CHAPTER ONE

Property, Ownership, and the Metaphor of Bundle of Rights

Ownership is bundle of rights. This concept compares land ownership to bundle of rights. These individual rights can be separated from the bundle by sale, lease, mortgage, donation, or another means of transfer. The complete bundle of includes the following rights :

- The right to sell an interest
- The right to lease an interest and to occupy the property
- The right to mortgage an interest
- The right to give an interest to any one
- The right to do none or all of these things

Major Concepts: Real Property, Real Estate, and Immovable

Real estate means land and any thing permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, such as light fixtures, pluming and heating fixtures, or other such terms which would be personal property if not attached. The term is generally synonymous with real property.

The term real property is defined as land, and generally whatever is erected or growing upon or affixed to the land. Also rights issuing out of, annexed to, and exercisable within or about land.

Property law, in English common law, is divided into personal and real property. Real property concerns itself with rights *in rem*, or relating to land. Personal property concerns itself with rights *in personam*, or relating to chattels. In the civil law system, there is a division between movable and immovable property. Movable property corresponds to personal property, while immovable property corresponds to real estate

or real property, and the associated rights and obligations thereon. In Ethiopia, the properties of land and any fixture to land are termed as immovable property.

Land: in the law of real property, the term land is including the surface of the earth, the land beneath the surface to the center of the earth, and the air above. The term also includes property permanently affixed to the soil, such as water collected in wells, houses, and fences.

In the Civil Law countries, land is only real property. building is simply part of the real property. But in Ethiopia, lands and buildings together constitute an immovable property or real property is both land and buildings, and not only land. as can be derived from Art.1130 of the Civil Code, building is not defined through land, i.e. building does not seem to be part of land unit.

This kind of approach under our law seems to bear problems of interpretation and application. For example, what constitutes a real property unit in Ethiopia? Does building include the land on which it is constructed? If so to what extent-only the part on which the building stands or some more part? On what basis do we decide this? Assume Kinde constructs a house on the land owned/possessed by Degu, is the house a real property/immovable in this case? Further assume Degu disposes of this plot of land to Semahegn, to whom does the building belong now-Kinde, Degu, or Semahegn?

It is not easy to solve such issues under our law given the definition for immovable/ real property as constituting both land and buildings independently.

For the sake of consistency to our law, when the term real property or real estate or immovable is used, it refers to land, or buildings, separately or both land and buildings. In other words, the term is not used to refer only to land and then buildings indirectly as it is the case, for example, in Sweden.

Different Forms Ownership of Land

Conventionally speaking, the ownership of land may be classified generally in to three major and two minor categories: private, communal and public on the one hand, and joint and community ownership on the other.

1 . Private Ownership

This is the kind of land totally owned by private individuals. It belongs absolutely to an individual and as such the law provides an absolute protection against any intervention on such right by any other party. In principle individuals have an absolute right of use, exclusion, and disposition of their property. However, in reality private ownership right is not an absolute one for the state and the public using the law may limit such right. Private ownership of land is well known and developed concept and system in most countries. The Ethiopian Civil Code under article 1205 describes private ownership as the widest right man can exercise over his property. Today only few countries, most of which were part of the former USSR socialist republic and other former socialist and communist countries, including Ethiopia, prohibited private ownership of land. The present Ethiopian constitution basically prohibits the private ownership of land. According to the FDRE constitution Article 40(3) the right to ownership of rural and urban land as well as of all natural resources is exclusively vested in the state and the people.

2. Communal Ownership

Communal ownership of land refers to land commonly owned by a community of a certain village or locality. In most cases common grazing lands, water wells, irrigation lands or river systems, common use forestry and mountains, fishing lakes etc are categorized under this system. There are many such kinds of arrangements in many part of the world. The village or the community need to have some regulation to control the use of the common property. In some systems the state intervenes to make laws and regulations for the community. In Ethiopia, although such kind

of system is envisaged in more general way in the constitution, Federal and regional land laws provide specific rules for the protection of community land such as grazing and irrigation lands.

Proclamation 456/2006 provided for the Rural Land Administration and Land Use, defines “communal holding” under article 2(12) as "communal holding" means rural land which is given by the government to local residents for common grazing, forestry and other social services.

3. State/Public Ownership

It constitutes all lands which are not owned by individual person/s or the community. In most countries, mountains, public highways, public halls, parks, trans-boundary Rivers and forest lands, lakes etc are owned and administered by the state. It must be noted that in western countries lakes, mountains and forestland can be owned by private people. In Ethiopia, as stated above the state and the people together own these properties, and it seems the public in general or the state itself are also prohibited the absolute power of disposition of land in Ethiopia, sale.

The Federal Land Administration and Land Use Proclamation identifies under article 2(13) “forestlands, wild life protected areas, state farms, mining lands, lakes, rivers and other rural lands,” as state holding lands.

The civil code under articles 1444 and following tries to identity the kinds of real properties classified as state or public domain or properties.

Art. 1445. - *Public domain.* - 1. *Principle.*

Property belonging to the State or other administrative bodies shall be deemed to form part of the public domain where:

(a) it is directly placed or left at the disposal of the public; or

(b) it is destined to a public service and is, by its nature or by reason of adjustments, principally or exclusively adapted to the particular purpose of the public service concerned.

Art. 1446. - 2. *Immovables.*

The following property, if owned by the State or other administrative bodies, shall be deemed to form part of the public domain:

(a) roads and streets, canals and railways; and

(b) seashores, port installations and lighthouse; and

(c) buildings specially adapted for public services such as fortifications and churches.

4. Joint Ownership

In some systems it is a type of ownership of land by two or more persons in which each owns undivided interest in the whole. In Ethiopia, the principle of joint ownership right is governed by the civil code or other land related recent laws as the case may be. (articles 1257 ff.) Joint ownership right may be determined by agreement of the parties. In the absence of such agreement the law presumes equal right to the thing. The right can also be freely exchanged, subject to the limitation of pre-emption, however.

5. Common Ownership

Property owned in common by husband and wife each having an undivided one-half interest by reason of their marital status. Common property in the FDRE Family law is the category of property within the marriage other than private property of one of the spouses.

CHAPTER TWO

Basic Land Legislations

1 Code on Immovable Property: Land Law in Prospect

Presently Ethiopian general immovable property legislation is found in different titles and parts of the Civil code. For example, the definition for immovable property is found in Title VI, some rights in rem, i.e. real property such as usufruct, servitude, in Title VIII, public domain, expropriation, association of land owners, and town planning in Title IX, register of immovable property in Title X, and contracts relating to immovable properties such as sale, lease and mortgage in XVIII of the Civil Code

2 Real Property Registration Legislation

Cadastre and land register are two important systems of effective administration of immovable properties. Laws on property formation measures such as partition, subdivision etc…are necessary preconditions to undertake cadastre and registration have not been put in place yet.

3 Planning and Building Legislation

Art. 1535. - *Creation of area.*

(1) Town-planning areas may be created by regulation with a view to promoting the development of towns in an economically sound manner.

(2) The regulation shall fix in a precise manner the limits of the area.

Art. 1536. - *Plan.*

(1) The municipality shall draw up a plan relating to each town-planning area.

(2) The plan and any amendment thereto shall be of no effect unless approved by Imperial Decree and published in the Negarit Gazeta.

Art. 1537. - *Contents of plan.*

(1) The plan shall, where necessary, divide each area into sub-areas.

(2) It shall fix in a general manner the restrictions and servitudes which it may be necessary to impose on the rights of the owners within each sub-area.

Art. 1538. - *Carrying out of plan.*

(1) In carrying out the plan, the municipality may impose the necessary restrictions on the rights of the owners within the area.

(2) It may in particular impose servitudes not to build, rights of way or servitudes relating to municipal sewers and pipes.

(3) It may, where necessary, use expropriation proceedings.

Art. 1539. - *Compensation.*

(1) The owners whose rights are restricted or whose land is expropriated shall be entitled to compensation.

(2) Such compensation shall be fixed by appraisement arbitration committee in accordance with the provisions of Chapter 1 of this
Title (Art. 1473.1476).

Art. 1540. - *Building permit.*

Urban Planning Proclamation No. 574/2008: no person may construct a building within a town-planning area unless he has given notice of his intention to build and been granted a building permit.

The reasons compelling the adoption of this law are:

- The need to regulate the proliferation of unplanned urban centres by sound and visionary urban plans.
- The need to bring about an integrated and balanced national, regional and local development.
- The need to take into account the existing federal structure of government and the central role of urban centres in urban plan preparation and implementation, and
- The need to create a favourable condition for public and private stakeholders to fully participate in the process of urban plan initiation, preparation and implementation on the basis of national standards.

According to this law, any process of urban plan initiation and preparation shall follow ten principles which are:

1. Conformity with hierarchy of plans,
2. Sharing the national vision and standards as well as capable of being implemented,
3. Consideration of inter-urban and urban linkages,
4. Delineation of spatial frame for urban centres in view of efficient land utilization,
5. Ensuring the satisfaction of the needs of society through public participation, transparency and accountability,
6. Promotion of balanced and mixed population distribution,
7. Safeguarding the community and environment,

8. Preservation and restoration of historical and cultural heritages,
9. Balancing public and private interests, and
10. Ensuring sustainable development.

Any structure plan shall indicate at least the following:

1. the magnitude and direction of growth of the urban centre,
2. principal land use classes,
3. housing development,
4. the layout (design) and organization of major physical and social infrastructure,
5. urban development intervention areas of the urban centre,
6. environmental aspects, and
7. industry zone

Any local development plan shall state, as may be appropriate:

1. zoning of use type, building height and density,
2. local streets and layout (design) of basic infrastructure,
3. organization of transport system,
4. housing typology and neighbourhood organization,
5. urban renewal, upgrading and reallocation of intervention areas, and
6. green areas, open spaces, water bodies and places that might be utilized for common benefits, and
7. any other locally relevant planning issues.

Existing Property System

2. Land Policy

Now all rural and urban land is under public ownership. According to the Constitution, all urban and rural land is the property of the state and the Ethiopian people. The argument forwarded by the ruling party for the continuation of land as public/state property rests solely on the issue of security. In particular, i.e private ownership of rural land would lead to massive eviction or migration of the farming population, as poor farmers

are forced to sell their plots to unscrupulous urban speculators, particularly during periods of hardship.

To the opposite other say it may aggravate land degradation through soil mining and problems of common resource use. The fear of the critics and supporters of private ownership of land is, among other things, that government may use land as political weapon by giving and taking it away as the case may be.

A. Constitution

Article 40 of the Federal Constitution, which relates to "Right to Property," 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. (Sub-Article 3).

Sub-article 4 states that Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. Likewise, concerning the pastoralists of the lowland areas, sub-article 5 declares that Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their possession. The Constitution has also shown the way to acquire land by private individuals. Sub-article 6 of the same provision stipulates:

Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. What about urban poor?

Sub-article 7 declares that every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it.

The power to enact laws for the utilization and conservation of land and other natural resources in the country is exclusively given to the Federal Government (Art. 51(5) of the Constitution) Regional governments have the duty to administer land and other natural resources according to federal laws.(Art. 52(2)(d))of the Constitution).

B. FDRE Proclamation NO. 456/2005

FDRE Rural Land Administration and Land Use Proclamation states: “peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge.”(Art.5 (1) (a). Any person who is a family member of a peasant farmer, semi pastoralist or pastoralist having the right to use rural land may obtain rural land from his family by donation, inheritance or from the competent authority.(Art.5(2)). peasants’ title to the land is only of a usufractury nature. In the proclamation this kind of use-right is termed as ‘‘holding-right’’. Article 2(4) defines ‘‘holding right’’ in the following manner:

The right of any peasant farmer or semi-pastoralist and pastoralist to use rural land for purpose of agriculture and natural resources development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same. Transfer of holding-rights, by way of inheritance or donation, is only applicable to family members.

Hence, the law permits holders to use, lease, and bequeath (transfer to family members by way of inheritance or donation) their holding rights.

Article 8 provides for leasing holding rights in part to investors, or jointly develops the land with investors. Article 8 (4) says that an investor who has leased rural land may present his use right as collateral. So, if there is someone who is willing to lend money to the investor securing his use right emanating from the lease agreement, then it is possible to hold it as

mortgage collateral. Mortgage of the land by the holder of the right himself or by a fellow farmer who rented the land is not allowed.

Article 7 (1), "the rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit." i.e it is life estate which means it gives a right to the land for the life of the holder.

Upon death of the holder of the land, the right will transfer to heirs by law, who are family members. i.e inheritance or donation is possible only to family members. It seems testate (inheritance by leaving a will) is void if the beneficiary is not a family member.

If the "holders are deceased and have no heirs the land shall be distributed to peasants…who have no land and who have land shortage" (Art. 9(1).

C. Lease Proclamation No. 272/2002

The system is applicable for the transfer of urban land to users in accordance with Master Plans.

The Current Debate on Land Tenure and Policy

1. *Individualization of land tenure (leased and freehold ownership) increases tenure security of the landholders, thereby reducing economic costs of litigation over land disputes.*
2. *Individualization increases investment by increasing tenure security and reducing transaction costs. Higher tenure security increases expected investment returns, thereby increasing the demand for capital (including credit) for fixed-place investment. The supply price of credit decreases because the cost of lending is reduced by improved credit worthiness of projects, and higher collateral value. Both supply and demand effects increase investment.*
3. *Individualization will cause a land market to emerge. Land will be transferred to those who are able to extract a higher value of*

product from the land as users that are more productive bid land away from less productive users.

Others based their arguments against the present land tenure system from the property rights perspectives. Some of the arguments include:

1. *Current rights are not completely specified, so that they cannot serve as a perfect system of information about the rights that accompany ownership.*
2. *All or some of the current rights are not exclusive, so that all rewards and penalties resulting from an action do not accrue directly on the person/s empowered to take action.*
3. *current rights are not freely transferable, so that rights failed to gravitate to their highest value use, and*
4. *Some or all of the current rights are not enforceable and completely enforced.*

CHAPTER THREE

LEASEHOLD

Lease means lease-hold system in which use right of urban land is transferred or held contractually (Art. 2(1) of FDRE lease proclamation 272/2003). Lease is another means of land holing system.

1. Rural Land Lease

The Federal rural land administration and use proclamation No. 456/2006 in its definition of "holding rights" include lease as one form of right. Hence, rural farmers are allowed to lease or rent their land to any person who wishes to involve in the agricultural sector.

Types of Rural Land Lease Arrangements

The readings of the federal rural land proclamation and that of others reveal that there are three types of lease arrangements concerning rural land holding.

1. Leasing farm land to other farmers
2. Leasing farm land to investors
3. State lease land to investors

Leasing to fellow farmers

Conditions

a. The law makes a limitation as to the size of the land which should be rented, which is “a size sufficient for, the intended development in a manner that shall not displace farmer …” It means, at least, the farmer should not rent all his land or a significant part of which would left him with insufficient produce for his livelihood.
b. The farmers need to have a land holding certificate.
c. The consent of some interested person. The federal legislation needs the consent of other “members who have the right to use the land” (Art. 8(2)), while the Tigray needs the approval of a spouse (Art. 6(2). in Oromian the rent is valid “if it is registered and approval by Oromia Agricultural and Rural development Bureau Art. 10(3).”

Lease Period

Although the maximum lease period is not fixed in the Federal rural land Proclamation, It is mentioned in the regional proclamations. Accordingly article 10(2) of the Oromian land proclamation provides “duration of the agreement shall not be more than three years for those who apply traditional farming, and fifteen years for mechanized farming.” The Tigray legislation agrees with the three year period concerning the traditional farming mechanism but 20 years for the modern farming mechanism (Art. 6(3).

Leasing to investors

The farmer may lease out his land to an investor, a licensed person who wishes to involve in agriculture. The landholder can develop his land jointly with the investor.

State lease of land to investors

Art. 40(6) the FDRE Constitution, under gives an opportunity for investors to get land in rural areas with payment. The Federal and Regional rural land laws have also upheld **lease** right.

The Federal Rural Land Proclamations

8. Transfer of Rural Land Use Right

1) Peasant farmers, semi pastoralist and pastoralist who are given holding certificates can lease to other farmers or investors land from their holding of a size sufficient for, the intended development in a manner that shall not displace them, for a period of time to be determined by rural land administration laws of regions based on particular local conditions,

2) The rural land lease agreement to be concluded in accordance with Sub-Article (1) of this Article shall secure the consent of all the members who have the right to use the land and be approved and registered by the competent authority,

3) A landholder may, using his land use right, undertake development activity jointly with an investor in accordance with the contract he concludes. Such contract shall be approved and registered by the competent authority.

4) An investor who has leased rural land may present his use right as collateral.

2. Urban Land Lease

Leasehold right

The leasehold right is a right to use the land for fixed period of time against payment of agreed amount of money. Pursuant to article 4 of the urban landholding lease proclamation, an urban land shall be permitted to be held by lease:

Pursuant to Article 4 of the Lease proclamation, an urban land can be permitted to be held by lease on the basses of the following conditions :

a) in conformity with plan guidelines where such - a plan exists, or, where it does not exist, in conformity with the law which Region or City government makes, as the case maybe, and

b) on auction or through negotiation ;or

c) according to the decision of Region or City government.

Rights of person who get leasehold title deed: 1. he has the right to construct a building of different nature (2. the lease right can be inherited, donated, or mortgaged provided that the beneficiary's rights are limited by the period of the lease term. 3. The lease can be sold or exchanged to any person. Article 13 of the proclamation provides the kinds of rights. As per sub-article 1 of this article "any lease holder may transfer, or undertake surety on (mortgage), his lease-hold; and he may also use it as a capital contribution to the amount of the lease payment he has made."

This right shall be enjoyed if some form of construction/activity has been taken place; i.e. bare land is not subject to all the above rights.. Article 12 requires the leasehold possessor to "begin to use the land for the prescribed activity or service within the period of time set…" The time set for commencement of activities may vary from 18-30 months as the case may be as emphasized in different municipal regulations.

Article 13 says that mortgaging a use right of land includes a building constructed on it and the accessories thereto, and conversely the mortgage of a building and its accessories includes the use right of the land. Similarly, sub 3 of same article says that land right and the construction upon it are inseparable in that during default of payment both rights should be transferred to the creditor.

Lease periods

Art. 6: Period of Lease

1) The period of lease shall vary depending on the level of urban development and sector of development activity or the type of service and shall have the ceiling of:

a) In any town:

1) up to 99 years for housing (personal and leasable), science, technology; research ,and study, government office, non-profit-, making philanthropist organization, religious institution; ,
2) up to 15 years for urban agriculture;
3) as per government agreement for diplomatic missions and international organizations;

(b) In Addis Ababa and in a town designated as of the grade of Addis Ababa:

1) up to 90 years for education, health, culture, sports;
2) up to 60 years for industry;
3) up to 50 years for commerce;
4) up to 50,years for others.

(c) In other towns not designated as of the Grade of Addis Ababa;

1) up to 99 years for education, health, culture, sports;
2) up to 80 years for industry;
3) up to 70yem for commerce;
4) up to70 years for others.

Renewal and Termination of lease permit

The state may not take back the land whether before or upon the expiry of the lease agreement unless the land is needed for public interest based works.

The lease hold possessor has the right to request for renewal of the period of lease agreement, 10 to 2 years before the final day of the agreement.

Art.7: Renewal of Period of Lease

> *1) Period of lease may, upon the termination thereof, be renewed for the lease-hold possessor as per the agreement to be reached, unless the urban land is wanted for public interest. Where the lease period is not renewed upon termination on account of the land being wanted for public interest however, compensation shall not be paid to the lease-hold possessor.*

2) Period of lease shall be renewed for the lease-hold possessor in pursuance with the stipulations of Sub-Article (1) of this Article if only he has applied in ,writing to the appropriate body, to that effect within 10 years and not exceeding2 years before the termination of the period of lease.

3) The appropriate body must notify to the applicant in writing its decision within 1 year after the application has been lodged with it. It shall be deemed as though it has agreed to the renewal if it fails to do so within I year after the receipt of the application

Art. 15. *Termination* of *Lease-hold and Payment* of *Compensation*

1. The lease-hold of urban land shall be terminated:

(a) where the lease-hold possessor has failed to use the land in accordance with Article 12(1)

(b) where it is decided to use the land for a public interest; or expropriation of leasehold right and compensation

(c) where the period of lease is not renewed

CHAPTER FOUR

REGISTRATION OF IMMOVABLE PROPERTY

Meaning of Cadastre and Cadastral Surveying

A cadastre is a system of writing or recording individual land parcels or real properties. In other words, it is a systematic description of the land units within a given area. Technically, this description is made by the cadastral maps which represent the graphical indices of the individual parcels showing the relative location of all parcels in a given region, and by written or textual records which represent the attribute files of the cadastre, in parallel. The most essential information in the textual files is the identification number and the area of the unit, usually differentiated by the type of land use.

A Land Information System is a tool for legal, administrative and economic decision-making and an aid for planning and development

which consists on the one hand of a database containing spatially referenced land-related data for a defined area, and on the other hand, of procedures and techniques for the systematic collection, updating, processing and distribution of the data. The base of a land information system is a uniform spatial referencing system for the data in the system, which also facilitates the linking of data within the system with other land related data.

Purposes of Cadastre and Sustainable Development

1. A cadastre helps a society to ensure its sustainable development in quite many ways. **Cadastre brings about a guaranteed ownership and secured land tenure.** The compilation of land information in the cadastre should provide formal identification and, in some systems, legal proof of ownership.

2. Cadastre provides security for credit and improves investment. Certainty of ownership and knowledge of all the rights that exist in the real estate provides confidence for banks and financial organisations to provide funds so that land owners can invest in their land. Mortgaging real estate is one way to acquire capital for investing in improvements. Real estate owners can then construct or improve buildings and infrastructure or improve their methods and management of the land, for example by introducing new farming techniques and technologies.

3. Developing trusted and enduring systems of land tenure and land transfer encourages investment in a wider sense. This means where confidence is lacking in land tenure no investment will be risked, no improvement or development will be made onto the real estate, and consequently no economic or social benefit will be achieved thereby rendering cadastre impotent to contribute to the development of the economy.

4. Cadastre highly enhances real estate taxation. Effective cadastre will improve efficiency and effectiveness in collecting land and property taxes by clearly identifying the real estate owners.

5.Cadastre helps reduce land disputes. Cadastre involves surveying of land boundaries and demarcation. This can reduce the dispute over land and its boundaries which otherwise gives rise to expensive court litigation.

6. It helps in formulating, facilitating and monitoring land reform or policy. It provides excellent opportunities for identifying problems associated with the development and implementation of land policies. The FIG Statement on the Cadastre identifies many matters which can be monitored and controlled with the assistance of Cadastre:

- The size of parcels, both maximum and minimum, for instance to prevent excessive fragmentation,
- The shape of parcels, to avoid uneconomical subdivision design or inefficient road and water system, etc.,
- Reallocation of land rights to improve social and economic policies through subdivision, land consolidation, land reallotment, etc.,
- Land use, for instance agriculture or to ensure that low-cost public buildings are allocated to the right group of people,
- Control and measures taken to implement social programs to improve access to land ownership by women and minority groups,
- Valuation of land for the collection of government taxes and rates,
- Collection of contributions to improve common facilities, such as water systems, etc.,
- The value of land as a result of development, and
- Acquisition of land for public or common purposes.

7. Cadastre can effectively facilitate urban planning and infrastructure development. Urban centres need redevelopment and effective land use and infrastructure development planning. An effective cadastre should permit the integration of records of real estate ownership, land value and land use with sociological, economic and environmental data in support of physical planning.

8. Cadastre supports environmental management. An effective multi-purpose cadastre can be used to record conservation areas and give details of archaeological sites and other areas of scientific or cultural interest that may need to be protected. It can further be used in the preparation of environmental impact assessment and in monitoring the consequences of development and construction projects.

9. Cadastre is used to produce statistical data. Statistical data is important to decide for long-term strategic planning and short-term operational management.

In summary, we can observe that a secure and complete documentation or representation of legal and physical land objects significantly supports the efforts to create sustainable development. The Bathurst Workshop underlies:

10. Cadastre can also help create political stability. The type of land tenure and land rights happens to be strong subjects of social and political debates. They have also a strong influence on the emotional feelings of individuals and organisations about the role they play within a society. As a result, no country can sustain stability within its boundaries unless it has a cadastre system that promotes internal confidence between its people, its commercial enterprises, and its public organs. Recognising that land is the source of all wealth lies at the heart of good government and effective public administration with strong legal and political basis.

2 Land Registration

1 Meaning and Importance of Land Register

Land register is ownership-based record while cadastre is normally an up-to-date and parcel-based information system or recorded information .

Land registration answers the question who is owner or holder of the land ; and by which means the ownership title is transferred from the previous owner to the new one, such as sale transaction. As we mentioned before, cadastre answers the question where and how much. The ‘where’ refers to the location of the land parcel and its boundaries; and the how much refers to the size of the land parcel.

We can summarise the basic differences between cadastre and land registration in the following table.

Cadastre	**Land Register**
1. Parcel-based	1. Ownership/owner based
2. Information about the parcel	2. Information about the interests/rights and restrictions
3. Answer where? And how much?	3. Answers who? And how?

Classification of Land Register

Worldwide, there are two basic types of land registration component of the cadastre. They are the deeds system and the title system. The difference is the degree of state involvement and judicial setting of the country. In the deed system only the deed or document or transaction is registered. “A deed is a record of a particular transaction and serves as evidence of this specific agreement, but it is not itself a proof of the legal right of the transacting parties to enter into and consummate the agreement.” Deeds systems provide a register of owners focusing on “who owns what”. They are rooted in the Roman culture (France, Spain, Italy, Benelux, in South America, and parts of Asia and Africa which are influenced by this culture) and in most of the United States.

On the other hand, in the title system, the title/ownership itself is registered and is itself a proof of ownership and its correctness is secured or guaranteed by the state. While deed registration focuses on the owner, the title system focuses on the land parcel and registers properties by presenting “what is owned by whom”. The title system is rooted in the German and is found in central European countries – Germany, Austria, and Switzerland. Different versions of this system are also found in Eastern European and Nordic countries, UK, and Australia (Torrens system).

Object → legal transaction → subject

Subject → legal transaction → object

Fig.2 Difference of focus between deed system and title system.

Although deed registration can generally be implemented more quickly cheaply than the other alternative and the laws and procedures of title registration systems (including examination of documents and cadastral plans) may be more complex, the latter

systems are considered more useful. The FIG statement on the cadastre has this to say:

> *….in principle, title registration systems have benefits in terms of greater security of tenure and more reliable information. Furthermore, users do not have to search through old documents to find information on ownership; they can rely on the information on the title register. This usually results in lower transaction costs.*

Due to these and other reasons such as the progress of IT, the title system is being accepted as a better solution. As a result, the difference between the two concepts has become grey.

Ethiopian Legislation on Immovable Registration

The 1960 Civil Code

Though inapplicable, as per Art. 3363- Art. 3365, the fundamental legislation on real property registration is the Civil Code. One title, Title X, is devoted for this purpose and is entitled as "Registers of Immovable Property". Read Arts. 1553, 1556 – 1559 , 1567- 1576, Art. 1583- 1585

Effects of Registration; - Art. 1637. Art. 1638 - Art. l646.

The Civil Code provisions on registration of real property do not make specific reference to rural and urban land separately. It may be understood that they apply to both rural and urban land. Indeed, there is no strong reason to have different laws and structures for registration of property with respect to rural and urban land.

Regional states land administration laws deal about rural land registration , data maintaining and the criteria of certification. For a

comprehensive understanding, look the regional laws stated at the following table

	Federal 2005	Amhara	Oromia	SNNPR	Tigray
Certificates/ book of holding/title deed		If jointly owned, it should be issued in the name of both spouses Spouses may agree for joint ownership after marriage.	Husband and wife shall be jointly certified to their common holding land. In case of polygamy, a husband is allowed to get a joint certificate with only one wife and the other gets independently. If land is rented out, the book of holding remains with the holder.	Joint certification of husband and wife. Title deed remains with the holder if land is rented out	It is issued in the name of the household head only, i.e., the name of the spouse does not appear in the certificate.

CHAPTER FIVE

LAND CONSOLIDATION

What is Land Consolidation?

Narrowly, land consolidation means reallocation of parcels to remove effects of fragmentation. The consolidation of fragmented holdings did result in improved agricultural productivity.

There is also comprehensive land consolidation which includes the re-allocation of parcels together with a broad range of other measures to promote rural development. Examples of such activities include village renewal.

Land consolidation has always been regarded as an instrument for rural development. Concepts of rural development have become much broader and have expanded to include increased environmental awareness and a wide range of nonagricultural applications. Accordingly, the emphasis of land consolidation projects has shifted from a focus on restructuring agriculture to one of achieving more efficient multiple use of rural space by balancing the interests of agriculture, landscape, nature conservation, recreation and transportation.

Among other things, land consolidation leads to improved agriculture and management of natural resources. It also improves rural development, and better land administration systems in many ways.

The most effective consolidation instrument of rural development is comprehensive land consolidation but at times other approaches such as simplified consolidation, voluntary group consolidation, and individual consolidation initiatives can bring benefits.

CHAPTER SIX

REAL PROPERTY TRANSACTIONS

Sale/Purchase

Article, 40 of the FDRE constitution provided that the right to ownership of rural, urban land as well as ownership of all natural resources is exclusively vested in the state and the peoples of Ethiopia. Land is a common property of the nation nationalities and

peoples of Ethiopia and hence not subject to sale.

Usufruct

It is a real right to enjoy a thing belonging to another the same as holding right of farmers and pastoralists . The usufructuary enjoys all rights on the thing including Usus (use right).the usufractuary has no right of abuses. Likewise under holding right both farmers and pastoralists have the right to use the land while the right to ownership of land remains in the hands of government. They have no right to abuses i.e. holding right lacks the right to dispose the land as one thinks fit except through the mechanisms enumerated under the law in this case.Usufruct confers double right on their holders i.e. the right to use the thing (usus) and the right to receive the fruit (fructus).

Land Inheritance

The farmers have the right to transfer their holding right through inheritance. Who is an heir eligible to inherit the land use right of the deceased farmer? The heir as stated by the new federal rural land use and administration law are both family members which are defined as "any person who permanently living with the holder of land use right sharing the livelihood of the later" and lawful heir. The strict interpretation of this article indicates or includes not only those persons who have relation by consanguinity or affinity to the holder of the right but also any body provided they are living permanently with the holder and share the means of the livelihood of the holder. Here, the major criterion is not blood or affinity relationship but whether the person concerned is living with and by the income of right holder. Lawful heirs mean persons having close blood relation, surviving the deceased and not found to be unworthy.

Donation

The Ethiopian farmers and pastoralists can donate servitude or usufruct or their holding right for another farmers and pastoralists

The following table summarizes the inheritance and donation provisions of the land laws.

	Federal 2005	Amhara 2006	Oromia 2002	South 2003	Tigray 1997 and its amendment 2002
Inheritance		The holder has the right to transfer land through inheritance to (a) to any rural resident involved in agricultural activities, (b) to persons living in towns engaging in low income generating activities to support their rural livelihood. Note this does not affect the right of minors or family member or the interest of surviving	The holder has the right to transfer land to his family member living any where through inheritance.	Has the right to transfer land to his family, but the land to be transferred should not be less than the minimum size. A family member is defined as any one who is permanently living with the holder by way of sharing the means of livelihood.	Children and adopted children who depend on their parents land can inherit land use rights from their parents. But those (a) who earn sufficient income to maintain normal standard of living and (b) who has the right to use their own land do not have the right to inherit land. Parents can inherit their children's land if the latter did not

		spouse.			have their own children. Inheritance cannot go beyond second generation, but if their parents do not have land children can inherit from their grand parents. If there are no children then a wife who does not have her own land can inherit from her husband and vice-versa.
Gift	Any person who is a member of peasants'/pastoralists family may get rural land from his family by	The holder can transfer land by way of gift to a child or grand child or family member who is a resident			

	donation…	of the region who does not have any land, or who uses leased land due to the smallness of the size of his possession. But spouse approval required in case of joint ownership. It should be in a written form and should be registered at the woreda and kebele level.			

Exchange

Prescription/Adverse Possession

Art. 1168. - *Principle.*

(1) The possessor who has paid for fifteen consecutive years the taxes relating to the ownership of an immovable shall become the owner of such immovable Provided that no land which is jointly owned by members of on family in accordance with custom may he acquired by

usucaption and any member of such family may at any time claim such land.

CHAPTER SEVEN

DISPUTE RESOLUTION MECHANISMS ON REAL PROPERTIES

The following table summarizes the land dispute resolution mechanism at federal and state levels as found in the land administration and use laws.

	Federal 2005	Amhara 2006	Oromia 2002	South 2003	Tigray 1997 and its amendment 2002
Land dispute resolution		Mutual agreements and local elders can be used to resolve land related conflicts. The detail of the formal institutions is not provided in the proclamation.	Land disputes can be resolved by (a) local social court, (b) then appeal to the ordinary woreda court, and (c) then appeal to the higher court. Note that mutual agreements and local elders can be used to resolve	Land related disputes will be seen (a) first by the woreda and kebele land administration and use committee, (b) if not satisfied, can apply to the kebele social court, (c) then can appeal to the woreda court, and (d) finally, has the right to apply to	There is nothing on land disputes and resolution.

			conflicts.	the higher court. Note that mutual agreements and local elders can be used to resolve conflicts.	

Informal Dispute Resolution Mechanisms

Art. 3307 of the Civil Code,

by a compromise (negotiation.) which is a contract whereby the parties, through mutual concessions, terminate an existing dispute or prevent a dispute arising in the future . The parties reach a joint decision on matters of common concern in situations where they are in actual or potential disagreement.

As per Art. 3325 of the Civil Code, arbitration is a contract whereby the parties to a dispute entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principles of law. In other words, arbitration is a process by which a dispute between two or more parties is submitted to panel pf impartial third parties for resolution on the merits based on the evidence presented at a hearing. The procedures for arbitration are provided for under the Civil Procedure Code.

According to Art. 3318 of Civil Code, conciliation is a mechanism whereby the parties entrust a third party with the mission of bringing them together and, if possible, negotiating a settlement between them. Stated otherwise, conciliation also called mediation is a process whereby a neutral and impartial third party facilitates communication

between negotiating parties which may enable the parties to reach settlement.

CHAPTER EIGHT

LAND USE RESTRICTIONS

1 General

Land use control refers to the body of laws and regulations which limits the use rights of a land and a building. These laws can be found in the civil code itself and in different other legislations such as urban planning, building legislation, forestry, water laws, and environmental laws and so on.

2 Restrictions

Nuisance law

Nuisance is an activity that arises from unreasonable, unwarranted or unlawful use by a person of his on property. It is mostly related with the abuse of right of an immovable. The lists of activities that can cause nuisance are not exhaustive. This type of activity is prohibited by many laws including our civil code. Hence, as one form of restrictions owners of an immovable, mostly building, may not use their property in a way that disturbs their neighbors. This principle is also included in our civil code under article 1225:

Art. 1225. - Abuse of ownership. - 1. Principle

(1) The owner shall not cause nuisance or damage to his neighbor.

(2) He shall not cause smoke, soot, unpleasant smells, noise or vibrations in excess of good neighbourly behaviour.

(3) Regard shall be had to local custom, the position of the lands and the nature thereof.

Planning law

Can an owner of a building change the plan of the building? Can he build a new building on the land leased or demolished it whenever he

wishes it? A change the use of such building requires a permit. Basically change can be divided in to three categories: construction of new building, work on existing building, and demolition of the building. This means use of land d building becomes under extensive official control.

At Federal level a proclamation that provides for urban plans has been adopted under Proc. No. 574/2008 empowers municipalities to control land use in urban areas. According to article 25 of the proclamation, “no development activity may be carried out in an urban center without a prior development authorization.” In this case the word “development” is defined as, “carrying out of building, engineering works, mining or other operations under the ground, or the making of any substantial change in the life of any structure or neighborhood (Art. 24)”

The above article hence includes the two aspects, i.e., constructing a new construction and making a change on it. So as you may know, people after getting a plot of land must get a building permission to construct a new building. Since, the law also provide that urban plans must contain rules about zoning, height of building, housing typology etc (art.11(3)) owner of a house may not the type and design of the house in a way that violates the planning laws, and as a result owner must secure prior permit.

The other point is that owner of a building may not demolish it without a permission as envisaged under article 32 of the proclamation.

Environmental concerns

Other legislation which relate to environment (proc. No. 300/2002), provides different restriction on property owners concerning management and release of dangerous and hazardous activities that may damage the environment. It among others prohibits people from emitting or releasing, toxic substances, chemical, or radioactive

substance from their property that harms human health and wellbeing, the biota and the aesthetic value of nature.

Expropriation

The concept of public acquisition of land without the consent of the owner is known by different names. In most common law countries, either “eminent domain” (USA) or “compulsory purchase” (UK & other commonwealth countries) and expropriation in civil law countries is used. Expropriation is a process whereby the state may take privately owned or leasehold land without the consent of the owner\possessor for a public purpose accompanied by payment of fair compensation.

The Civil Code, under Article 1460, provides:

> Expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable required by such authorities for public purposes.

The important elements in any expropriation process and practice are:

- Expropriation is a taking of private real property
- It is an inherent right of the state
- It is done against the consent of the owner/possessor
- Fair compensation must be paid
- The taking must be made for public interest/use

Justification of expropriation is to satisfy public needs. As the government has the duty to construct infrastructures such as roads, dams, schools, hospitals, etc and whenever it needs a certain land for such purpose it can take the land.

The government or other developers can get land, besides to negotiation and other purchasing mechanisms, by way of expropriation without the consent of the owner. The justification usually given in favor of expropriation is one related with the need of development. It is said that unless we forced to surrender his land, the landowner would otherwise, due to his monopolistic position, be

able to block development when refusing voluntary transfer of his land or claiming for an unrealistically high compensation. Another reason for expropriation is the need to ensure the efficiency of land acquisition. Efficiency means the most productive use of resources to satisfy competing material wants. Hence a plot of land may be expropriated if the new owner can develop it and makes it more profitable to the society.

Similarly the justification for expropriation given in Ethiopia is that of land acquisition. The preamble of the present expropriation legislation (Proclamation No.1161/2019) justifies expropriation on the fact that:

> "urban centers of the country have, from time to time, been growing and the number of urban dwellers has been increasing and thereby land redevelopment for the construction of dwelling houses, infrastructure, investment and other services has become necessary in accordance with their respective plans as well as preparation and provision of land for development works in rural areas has become necessary."

The other element in expropriation is the payment of fair compensation. Owners/holders/leaseholders of the land should be compensated for the development or change they bring about on the land. In most legal systems people are compensated for the ground itself and the fixtures (building, excavation, trees etc) on the ground.

In Ethiopia, in urban areas, instead of compensating for the value of the ground people are given replacement land.

The other element is the requirement of "public purpose/use." The idea is that state may not take a private land arbitrarily; it must be justified on public purpose. It means that the taking of the land must be for public interest. What constitutes public interest is not a settled argument. In its traditional concept, public interest includes the traditional state responsibilities: Construction of roads, schools, dams, bridges, etc. Modern interpretation of the concept however even

includes that the taking of the land for private development activities, malls, hotels etc may amount to public interest.

Article 2(1) of proc. No. 1161/2019

> "*public purpose*" *means the use of land defined as such by the decision of the appropriate body inconformity 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;*

Valuation and Compensation

Compensation

Compensation is defined full indemnity or remuneration for the loss or damage sustained by the owner of the property taken or injured for the public use." The compensation requirement under the law demands that the expropriator reimburses the expropriated for the property interest taken and place the latter in as good a pecuniary position as if the property had not been taken. In Ethiopia, the constitution and other land related legislations underline that a commensurate amount of compensation should be paid to the expropriated person. Commensurate means in this case literally equivalent. In some legal systems the word commensurate may be replaced by words like "fair" or "just". But the addition of such adjectives doesn't create any change in the basic definition of compensation itself, they are added merely to give emphasis.

But how do we ensure whether certain compensation is commensurate, fair, just or not? In other words how do we know whether the compensation valued is appropriate one?

In all Western countries and in most developing countries, the fundamental principle that guides valuations under expropriation laws is the payment of "fair market price" or market value. Market value is generally taken as a test for the existence of just compensation. Market value, as defined in *Appraisal of Real Estate*, is:

> *the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.*

Well if this explanation is not clear enough, in order to understand the market value of a property imagine the sale of a house by the owner after negotiating with buyers and may be involving brokers. Here the buyer and seller know what similar types of properties are sold at market, and hence the seller puts the highest price that his property can have and a buyer can afford. By the same token the buyer offers the best of his price for the house comparing that house to other comparable properties.

Valuation

The valuation process, whereby compensation is fixed according to law, is generally the most difficult, time consuming, and litigated part of the expropriation process. A proper valuation process is the most important step for the land owner. This is because it is the way to reach just compensation. Although the constitutions of most countries contain “just compensation” phrases, they do not give any clue as to how to determine it. However, market value is usually suggested to calculate the amount of compensation. Hence, just compensation has also been sometimes defined as “the fair market value of the property as of the date of the taking, determined by what a willing buyer and a willing seller would agree to, neither being under any compulsion to act.”

Valuation may be ordered either by the court or the administrative organ, as the case may be. In countries where the administrative organ facilitates the valuation process, an owner of land may dispute its validity and appeal to the courts. On the other hand, if it is the court that organizes and selects experts, then it will accept the valuation report as evidence to give its final expropriation decision.

Valuation Methods

Generally, there are three primary valuation methodologies for arriving at the fair market value of real property taken by way of expropriation which are : -

a. Comparable Sales Approach

The comparable sales approach simply requires searching for similar properties that have been sold in the marketplace within a reasonable time period preceding the taking date, and then adjusting the sales price of those comparable properties to reflect differences between the comparable and the subject property. The comparable sales method is considered the preferred method of ascertaining the fair market value of land taken by expropriation.

b. Income Capitalization Approach

It gives value to the land in relation to the income it produces. The capitalization of income approach is generally used to value income producing property when it is completely taken. It usually consists of arriving at an independent value of the underlying land involved, and adding to it the value of improvements, by converting reasonable or actual income at a reasonable rate of return (capitalization rate) into an indication of value. The land and improvements may be capitalized together in a single process. The capitalization of income is not used to project future profits or to compensate the owner for lost profits, but rather, to calculate the fair market value of the land at the time of the taking. The income capitalization approach is an accepted method

for determining market value when there are no available comparable sales data, and the income is directly attributable to the land.

c. Replacement Cost Approach

The replacement cost method values the expropriated property by determining the replacement or reproduction cost of improvements, less depreciation, plus the market value of the land. Hence, this predominantly serves to value buildings as well as utilities, but not the land itself. It is especially considered one of the better methods for determining a utility's fair market value. Generally, it is assumed that landowners may be compensated fully by other approaches, especially where the property is not shown to be both unique in nature and location and also indispensable to the conduct of the landowners' business operations on the site from which a part is taken. So, mostly, buildings of a unique character are valued using this method. We can also add that this approach can be used in countries where the market value of real property is not developed. The method develops the value in terms of current labour and materials required in assembling a similar asset of comparable utility.

Valuation method in Ethiopia today

We have two different systems we follow in urban and rural areas. In urban areas compensation is paid for the improvement made on the land in the form of building, tree, and other excavations or structures. The compensation is based on replacement cost of similar property. Means in Ethiopia, we follow the third valuation method. Read article 12 of Proc. No. 1161/ 2019". In addition property owners shall be paid for transportation, removal of things from the place, fence, etc and shall also be given a replacement land to construct the house. But what misses in the Ethiopian case is the location value of the property. For any modern market based valuation system, location

maters a lot, that values of same buildings can be varied because of the difference of the location of the land.

In rural areas besides to the houses, if any, land plants (grass, trees, crops, fruit etc) thereon, farmers should be compensated for the land they lose. In principle a replacement land would be given to the farmer. In that case the compensation is based on annual income of the farmer, and an amount of price of annual harvest shall be paid until the replacement farm is given. On the other hand if the lose is permanent, means if replacement land is not to be found, then the amount is to be in the form of replacement compensation "which shall be equivalent to 20 times the average annual income he secured during the five years preceding the expropriation of the land." Read article 8 of same proclamation. The usual criticism forwarded against this approach is why should it be calculated based on the income secured before five years? Why not it to take or based on current market prices of produces.

The subject of expropriation is not only rural land and building but also leased land. Expropriation of leasehold land may be effected during the expiry of the lease agreement (7(1)), or before the expiry of the agreement as can be inferred from Article 15 (1) (b), and 16 (1). According to article 7, the state may refuse renewal and take back the land when the land is needed for public purpose. The law also emphases that in such case compensation is not to be paid. Hence we can argue that the taking back of the land doesn't amount to expropriation. Only leasehold right which is active is compensable. Do you think it is just to deny compensation for the property constructed?

Art 16: Clearance of Urban Land

(1) The appropriate body may clear and take over an urban land which it decides it is necessary to commit for a public interest by issuing clearance order in writing to the concerned person.

It shall also publicize the order through other alternative means.

Where a leasehold right has been taken away by the state for public interest the state must compensate the leasehold possessor for the property on the land and the remaining lease rent. Regulation No.135/2007 provides that the payment of compensation for property situated on landholdings expropriated for public purposes. As per Article 13,concerning compensation for buildings the amount of compensation should be calculated by taking the following in to consideration:

- cost of construction (current value) .
- cost of permanent improvement on land
- the amount refundable money for the remaining term lease contract

The leasehold possessor is going to be refunded if he had made full or prior payments the rent.

Servitude

Introduction

Assume that you have a house in one area but for some reason that you have no way out to the next street? Or that your house must be connected to the water pipeline or the sewerage service? What will you do? Such related problems are solved by the concept of servitude. The solution is that the neighboring land must provide you or your house with a right of way, a right of passing over it the pipelines or the sewerage tubes. Servitude is defined as “a charge encumbering a land (servient tenement) for the benefit of another land (the dominant tenement.)” And the type of obligation or encumbrance made on the burdened land, that is the servient land is “the obligation to submit to the commission of some acts by the owner of the dominant tenement

or to refrain from exercising some rights inherent in ownership.” Read article 1359 of the civil code.

This means the servient land is burdened with some obligation for the purpose of the advantage of the dominant tenement. This type of right is right in rem or real rights which are related to the properties. Hence, servitude may only accessorily cast upon the servient owner the burden to commit any act (1360). The burden of servitude shall transfer with the land irrespective of the change of the owner.

The purpose of discussing servitude is just to show that it is a limitation or restriction on one’s land, in this case the servient property. Students are expected to explore the details of the system.

1 Means of creation and types of servitudes

Servitude can emanate from contract, will, the law or custom. In case of contractual servitude the agreement may be made between owner of the dominant and servient lands. On the other hand servitude that emanates from a will shall be made by the will of the deceased when it divides a property in to two or more parcels (1362.) Like any real rights servitude must also be made in writing. And in order for it to be defence against a third party it must be registered. The third method of creation of servitude is acquisition by prescription. According to article 1366 an apparent servitude may be acquired by enjoyment for ten years. Apparent servitude is one which is visible and conceivable to a third party. Some times rights of way across another’s land on foot or with animals can be determined by the custom of the place (1371.)

Art.1220 pipes

> *(1) An owner shall, against full payment in advance of compensation for the damage thereby caused, allow the*

installation on his land of water, gas or electrical lines or similar works to the benefit of other lands.

Art.1221. Right of way-principle

An owner whose land constitutes an enclave or whose access to public ways is not sufficient to enable him to exploit his land may demand right of way from his neighbour against payment of compensation proportionate to the damage that may be caused there by.

Art.1246. Duties of Land owners below

(1) the owner of land on a low level shall accept the flow of water from land on a higher level where such water flows naturally and not artificially.

(2) the owner of the land below may not set up a dike to prevent such flow.

Art.1247 Drainage

(1) Where the owner of the land above constructs drainage works on his land, the land owners below shall accept without compensation the water flowing there from.

Art.1249. Taking of Water. 1. Right of owner

(1) An owner who requires water bordering his land for irrigation or other purposes may build on the neighbouring riparian's land the works necessary for the taking of water.

(2) He shall have access to such neighboring land for the purpose of constructing or maintaining such works.

Art.1252. Acqueduct-1. Right of owners

An owner who wishes to make use for domestic or irrigation or other purposes of water which does not cross or border his land may apply to the court to be allowed to bring such water through other persons land against payment in advance of a fair compensation.'

Art. 1362. Creation of Servitude—1. Contract or will

(1) A servitude may be created by agreement between the dominant and servient owner.

(2) It may be created by a will in which the owner of a land divides such land between two or more persons.

Art.1371. Right of way and rural servitude

(1) Rights of way such as the right to traverse a parcel of land on foot, with animals, during to dead season, across fields or out of a wood shall be of such extent as is recognized by local custom.

(2) Rights of pasture, wood-cutting, watering animals, irrigation, other rural servitudes shall have the same extent.

Art.1372. Means necessary fro the enjoyment of servitude

(1) The existence of a servitude shall entail the existence of the means necessary for the enjoyment of such servitude.

(2) Who ever benefits by a right to draw water from a well shall enjoy a right of way to such well.

2 Termination of Servitude

The law provides examples of servitude rights in the code, although the list may not be exhaustive. Here are some of them.

The following are grounds that lead into or bring about the extinction of servitudes:

- Maturity of the time fixed for servitudes in the contract or will;
- Destruction of either of the tenements or both of them;
- Prescription;
- Division of the dominant or servient tenement(partially);
- Struck off from the registers of immovable;
- Redeeming servitude;

- Merger of the ownership of the two tenements, etc

Group assignment

- 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 Art. 40(3) OF the FRDRE Constitution
- QUESTIONS
- 1. Write the meaning of this constitutional provision
- 2. Write the merits and demerits of this constitutional provision and show your position

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