for his/her/its violation of the law art. 10(1)
 - **Limitative prescription** (Oromia rural land regulation no. 151/2005 article 32)
 - **Death**
- ❖ Voluntary
 - ▢ **Willingly abandoning ones** holding art. 10(4) 456/2005
 - ▢ **Transferring it through donation**

Tenure security

- We can say the current rural land regime of Ethiopia has tenure security as one of its rural land policy.
- This is manifested through the following things:
 - **Constitutional and legal guarantee** against eviction
 - Issuance **of land holding certificate**
 - Position of the ruling party former ruling party as had been expressed in many discussions forums

land holding certificate?

❖ What is it

- It is a **legal holding certificate** issued by **competent authority** and given to a land holder art,. 2(14) of 456/2005
- **What purpose does it serve?** it has **evidentiary value** or uses as a proof of rural land use right. or it gives a presumption of holding right 2(14) of 456/2005, 2(21) of 130/2007 and art. 24 (4) of 133/2006
- Particulars to be written on it
 - Name, photo
 - code of the holding
 - The boundaries
 - Size
 - The use of the land and etc.