# LAND SHORT NOTE; INSTRUCTOR MOLA M.

What is property? Property can be tangible or intangible thing that has economic value. It could also be a right which is the relationship between persons and things. By the combination of these elements, we can create a comprehensive definition of property to mean a thing or an object of economic significance which deals with relationship of persons with regards the object or thing. In other words, property can be defined in terms of both the object and the related right to such object (the relation of persons with such thing). If we define property this way, then it is obvious that the next issue would be as to what is real property and the nature of land in relation to property. Is land property? First let us define real property. The term real property is more of common law concept. In civil law legal systems, we do not have such classification. Instead, property is classified as movable and immovable which is referred as to real property. If the reference of immovable in civil law systems is to the concept of real property, real property obviously refers to land and anything attached to it. Thus, land is property which is real. Anything which is attached to land and at the same time is referred as real property includes buildings, mineral resources, water and other resources that are attached to the land. It is not how ever the case when laws under exceptional circumstances specify limitation to the use of such resources. Real states are also other kinds of real property.

## CHARACTERSTICS OF REAL PROPERTY

**Real properties h**ave unique characteristics in distinction from other properties. 1. They are fixed. Particularly, it is land that has characteristic. It is because land is created once and every one strives to increase the value when the land is fixed. 2. They are stationed in one place. They cannot move by themselves. They are limited in size and fixed in location. 3. Real properties are always in confrontation with size of state firms that demand sales. Competition for such resources might be in place for different reasons. For instance, if population increases, then the demand to use the resources increases. Or when the technology increases there is the possibility of increasing interest to develop such resources. Say that Dihaw had the capacity of ploughing one hectare land before 5 years. But, he has now the capacity of ploughing more than 8 hectares of land. Therefore, dihaw has the need to compete with stake holders in land to increase the size of his land. In any case, real properties are always subject to competition for the demand and

supply does not match with increase in population and employment of advanced technology to develop such resources.

Generally, the fixture, the limitation and the increase in the demand aspects are the basic features of real properties. These specific characteristics make land (a) very important resources. It is because since it is the basis for development there is always competition and the demand for land increases from time to time. (b) Make it certain. The fixed nature of land makes it certain. It is not difficulty for a person to conduct any transaction without any anxiety with regards it modification as to its shape for it cannot move. Therefore, we need to have specific rules to regulate this kind of property. The sale rules for car and the sale rules for land are different due to the important value attached to land. Thus, we will have different rules as to the mode of acquisition, mode of transfer and mode of utilization of land. This is why we have special law on land. It is not an easy task to acquire land as obvious as it is in mode of acquiring other movables except some special movables such as securities. We need to pass through certain procedures to acquire land. At the same time we can transfer land by inheritance or by donation. Certain procedures are still required of a person who is in need to transfer his land by way of donation or inheritance.

For a person claiming a right on land is required to prove that the property is registered in his name or the change of the name of the previous person that had ownership right on such property. There are also certain limitations or restriction while utilizing land. Since all these issues need comprehensive regulation, we need to have specific rules on land hence is land law in place. Even though land law rules are specific to land, we have other claims related to land that require application of land law rules.

Intrinsic elements, accessories and other claims form this category. Intrinsic elements do not have separate existence. They do not stand by themselves. They are dependent on land or building to exist. Intrinsic elements as to their destiny to land during transfer; management etc should be regulated by rules governing land. Before determining the fate of intrinsic elements while transferring or managing land, it is worth noting to look in to art. 1132 of the civil code to take note of what intrinsic elements are in language of the law. Anything which by Custom is

regarded as forming part of a thing shall be deemed to be an intrinsic element thereof.[1] Anything which is materially united to a thing and cannot be detached there from without destroying or damaging such thing shall be deemed to be an intrinsic element thereof[2].

From this provision we can adhere to custom and physical unity tests to consider a thing as an intrinsic element. If the custom acknowledges something as part of another in case part of land, then the thing attached to land as a result of such perception will be an intrinsic element. For instance, Niftalem concludes a contract of sale for a horse with Abebech and if the custom of the society is to effect sale of horse with its saddle, then Nftalem will not claim the saddle though the physical detachment of the saddle does not harm the horse. The same applies to a gun and proplites. Though the custom test is mostly purported to apply to movables, nothing impedes such a test to apply to land so long as the proof to its existence is properly established. At the same time, the fixture aspect is widely determinant factor for land. On the other hand the physical unity of something to another in case to land is important element to determine the fate of intrinsic elements. Accordingly, anything which has a physical unity or material unity with land will be an intrinsic element. Emphasis added, in order for an intrinsic element to exist in pursuance of both test, its detachment should cause damage to the object with which it was united.

As to their destiny during the transfer of an object or in case land with they are united, we have the following principle here in below. Unless otherwise provided, right on, or dealings relating to, goods shall apply to all intrinsic elements thereof.[3] By this principle, we understand that unless the law or parties provide otherwise, any dealings relating to goods in case to land or immovable attached to land shall apply to all intrinsic elements thereof. Thus, any transaction be it management or transfer or acquisition made to land is always made to intrinsic elements of such a land.

Accessories are other aspects of real property or parts of an object that require application of the rules governing the object or land in case. Anything which the possessor or owner of a thing has permanently destined for the use of such thing shall be deemed to be an accessory thereof.[4] Here,

[1] The civiler code 165 1960, article 1132, *(1(
[2] Ibid, article 1132 (2()
[3] Id, article 11431, p. 157
[4] Id, article 116436

we have two things. We bring an independent object. Then we put or distain it to another object for the use of such a thing. In other words, if something is destined to assist the economic utility of another object, it is considered as an accessory which makes the principal object give utility. For instance, a police holds a gun which helps him carry out security tasks properly. Florescent light attached in a class room particularly in the evening makes the class room provide maximum benefit to the teaching and learning process. It is to mean that if a police does not hold a gun, he cannot easily disbar gross disorders that can possibly be a target even to himself. At the same time, if a class room does not have light it is not possible to conduct the teaching and learning process properly.

When we come to the issue as to what the fate of accessories will be while transferring the principal, we have the following principle. In doubtful cases, rights on, or dealings relating to, things shall apply to the accessories thereof.[5] As is the case for intrinsic elements, when there is a doubt as to law or otherwise agreement of parties on the accessories, any dealing on the principal shall apply to the accessory. In such a case, any movable or immovable attached to land will be part of the land for all purpose. Assume a tractor or an ox is destined in a given farm for the economic utility of the land. The land is mortgaged for loan of 490000 dollars from the commercial bank of Ethiopia. The owner of the investment in that land is unable to pay back the loan. Now the commercial bank of Ethiopia issues an auction to recover its money. In this scenario, the auction will be applicable to all or immovable including the ox or the tractor that were destined there for the economic utility of that land. Finally, it is worth to take note of that the permanent destination of an object establishes the accessory nature of such an object.

## Types of rights

Ownership is the widest right of all other inferior rights. The Ethiopian civil code also defines ownership right as the widest of all rights which means that there are other rights less than ownership right (see art. 1204). One thing that should be considered before doing anything on something in relation to the corresponding right purported is determination of the scope of the right. This depends on the law which determines the scope and extent of rights. Accordingly, without prejudice to such restrictions as are prescribed by law, the owner may use his property

[5] Id, article 11435

and exploit it as he thinks fit. He may dispose of his property for consideration or gratuitously, inter vivo or mortis cause.[6]

Being this the scope of ownership right that one exercise over a certain object, the scope of other rights less than ownership right is determined based on the extent that allows use of the thing. For instance, let us examine as to what is the extent of land used by the owner above soil or below soil. There is no limit for the use of land above soil. Ownership of land shall extend above the surface of the land to the extent necessary for the use of the land.[7] At the same time, there is no limit to dig one's own land down to the land below soil. However, certain exceptions are always there. Urban laws for instance limit the owner of a land not to go up more than 100— above the soil. The land should be used in a way that it does not obstruct lines. Even though a land below soil can be used to the extent necessary by accontrario reading of 1211, there are still certain exceptions attached to it by other specific laws. No person may without permission construct on his land a drilling exceeding one hundred meters in depth.[8] It is the spirit of this provision that the land that exceeds 100 meters in depth remains public domain while digging down water wells. This can also be limited by specific rules of water law. Ownership on land is not therefore limited to the surface but is also limited below soil to its use. Land has many types of resources. Unless there is a specific law that provides otherwise, an owner of land has the widest right to use anything that is associated with that land.

## Theories of property rights

Theories are the bases for policies to be designed by governments. It is based on the theory advocated by such policy that rights could be designated to persons in their relation to property. The political outlook of our policy making organ is the basis for determination of ownership rights on property in general and on land in particular. Accordingly, we have different theories of property land. The Labor theory and the natural theories are the most dominant advocated outlooks with regards property rights on land.

[6] Ibid, article 129065)*(2)
[7] Id, art. 1211
[8] Id, article 12655(2()

The natural theory advocates that any person has an entitlement to claim property right on land. It is based on the premises that as long as one is a natural person, it is his or her natural right to claim land. On the other hand the labor theory advocates that property should be the result of the physical effort of somebody. It is to mean that for one to claim property right on land or another object he should invest his or her labor on the purported object. Unlike the natural theory, this theory makes distinction on persons who invest and do not invest their labor on the object to determine the claim of such persons to property right to land.

Based on these theoretical inclinations, those advocating for labor theory might prescribe ownership of property right to land as public ownership. Nobody has created land. Nobody has invested labor in the creation of land. Therefore, individuals are not entitled at least to own private land. If no individuals prove their investment on the creation of land, then it is the presumption that land belongs to nobody in private ownership and hence is public property. Individuals can only claim lesser property rights to land than private ownership. If we, however, advocate the natural theory, individuals are entitled to own private land for there is no need for to invest labor or resource to create land. In such cases, ownership of property right to land becomes private ownership.

We remember in our property course that dismemberment of rights happens to exist when a package of rights is divided into different rights. Say we have ownership right. In fact, we have ownership but is bare ownership. At the same time, we have a sort of possession to certain property on the usus aspect. But, use without abuse. Here, the bare owner has the abusus right but not the usus and vice versa. The usus, the abusus, the possession aspects of property rights are the inferior rights compared to ownership right which consists of all these inferior rights. In fact, the abusus right is the highest right which enables the right holder demolish, destroy, disposes in whatever way of disposal. Therefore, if we say that property right to land is public ownership right, individuals will have other inferior rights to land other than ownership right to land.

It is however important to take note of that public ownership exists independent of dismemberment. By this, we imply that public ownership does not emanate from private ownership which is the case for other rights. Without adherence to private ownership, we can

sort out other rights such as the fructus, the usus and other rights from public ownership. For instance, the lease type and the rent type of transaction that individuals involve are totally different in public and private ownership right aspects. Now the government invokes public ownership to administer the lease system as a custodian while it does not abuse such a right. It is a special type of right which emanates from avocation of the labor theory. Conversely, individuals invoke private ownership containing all types of rights including the abusus right. Mention has to be made on the Ethiopian land ownership system the basis of which rests in the labor theory which is more of Marxist inclination. Public ownership is by its nature a kind of ownership right which the public do not directly exercise. When we say that land belongs to nation's nationalities and peoples in the language of the FDRE constitution, legally speaking, it's a right whatever it could be in the political context. On the other hand, by government ownership, we do not mean that government owns land. Rather, the term refers to a special type of right to administer land. Public ownership always lacks the abusus element. It is however the issue as to which form of abusus is that public ownership misses. It is because to lend, to borrow, give, to sell land have different legal effects.

We will deal the detail in our due course. Another issue associated with land is the wording of the Ethiopian constitution to mean land the property of nations, nationalities and peoples. It is argued that if land belongs to people of Ethiopia, then it is automatic right for whenever is Ethiopian and hence the qualification to nations, nationalities etc makes nonsense. Again this gives birth to another issue. If land belongs to nations, nationalities and peoples of Ethiopia, then nations issue their own constitution that reads land belongs to nations of B region only. This excludes an Ethiopian who is not the national of REGION B. this argument is forwarded to support the constitutional frame work. It is because the proponents of such an argument believe that the wording of the constitution conveys the notion of self governance. If land belongs to people of Ethiopia, every Ethiopian will be entitled to such a right. If land belongs to nations, then nations can issue a constitution of that nation to limit land ownership right only to its nations. Nonetheless, the instructor does not believe that the very of design of the constitution contemplates the latter argument. He further argues that certain exceptions could be there. If an Ethiopia persons who is not farmer claims land for only land belongs to all Ethiopians, he may not be successful in getting land for the fact that he or she has does nothing in the creation of

land. When  look in to the legal frame regulating urban land holding system, we do not find a provision that states urban land Addis Ababa belongs to the people of Addis Ababa. This is also one of the reasons that the Ethiopian civil code prohibits foreigners to own immovable property situated in Ethiopia. He concludes his argument the constitution in its wording of nations, nationalities and peoples conveys nothing other than giving emphasis on the nature of public ownership.

## Land tenure system

### Land, economy and politics

It is obvious that land is the basis for economic development. The biggest population in Ethiopia depends on land to earn income. Land is important to promote investment particularly in the agricultural sector. Thus, land serves as a pillar to economic development. Accordingly, the cruciality of land will have implication on politics. On one hand the political system has stake to control land and the public has an interest to get this resource on the other. If a certain political party with ideology based on the natural theory gets the attention of the majority in a state, it will assume a position of controlling the very tension calling resource, land. Since it is the winning point to privatize land based on the advocated theory, private ownership right to land in such a state of this political system will prevail. This also applies to another kind of ideology advocating political system and gets successful in control of land. For instance, a political system advocating the labor theory may adopt a land tenure system that makes land the property of the public. It is therefore this land tenure system rooted in the type of ideology advocated by certain political system, establishes the relationship between politics and land.  Land is a serious issue in a policy frame work of a political group for the fact that it is the big pressing resource to easily attain the public.

### Land, tradition and the social status

A tradition on land is a tradition of rural land holding and a tradition of urban land holding. As people grow and develop in certain area, they develop their own custom in all aspects of life in terms of technology, living style and others.

The mode and administration of land could also depend on the practice of a certain community. In some areas, land could be the common property of every one and hence the administration of land might take a form of communal ownership. In other areas, the chief could control land might distribute land the members of that clan only based on tradition adopted by same clan. Particularly, customary land tenure systems have developed in Africa. This is true of the history of Ethiopian land tenure system. Despite the feudal land tenure system based on the European type land tenure system, it did not succeed in getting reach of the pocket areas. Even nowadays, modern land laws do not influence the existing customary land tenure system in some parts of Ethiopia. In fact, modern land tenure system should be designed in a way that it takes in to account the concepts of customary land tenure system. It is because the very formulation of law is limited in the interest of the people practicing that custom. However, it is basically required to adopt the values of human rights in relation with property right. It is not to mean that the challenge is easy to adopt a land tenure system based on modern land laws. There is always a challenge between the government and the communities of different customs on land tenure systems. In the current Ethiopia, even though there is an attempt by the modern rural land tenure system to change the trend, the challenge has continued in some parts of the country.

We also need to maintain the relationship between land environments. These days, the issue of environment is the issue of the global setting. Thus, it is of paramount importance to consider the issue of environment when we deal with management and administration of land. Land administration and management should consider the equilibrium of the echo system. Maintaining the eco-system of the environment, water bodies, the soil, the forest, the animals, etc; forms one component of land administration and management. A kind of this land administration or management in turn, justifies proper land policy or proper land tenure system. It is because citizen prefers a policy assisting the proper maintenance of the eco-system which is the foundation of their survival rather than a policy making land prone to mismanagement which disturbs the eco-system.

In terms of maintaining the eco-system, the issue of sustainable development is an important point of discussion. It is asserted that development should not be one time development. There should development takes the future generation in its ambit. Particularly, the issue of land administration and management thus becomes worth noting point of view on how to make the

future generation benefit from the present land tenure system which ensures sustainable development. After all, maintenance of the eco-system and sustainable development will be feasible if we adopt and implement a proper land management and tenure system.

## Land tenure and its fundamental features

The development of land tenure system is an important issue while discussing land tenure system. We have various types of land tenure systems. We will have a brief insight on what are the roots of land tenure systems of the globe, Africa and Ethiopia. So long as there has never been outsider interference, a certain land tenure system emanates from the tradition and custom of a specific society.

African countries were not fortunate to develop their own land tenure system due to the imposition of the colonial land tenure system because the colonizers came to Africa with its own laws. In fact, the colonial system did not only affect the customary land tenure system of Africa. It also affected the ultimate legal system of African countries. Depending on the ideology of the colonizer, African countries in effect adopted a land tenure system based on the common legal system or the continental legal system. This type of a colonial land tenure system has in fact influenced the rural land tenure system.

This was not however the case in urban areas for urban land tenure system has its particular features which require an appropriate tenure system to urbanization. In most of African urban areas have similar land tenure systems based on private land holding system. Nevertheless, land tenure system in countries where indirect colonization was in place for big chieftains had certain autonomy to apply the customary rules of land tenure system.

## Types of land ownership as a property

We have private ownership to land public ownership to land. Features of either public ownership to land or private ownership to land depend on the nature of the right holder. Accordingly we will be dealing with some of the features of the respective types of ownerships.

By private ownership to land, we in the normal course of things refer to an exclusive right of individuals to say any on the land. Individuals will be in a position of collecting fruits from the land using and abusing the land including sale. On the other hand, public ownership right to land is normally distinguished from private ownership right to land for public ownership right to land mainly misses the abusus element.

However, we have a number of types of public ownership right to land with different position on the abusus aspect. We advise readers to look in to the land tenure systems of Vietnam, Israel and others for the proper understanding of these differences. Theoretically speaking, it is clear that public ownership right to land in Ethiopian context misses the abusus element which is to sell land. Certain confusions however coexist with this theory for practical reasons. Assume that rahel wants to take loan from commercial bank of Ethiopia by mortgaging her g plus building. Again assume that debtor creditor relationship is established between rahel and the bank. Can rahel mortgage the land on which her building rests? Can she sell such a land when rahel defaults? Do you think that there will be difference in the value of the land when government pays rahel compensation to expropriate the land for public purpose and when the bank sells the land to recover debt owing to rahel. In fact, we have clear laws that state a land held by investors through lease can be transferred to another person. Even this does not apply to individuals. In any case the abuses aspect is the disputed component of public ownership.

The Ethiopian constitution provides that land is not subject to sale or other meanness of exchange. After the constitution under art. 40(3) provided that no private ownership exists in the soil of this country, it prohibits the transfer of land by sale or other means of exchange. It is the principle of right to property that one cannot transfer what he does not own. The right to property between the transferor and the transferee always remains equal. From the very outset, we do not have a clear ownership system in relation to land. The constitution however prohibits transfer of what we have on land by sale or by other means of exchange. The rationale seems that it discourages disguised sale of land. Transfer of land by way of inheritance, donation, barter which could arguably be tantamount to other meanness of exchange is practically possible in the current setting of Ethiopia. Do you think that it is constitutional? We notice this argument that the constitution has to be interpreted in a way that it does not prohibit free transfer. It is still the issue to remain contentious if we allow land to land exchange.

Common ownership is another aspect of ownership right to land. By this kind of ownership right to property we refer to ownership of persons having no distinct right in use of a given property. If we take the property of married couples, the property remains to be communal so long as the marriage continues. One of the parties cannot say that I have this right of providing portion of this property to persons of my preference.

We have also community ownership right to property which is more or less similar to communal ownership. A grazing land where certain community feeds its cattle in common could be example of this type of ownership right. For instance, if the community reaches consensus to contribute 60 birr to develop the grazing land and a member of such community defaults to contribute, then he will be excluded from using the grazing land. This is however the case to property of couples.

When we come to joint ownership right to property, it does not grant the right to equal access to the claimed property as is the case in community ownership and communal ownership. It can be expressed in terms of fraction. It could be equal or unequal. Under this type of ownership right to property, the right is joint, but not the property. In physical terms we cannot divide the property other than manifesting the interest of parties in the property. For instance, tesfu contributed 1000000 birr and tesfanesh contributes 200000 birr to buy a car. In this case we can not specify some part of the car to either of them based on their contribution. But we can divide the right of tesfu and tesfanesh in to their contribution to buy the car.

More or less related to community ownership right to property is the concept of public domain (see art. 1444(. Public domain refers to a property that the government or the citizens do not claim. Properties under public domain are freely accessible to whomever in the soil of Ethiopia. Water wells i.e. flowing water, roads etc form public domain. Religious are also purported to form public domain for they are freely accessible to anyone.

## Merits and demerits of private and public ownership rights to land

Private ownership right to land gives incentive to develop that land since it creates sense of belongingness. exploitation of labor is the disadvantage that can prevail in a land of private ownership right to land. If certain property including land is under the monopoly of certain

individual(s) then the rest with no opportunity to access to land will be subject to exploitation. We cannot bring about fair distribution of land to individuals. Rather, the poor becomes poorer and the rich becomes richer.

On the other hand, public ownership right to property is important for continent administration of land. We remember that private ownership right to land gives incentive for property maintenance while it subjects the public to exploitation. But other types of public ownership, communal ownership, etc are relatively disincentive.

## History of land tenure systems in Ethiopia

The customary land tenure system in Ethiopia is mostly communal land tenure system. In the past, Ethiopia without a centralized form of government, land was in common ownership of different clans. Based on the land tenure system that the tradition adopts individuals residing in different parts of the country had an access to land for common use. Some could get permission to use land from the chieftain and some others may not owing to their custom. It was somehow a sort of a very traditional arrangement of federal system by which the chief sends his submission to the king by of a messenger to administer land in the specific community he resides.

In the meantime, the central government had no access to the whole land of the country. In effect, this kind of system did not affect customary land tenure system adopted by different communities. Following the centralization of state administration, the expansion and the annexation of the some parts of Ethiopia to the central government changed the trend of land holding system. Particularly, this was more apparent onwards the reign of menilik II. Particularly, for the basic aim of keeping the central administration intact, different nobles were assigned to five gasha meret which was owned by the concerned community through customary land tenure system. This was a form of prize in return for what they did in the expansion under the order of the king. As a result, the indigenous land owners through customary land tenure system were evicted from the land and hence were subject to tenancy. This assignment of certain gashas of land to a noble also in turn brought about a new land holding system which is private land holding system. The deji azmaches, the gira azmaches and others owing to their titles who

were assigned to various sizes of plots of land measured in gashas automatically the private owners of land. Therefore, next to communal land holding system through customary land tenure system, this kind of private land holding system is another kind of land holding system in the history of the country. In fact, this system developed in the south and south western part of the country which was not in the direct control of the kingdom.

Despite the expansion in the northern part, it did not affect the customary land tenure system and communal land holding continued. At the same time some parts of the kingdom were reserved for the government ownership to land. In this era, communal land holding system, private holding system and exclusive government land holding system coexisted in various parts of the country. Vacant lands which were not in the control of the private land holding system or communal holding system were reserved for government ownership. Besides the land lords that became private land owners through the expansion, some individuals in south, south-west and south-east of the country were private land owners.

Particularly, the rist system which is highly associated with church establishment enabled the founders of the church or the founders of that specific village to claim land in such area for themselves and for their coming posterity. Accordingly, anyone who shares blood relation with the founders can claim land. Under this system, land is not subject to sale. Land can however be exchanged as between the members of the community that the rist brought about. Though outsiders can plough a land of such community, he cannot claim land for ever exchange with outsider will not thus be possible. There is no period of limitation to claim land under this system so long as the claimant proves that he has the right to own land in that community. The possessor who has paid for fifteen consecutive years the taxes relating; to the ownership of an immovable shall be come the owner of such immovable Provided that no land which is jointly owned by members of one family in accordance with custom may be acquired by us caption and any member of such family may at any time claim such land.[9] Accordingly, no person can claim land jointly owned by family members by custom through.

Communal ownership to land that got recognition by the law was only the rist system highly practiced in the northern part. Nomadic areas in the eastern part of the country practically

[9] Id, article 1168(1)

experienced this mode of land holding system. There was however a high degree of exploitation of peasants by the private land owners in the remaining part of the country. In fact, the extreme exploitation of peasants gave rise to the 1975 revolution the slogan of which was land to the tiller. This was all about the rural land holding system.

It is obvious that Ethiopia was not urbanized at that time. There were however some towns found scattered in some areas. In such areas, private ownership to land prevailed as a mode of land holding system. With the expansion of urbanization, the communal ownership rooted in the rist system transformed in to private land holding system for it was the practice to sell communal land to outsider who came to settle in that particular area as a result of the urbanization since it is not as such easy to practice farming in urban areas with enormous introduction of cash system.

As a certain area develops in to city or town, the land administration will be taken over by government appointees and hence land will be subject to sale to any person through all meanness. At the same time, there will be no any restriction except the plan or regulations set to administer the land. It was not limited only to areas where private land holding system was practiced. Ethiopia however adopted another type of land holding system in the belch of the revolutionary period of 1974.

The Derg regime nationalized land which was communal, private and government ownership in the rural setting and private ownership in urban areas. The preamble of public ownership of rural land pro. No. 31/1975 provides that the government has found it necessary to nationalize rural land. On the other hand, government ownership of urban land extra houses pro. No. 47/1975 was issued to nationalize urban land and extra house with different objectives. The proclamation prohibits transfer of urban land by sale, ant crisis, mortgage or succession.

From 1975 to 1987 there was no constitution. The land tenure system based on uniform government ownership to urban and rural land was regulated by the proclamations here in above. In fact, the 1987 PDRE constitution was issued and continued till 1991 maintaining the position of land tenure system adopted by the preceding proclamations.

Another change of government also took place in 1991. Following change of the government, a charter on the transitional government was issued but had nothing to say any about the fate of land tenure system in particular and the property system in general.

Even though there were some economic reforms made by the derg regime and by the transitional government from 1987 to 1995, it did not affect the land tenure system. Since there was nothing in the charter about land tenure system, we can consider that no change was made on the proclamations governing land. Then it follows that government ownership again continued until the expiry of the transitional government in 1995.

However, the 1995 FDRE constitution marked a new era for the existing property right system in general and land tenure system in particular. The constitution in principle declares private ownership in the property right system. Automatic shift was made to private ownership right to property from government ownership to property right. Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.[10] If one is a private owner of a certain property, then she will have full ownership right to use, to collect fruits and to abuse it in a manner she wants. "Private property", for the purpose of this Article, shall mean any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.[11]

Labor or creativity on the property in the language of the constitution presupposes private ownership of the same property right. This is clear reflection of the labor theory which has been the founding principle for the property right policy of the new government.

With this justification, the present land tenure system has assumed the following position. 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,

[10] The FDRE constitution pro. No. 1, 109965, article 40 (1()
[11] Ibid, article 540 (2)

Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.[12] In this regard, the constriction contends the previous land holding system. Dear readers please go through sub articles of 3, 4, 5 to 9 of article 40 of the FDRE constitution and read them in conjunction with the related provisions of the 1987 constitution, pro. 31 and pro. No. 47 of 1975. Then please try to find out if there exists any substantial difference between the two systems with regard to land tenure system.

## The Ethiopian land tenure system as of the adoption of the 1995 constitution

Despite some economic reforms, we have seen that the general trend of ownership which is government ownership right to property has continued till the adoption of the FDRE constitution. However, we have to take note that even before the adoption of this conation, there was a shift from the previous land holding system in relation to urban land holding system. This is because the present urban land holding system which is a leas system precedes the adoption of the constitution and hence was not the constitution the source of the lease system. Now, we all understand that the constitution under art. 40(3) has not made a shift from free allocation of urban areas in to lease system.

Do we notice any indication that the Ethiopian land tenure system allows citizens to hold urban land by lease in pursuance of the constitutional path? Certain proclamation cited as pro. No. 80/1993 and signed by the president of the TGE provides that urban land holding system should be based on lease system. We can thus talk of the policy shift with regard to land tenure system beginning from 1993. This proclamation was maintained for about eleven years till the adoption of pro. No. 272/2002 even after the adoption of the constitution. This indicates that the lease system is of practical application parallel to the constitution. At the same time, the constitution does not say anything about allocation of urban areas and the lease system while it expressly provides for free allocation of rural land. Though we cannot shift from free allocation of rural lands to a fee system, we cannot blame the constitution to maintain the policy shift from free allocation of urban areas to lease system since it is not prohibited. Therefore, the shift will have nothing to do with the adoption or non adoption of the constitution.

[12] Ibid, article 490, (3)

## Transfer of land and the position of existing land laws in Ethiopia the constitutional issue vs. the practice

It is the FDRE constitution that comes in front to examine the existing land tenure system. We have already seen that the constitution has founding principles for property right system in general and land tenure system in particular. Now, we will be dealing with what rights we have and what are the restrictions to our rights in relation to land. Is it correct to say that a right of a person to land is limited to collection of fruits and usus without abuse of the land or without any right to dispose of the land? What do we mean by other means of exchange? The Tigray regional land law allows transfer of land by way of inheritance. The Amhara region also adopts this trend with different application. Article 11/4 of pro. No. 108 of 2007 of SNNPR allows exchange of land to land for the effective use of the land when the parties consent to it before the agricultural bureau. Regions are empowered to administer land in accordance with the federal frame work law on land administration. In fact, since the issue of having a say on inheritance is left to the discretion of states.

There could be variation between the federal frame work law and the regional laws on the issue of inheritance and other related matters. Variations should not how ever necessarily exist in some issues. For instance, if the federal frame work law or one of the regional laws allow sale of land, then there is wrong with one of the laws. There are also some diverging points between the regional land laws and the federal frame work Land law. The federal frame work law legalizes inheritance. But, it does not resort to the existence of consigunal relationship for one to succeed. Anyone who is economically dependent on the person from whom the succession devolves automatically qualifies to succeed. This is not however the case for regional land laws. Be that as it may, all these indicate that there exists an argument in favor of the legality of the disposal aspect by donation, inheritance, land to land exchange and other meanness. Hence we reach a conclusion that the constitution under art. 40(3) does not disposal other than sale and other means of exchange which is tantamount to sale of land. It is also of practical application. Unless we have misinterpretation of policies, we can safely argue that land holders in Ethiopia have almost a right as equal as a private land owner has except sale of the land or exchange of the land for other meanness.

Moreover, we should be able to clearly distinguish ownership and use right to land. For better illustration, let us examine the scenario. Hagos is an owner of isuzu car. His neighbor hayelom also holds one berari farm land near their village. Now hagos decides to grant his car his primordial boy for use till hagos dies. At the same time hayelom decides to transfer his use right on the farm land to his poor brother tsirh nitsuh until hayelom dies. Which scenario do you think is supported by the land tenure system? Are both scenarios possible and lawful and hence equally gain legal support?

In our previous discussion, we have seen that the highest right of ownership is disposal. At the same time we have also seen that there are other inferior rights such as the use right in ownership. Now, can we dispose of the use right to land? In other words can we transfer our lease right in urban areas to be specific?

We can answer these entire questions in the affirmative. Even when there is a fear as to the effect of a perm's failure to pay his debit once he has mortgaged his use right to land for certain amount of sum, we can resort to other mechanisms to regulate the situation. For instance, if bekele takes a loan of 5900 from bank by mortgaging his use right to land and fails to pay back, the bank can use the land till bekele discharges his obligation. We have already distinguished that the rural land holding system deviates from what is adopted to general property right system under sub art. 1 of art. 40 of the FDRE constitution. Though private ownership right to property is the principle the land tenure system makes rural land holding fall under government ownership (see art. 40/ 3). Accordingly, Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession.[13] This ensures Ethiopian farmers to get rural land for free and to be protected against eviction from their possession. Particularly, the fact that constitution provides protection of farmers against eviction flourishes the permanent use right to land by the holders once it is distributed. This is also the cornerstone on which we can a build an argument of use right to rural to land for life. Legal speaking a kind of this tenure security against eviction is automatic right of every Ethiopian farmer. Prohibition of repetitive land distribution, typical example of tenure insecurity best justifies this right. Ethiopian the privilege of tenure security and distribution of grazing land for free is also applicable. Pastoralists have

[13] Ibid, article 40, (4 first line)

the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands.[14]

However it is not without limitation. Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.[15]

By the language of the constitution, a right to private property that should not be prejudiced during expropriation in relation to land seems the use right aspect. On land, we notice two competing rights I. e. government ownership right and individuals' use right to land. It is to mean that the government always remains bare owner while the individual is permanently distened to use the land. In such cases, since a right per se is a property, the government cannot claim its ownership to take away what is privately owned property which is the right to use that land. It is because individuals are protected from eviction unless the contrary is proved by the government based on the conditions specified under the same constitution. In order for the government to invoke its right to cause eviction, it has to prove that there exists public purpose. Public purpose and public interest are terms used in confusion but require clear demarcation for practical reasons. By public purpose, we basically refer to public domain activities such as construction of road, building public schools, public hospitals to address their accessibility to the public. On the other hand, by public interest, we refer to the interest of the public that can indirectly be exercised. For instance, expropriation of land for construction of private schools, private schools hotels etc does not justify public purpose. But, the public has interest in all developments of these infrastructures. If a government has devises a policy for more protection of private interests, then it invokes expropriation for public purpose which confines expropriation to limited and certain grounds. Expropriation is the result of the conflict between public purpose and public interest. Accordingly, when the public interest and the private interest contend for land, the government will be under obligation to protect both interests. Thus, as an exception to the rule of protecting the private interest, public interest could be given priority of certain conditions which can either be widened or narrowed. If we need to widen these conditions we employ public interest as a justification key to expropriation. If we however pay more attention to provide much protection to the private interest, then public purpose will be in place to justify expropriation. The founding justification for expropriation under the FDRE constitution is stated to be public purpose. Nevertheless, other laws employ in most cases public interest to justify their deviation for the principle. Please test their compatibility with constitution. Now, the language of the constitution does not seem limited only to

[14] Ibid, article 40(5 first line),
[15] Ibid, article 40(8),

expropriation of the object. The exception also includes the private property right which is in case the use right to land. In other words, it is to mean that art. 40(8) of the constitution does not prevent expropriation of the use right of a person and the land on which the use right is exercised when public purpose is in place for the justification. It is how ever the issue as to who decides the existence of public interest or public purpose based on the policy framed. For instance the Ethiopian civil code lists some activities such construction public schools, religious institutions, public health centers to justify public purpose. In other instances this privilege could be given to specific organ in most cases to the executive organ to decide on the existence of public purpose or public interest. In Ethiopia, all werda administrations have the right to decide on the existence of public purpose. In any case, we should balance the government interest and private property interest to the extent possible. Once the existence of public purpose is determined, there should be sastisfaction to the interest of the individual whose right and or his property is going to be expropriated. Compensation is one of the mechanisms by which we can bring about such a satisfaction. The compensation should be equivalent to or commensurate to the amount of the property. It should also be made in advance of controlling the property. Now, it is again the issue as to how do we determine the value of the property in a situation where a person has abuse right and the value of property held for use right. It is the confronting debate as to what does use right cost. It is also another issue as to who determines the amount of the compensation for there are two competing interests. It is obvious that the government has the power to decide on the value of the compensation. Therefore, the government is required to set certain criteria by which compensation can be effected when expropriation for public purpose is to be made against individuals. The government does this through legislations. Proclamation no. 455 issued for this particular purpose determines compensation under part there. A landholder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land:[16] The amount of compensation for property situated on the 'expropriated land shall be determined on the basis of replacement cost of the property.[17] Where the compensation referred to under Sub-Article (2) of this Article is payable to an urban dweller, it may not, in any way, be less than the current cost of constructing a single room low cost house in accordance with the standard set by the concerned region.[18] Compensation for permanent improvement to land shall be equal to the value of capital and labor expended on the land.[19] The cost of removal, transportation and erection shall be paid as compensation for a property that could be relocated and continue its

[16] Proclamation no.455/2005 article 57(1)
[17] Ibid, article 7(2)
[18] Ibid, article 7(3)
[19] Ibid, article 7(4)

service as before[20]. It is not in fact to determine the amount of compensation based on the provisions here in a above. How ever the proclamation seems baffled in determination of compensation for use right. Under its caption for compensation of displacement the legislation provides as follows. A rural landholder whose landholding has been permanently expropriate shall, in addition to the compensation payable under Article 7 of this Proclamation, be paid displacement compensation which shall be equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land.[21] Now we can raise an issue as to whether ten years basis for compensation is adequate for permanently displaced land holder. This seems the sole mercy of the legislation to do for fear of backbit. However, as a policy, the very scheme of compensation should be to provide the evicted individual with what he is going to do and support himself and his family. Apart from this, there is difference between the use right to rural land and the use right to urban land in that the former dies with life while the later is limited by certain period of time such as 899 years. However, they share a common feature in that both urban land and rural land are not subject to sale or other means of exchange. With regard to transfer of rural land, the orimya ruralnd administration law also allows inheritance between family members and children of the land holder. The same law also allows exchange of land to land.

The power to administer rural land

1. We have already determined the nature of the land tenure system by looking in to sub articles 3, 4, 5 and 8 of art. 40 of the FDERE constitution. Then it will be the next point of discussion as to who the power of administering rural land. By administration of land we refer to management or execution or implementation of the acquisition, use and transfer process of rural land. The federal government shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects.[22] After the federal government has issued a frame work law on rural land administration, regions or states will also enact their respective laws in accordance with such frame work law and administer rural land (see art. 52.2(D).

[20] Ibid, article 7(5)
[21] Id, article 98(1),
[22] Supra note: article 51(5)

The constitution is not exhaustive in giving the power of administering rural land to the federal government and the state. Rather it simply divides power the way that we have delineated here in above.

The frame work law issued by the federal government's proclamation no. 89/1997. This proclamation has three parts each dealing with short title and definition, general principles on land administration and mescelaneous provisions in order. Particularly, as an important guide for the states to issue their rural land administration laws, the proclamation under part two has included general principles on land administration, conditions of land administration and contents of land administration laws to be issued by the regions. This frame work law is a proclamation. If it is a proclamation it will be the issue as to what law the regions can issue. Can they issue proclamation or regulation or directive or all? Is there an issue of hierarchy? There is this confusion by some writers as to how two parallel legislative organs can issue proclamation of the same hierarchy. The frame work law empowers the regional council to enact rural land administration law meaning proclamation. At the same time the frame work requires regional land laws should not violate basic principles of the constitution, the frame work and policies for utilization of natural resources.

Another proclamation however repealed the proclamation. Pro. No. 56/2005 came to bind regions by of laying down guiding principles. This proclamation provides that no regulation, or law or practice or directive inconsistent with proclamation shall be of no effect. However, regions are free to enact their own proclamation regulations or other laws of their preference so long as they are consistent with the frame work law. Based on this we are trying to find out as who can succeed land. Personal activities are required of farmers on the farm land so as to ensure their use right to land. Women are how ever permitted to use hired labor in relation to their lands. What do you think is the fate of absent farmers in relation to their lands? The rationale behind the requirement of personal activity on the land seems to do away with tenancy. Accordingly, farmers have the right to personally engage in and produce for use on land. They have also the right to give land in rent. 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.[23] Land holders can lease their use right so long as they have a sufficient plot to the intended development and the lease shall not displace them. However it is the issue as to when do we say a person is displaced. A farmer is deemed to be displaced if the lease agreement is for five years use on the land by the lessee in return for sum to the lesser and when the lessee fails to return the land after expiry of five years to the lesser in case the land holder. Others also argue that loss of control on the land amounts to displacement. the oromiya land law under art. 10 seems with suspicion to prohibit lease more than half of the land. The frame work law does not limit time for lease of rural land. Rather, it leaves the issue to the respective regional land laws. As a result we see discrepancies between the regional rural land administration laws. In fact since it is the nature of leas to be period specific, the difference is tolerable for the frame work law has not set specific time limit.

**Holding right**

"holding right" means the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for purpose of agriculture and natural resource development, lease and bequeath to menders of his- family or other lawful heirs, and includes the right to acquire property produced on his Land thereon by his labor or capital and to sale, exchange and bequeath same;[24]this indicates that every farmer has a holding right for personal use in agriculture, to lease and to inherit to family members and other lawful heirs. "Family member" means any person who permanently lives with holder of holding right sharing the livelihood of the latter;[25] lawful heirs are left to the determination of other laws. The SNNPr land law allows an investor having a lease holding on rural land can pass to his collateral. Under the land law of oromia, for a person to inherit land, 1. He must be a family member. 2. He must be entitled to inherit according to law. Please read art. 2/16 and art. 9/5 of the oromia land administration law. Sale of apples, oranges, and coffee is prohibited under the same proclamation (see art. 6/2 and analyze its constitutionality). The tigray land administration also allows inheritance and lease for specific period of its preference. However, we do not find the concept of family member under art. 79 of the rural administration land law. In such case, we can rays as an issue as to how much the frame

[23] Proc. No. 456/2005 article 78(1),
[24] Id, article 2(4)
[25] Ibid, art. 2(5)

work law would be binding upon regional laws. The amhara land administration law also allows transfer of use right to land through inheritance, donation and rent (see articles 16, 17 and 18). Under sub art. 1 Of art. 16 of the same law, a land holder can transfer his land by will to any person but who is a farmer B wants to engage in agriculture. This makes different from other regional land laws. Transferring in will or inheriting the holding and use right, stipulated under sub-article 1 of this Article, shall not be valid where it disinherits the minor child of the testater or the family of same from inheritance right or harms his spouse. The detail shall be determined by a regulation.[26] This provision entitles two different rights of a land holder to more than persons. For instance if Solomon has a land, he can inherit his holding right to his children and his use right to melesu for say 5 years. on the other hand, to mortgage the use right is only permitted to investors. In this regard, the instructor argues that the lessee should never have a better right than the lesser. They should have been equal right. Furthermore, even when the investor his lease right from a farmer mortgages he argues that the investor should not mortgage his lease right without permission from the farmer and more than the lease period agreed.

**Challenges to the implementation of rural land laws issued by the federal government visa Vis the implementation of the regional land laws by the regions**

**The issue of equality in the allocation of rural land**

The issue of equality of citizens is one of the challenges to distribution of rural land. Following the nationalization of land, the first distribution of rural land was made by the derg regime. Feudal land lords were evicted from their possession and were denied their right to land. From citizens' right point of view, it indicates that there was unfair distribution. At the same time, we cannot be sure of the fair distribution of rural land due to then bureaucracy. Particularly, when we see it from point view of gender distribution, women were not given much attention in the distribution by the customary way of allocation rooted in the keeled administration. This has continued for longer period of time except in tigray. The distribution was completed in all parts of the country. In tigray, there was a continous redistribution. There was also redistribution of rural land in amhara region before the adoption of the FDRE constitution and after the fall of the derg regime. The sologan that based the redistribution was taking land from dereg bureaucrats and redistributing. From citizens' right point of view, what derg has done was repeated though

[26] Amhara proclamation no. 1---- article 16(3)

different to some extent. In fact, there was no problem in the redistribution process. The basis of the distribution was never in conformity with equality of citizens. Though the redistribution was not as to what has been done in amhara, it was almost of all regions' concern. As regards associated problems to the redistribution program, the traditional marginalizes certain sectors of the population. Women were the forefront victims. Since the middle class came to assume power in the kebele administration, the surgation based on custom and other grounds was of practical application. Besides, corruption developed faster in the rural land distribution than it was in urban areas. The keeled administration appointees made enormous unlawful contracts with peasants for distribution of land. There was also unfairness in the redistribution in the early periods of the new government. In fact, irregularities are always there. It is how ever the problem with irregularities of the redistribution in that they cannot be corrected. It is because most of the regional rural land laws prohibit redistribution unless exceptions exist to the contrary. Generally, citizens in the redistribution process were unequally and unfairly treated owing to their institution and gender. The basis for such discrimination were in fact *bureaucracy, corruption and custom*. Particularly, women were denied of their right to inherit land. Dering death of husband divorce, etc, women are denied of their right to land. The custom challenges the application of the proclamations.

**Rent of land use right**

Most of proclamation permit rent of land use right. It is how ever the challenge that rents are no a day's becoming disguised sales. For instance, A and B conclude a lease agreement for 3 years or 25 years. They renew their agreement indefinitely. It is because they have made a hidden sale contract. Ultimately, unfairness, inequality and disguised sale of land under the cover of rent or lease are the main challenges to the application of the rural land administration laws.

**URBAN LAND**

On urban land, we had these proclamations 80/1993 and 272/2002. Now, we have active proclamation on urban land holding and the lease system i.e. pro. No. 721/2011. The present proclamation provides that urban land holding system should be only based on the lease system as a solitary mode of acquiring urban land. We will be forced to ask ourselves if the lease system is the only means of acquiring urban land. Is lease system applicable to all parts of the

country? Pursuant to pro. 80/1993, the scope of application of the lease system extends to all urban lands of Ethiopia. Art. 6 of the same proc. requires conversion of old possession in to lease system. At same time, it provides that it does not apply to all lands previously held or utilized buildings, houses. Pro. No. 272 also provides that it applies to urban lands held by permit system or lease holding system or by other means prior to this proclamation as well as to urban lands permitted hereinafter. Proc. No. 721 has also similar application.

By permit system we refer to land allocated before the issuance of these proclamations. Although this proclamation in its scope of application provides that it applies to all urban lands, it also deals with conversion of old possession. Since the conversion process has not started, we can say that all urban lands are not governed by lease system. Nevertheless, though inapplicable, it is the general principle for urban land holding system to be governed by lease system. With regard to the applicability of proc. No. 721, it applies to urban centers or lands, old possessions and urban centers of regional states. Regional states are ho ever given certain period of time i.e. 5 years after the application of the proclamation to apply the lease system. On the other hand urban lands and old possession are defined under at. 2 of the proclamation. Currently, two urban land holding systems Exist.

They are permit system and lease system. In other words in urban areas, we have lands allotted by permit system and lands allotted by lease system. The two systems are different that permit system is period specific while lease system specifies a certain period of time in which the lessee has to return the land. There is also difference in payment between the two systems in that the lease system is more costly or at least not stable.

We remember that if certain person in case of rural land wants to get land he can apply to kebele geberie mahiber and get land if any. At the same time it will be the issue as to how we get land by lease in urban areas. One mode of acquiring urban land is auction. To get urban land by auction, we should first compete by offering price per meter square and per period of payment. We offer as to how much we can pay for each meter square and in what period we can pay the lease price. In fact we are not required to compete for the period if we win by our offer for each meter square since the period is legally prescribed. It is worth mentioning to note that auction for such purpose will be conducted only when the concerned department of the city administration notifies the public that it has some plots to give by lease.

On the other hand, direct allocation of urban land is another mode of obtaining urban land. By this mode of urban land allotment, it is not all sectors of the population joining this project. Since allocation is more of support project, participants in allocation project are protected against price inflation for they compete with fat pocketed individuals. The sectors are individuals in need for residential purpose and some preferred service providing institution like churches, mosques, schools etc. Allocation has its own constraints. 1. It size limited. Except an already existing possession, individuals in the current setting of Addis Ababa obtain land 70 up to 175 care meter. This is not how ever the case for auction. In fact, the practice limits any size of land holding in urban areas particularly in Addis Ababa to 500 care meters. In an case individuals in this scope can freely compete e by auction. 2. Land obtained through allocation is delimited in terms of location. In most cases lands this way are allocated in adjacent areas of the urban centers. Practically we might observe petty houses in the center of the city. However as a policy, lands through allocation are to be distributed away from the center of the city.

**Lease hold permit of urban land**

An urban land shall be permitted to be held by lease hold. 1. It should be allotted by tender. 2. It should be in conformity with guide lines if any or with regulation to be issued by regions or by the city administration. 3. Following the necessary procedure this way, there should immediate transfer of land to the winner. This minimizes the bureaucracy and unfairness that distribution of rural land experiences. However it is not flexible for their interests and considerations by individuals and the government.

Allotment of urban land is the other mode of obtaining urban land. This involves association of individuals, condominimiums, project of special national significance, places of worship displaced tenants of kebele houses and others. The proclamation has all these details and the procedures how to allocate land. Now a days, the practice has assumed a position to reject individual request to benefit from allotment of urban land. If this all about how to get land either by tender or through auction, it will be the next issue as to how lease price can be determined.

Lease bench mark price will be determined by the city administration. It depends on the level of the area. It is to mean that the city administration or the region say the Addis Ababa city administration labels some areas and ranks them accordingly. For instance it may put paisa in the

first rank, arat killo in the second place, shiro meda in the third place etc. based on this ranking, the city administration may issue a lease bench mark price for each areain conformity with their level.

Again another lease bench mark price will be issued for each plot in these areas when need arises to lease such plot and when auction is prepared for it. It is because even though we find the plot in an area the rank of which takes precedence of all other areas, the demand for such a plot due to its location, size etc may not be as equal as plots found in areas with different levels and vice versa. Thus, though in the seam level, plots may differ in their lease bench mark price for variety of reasons.

When we come to lease bench mark price for allotment of land, unless it fluctuates by itself, it is always fixed and it is 1.50 birr per meter square. However we need to take note of that every allotment is subject to payment. It does not imply that the allotment is not bound by the lease system. But it is free from lease price. The land will be allotted based on the lease system but free of lease price charge. If somebody deserves certain tract of land to build an institution for orphanage purpose, he might be given the land free of lease price payment but for a certain period of time based on the lease system arrangement. Other preferred social service rendering institutions, poor individuals, projects with special national significance like research project in science and technology could benefit from such arrangement. This basically takes effect in the form of incentive or in the form of support for those who cannot afford. Lessee are given grace period in which they cannot be subject to lease payment for certain period of time that can be stated in terms of the negotiation. Then there is a lease contract containing other agreements. Amongst the agreements the leas period is one term of contract. The ceiling of lease period is 99 years. In some cases such embassies, there is fixed time and we cannot determine the floor and ceiling of the lease period. In fact, every lease period subject to negotiation so long as the lessees fulfills the necessary criteria set by the law to the effect. There is this lease renewal system which can best support the above argument. (Se arts 15, 16, 17 and 19). After all these procedures the lessee will be provided with lease holding certificate.

What do we mean by urban land?

Certain population in number might be the floor to determine a given area an urban land. In Ethiopia the threshold forms two thousand inhabitants. Then this identified urban land has its own plan. This plan allocates or determines areas for various activities. Accordingly, areas could be identified as resort centers, for industrial activities and other public utilities activities. The urban planning does not remain stagnant. It changes as situations change. It is because its dynamic nature requires different changes in an already decided planning. It is generally accepted that an urban planning should be revised every ten years. Accordingly, the revision may have the effect of changing the areas which were designated for certain activities to other activities. This has also its effect on the property right of land holders.

We all know that the land tenure system in urban areas is lease system. This system provides lessees with two important rights less than ownership in relation to their land. On account of this, they have the right to utilize the land by themselves and the right to transfer the land for duration of the lease so long as they satisfy the necessary obligation n prescribed by law. Let us create the following hypothetical scenario for better illustration. Martegib is a city in which five hundred thousand inhabitants reside. The urban planning of martegib has allocated borasho for residential purpose. Assume borasho has been the target for road construction when the urban planning is revised after ten years. In now, the city administration of martegib has decided to expropriate residential house found around the borasho area for public purpose. When the expropriation materializes, it puts obligation on the city administration to serve notices, pay compensation and establish tribunals determining the compensation. On the other hand, it affects all rights provided here in above. As urban planning has its own benefit to the development of the city or the urban area, it has also a tremendous and arduous impact on the property rights of lease land holders. We do not find urban planning provisions in the civil code. Rather we have regulations and directives on urban planning issued by Addis Ababa city administration.

**Expansion of urbanization and its impacts**

As we have already stated, the size of population with certain number can in most cases be set to measure a given area as an urban land. There should how ever be a law allocating certain areas as urban areas by devising its own mechanism. In Ethiopia the law sets minimum number of 2 thousand inhabitants to found an urban land. By exclusion, an area which decided by law as an urban area will be a rural area. When defining an urban land, we should always commence from

the urban area since we have legally prescribed definition for rural area. When certain area is determined to be urban land, the administration may delineate all its boundaries. In the delimitation process, the urban land could be determined to extend to neighboring rural areas. The extension will also have an impact on the right of the rural land holders. On the other hand, as a policy, when urban areas grow faster, there could be some required developments which in turn require annexation of some rural areas to the effect. This will also have its own impact on the right rural land holders. As a result, it deforms the mode of acquisition, duration of the holding size of the land to be obtained.

In the first place, there is always contention between urban areas and rural areas. When the urban expands to the rural area, the rural area always resists it. It is because the urban expands to take plots against the interest of the rural area while the rural area wants to clear its suffering from shortage of land. In the second place individuals as a result of the annexation of the rural area to the urban area will be subject to new life. The land that these individuals can get in urban areas is a land for residential purpose when their previous land was sufficient for both residential purpose and agricultural purpose by which they support their family and themselves. Related with this will be the issue of compensation. We should consider the impact of displacing peasants from agriculture to a new way of life. It is not the amount of compensation such as certain sum per meter that determines the fairness of the compensation. From the very outset, it is important to weigh the difference in the life of the peasant while displacing him from his favorite career i.e. agriculture and the corresponding ne life that we provide him as the result of the compensation. It should be properly determined as to whether he continues retaining his previous status without being affected by the new change.

Therefore, the instructor argues that it should not be mere compensation that would be provided to rehabilitate the peasants. There should also be a trend of establishing a project assisting the peasants on how to use the compensation to sustain their previous life les affected. Finally, we should avoid confusion between compensation due following the effect of urbanization and compensation due following the effect of expropriation for public purpose. Since it is the law that allows annexation of rural areas by of urbanization, we are duty bound by the law of our volition. It is not an issue of making one community concern of public issue at the expense of another community. On the other hand the issues of public purpose comes in front when there

exists change of an area designated to certain activity to another activity. The compensation is also somehow different from the type of the compensation due as a result of urbanization. In addition to this, it is the law determines urbanization while it is detailed and subjective guidance's determining public purpose.

Registration:

Registration of rural land and protection of rights of land holders

We protect the right of land holders A by limiting the power of the executive organ to interfere in the interest of the land holders: B by protecting the interest of the holders from other individuals' interference. However, we need first to prove that the claimant is the right holder. We prove that one is the right holder by means of proof which is prima facie. It is to mean that one is not expected to produce witnesses before courts to show his status. It is adequate to show that one is the right holder. With no extra evidence, this will be a prima facie proof. It implies that one claiming that he has a better right will be under obligation of disproving otherwise. As regards certain properties, showing other facts give such presumption the holder in his favor. In most cases, movables are proved this way. However, in respect of immovable properties, showing possession does not suffice. In effect we will be dealing with ownership for additional evidence proving the status of the holder. Case of movables, possession and ownership coexist together.

In respect of immovables, we are required to produce title document. Though land is not owned since the use right is owned any person claiming that he is a certain land holder is required to produce title document to the effect. Devoid of this title document, the fact that has the possessor does not complete his status of right holder. Still, the title document may be challenged and rebutted due its invalidity, replacement etc. however a person who is able to first produce the title document will have a better presumption in his favor. Therefore, the means of proof in respect of land holding is possession plus production of title document showing the same status. This also takes effect through registration.

**What is registration?**

Except certain special movables, movables are not by law required to be registered though voluntary registration is possible. Nonetheless, Immovables are by required to be registered for two reasons. In the first place, immovables are important the significance of which requires special procedure for acquisition by registration which helps show means of proof. In the second place, immovables are permanent in terms of size and location. For these two reasons we need registration.

This will be by simple entry in to the register either through property registration or ownership registration. It is an entry in to the register that determines keeping property owned by individuals in reference to third parties. Depending on the policy adopted by the system, the choice of entry in to register will be through ownership or property registration. After careful weighing of certain benefits and difficulties, policies adopt mode of ownership or mode of property registration for entry. Despite no the scope of this discussion, we have also registration of actus. It will however be the main theme of this point of discussion on the two types of ownership registration and property registration for immovables in consideration that the civil acts and authentication record office effectuates the conclusion of a certain act as a means of proof.

By ownership registration, we refer to the entry of the name of the owner in the register document followed by the list of properties in her or his ownership. For instance, we register the name of a person called atinaw in the heading of the register document. Then we list plot one in gulele, plot three in yika and plot in methara.

On the other hand property registration refers to the entry of the specific property in the register document with all its distinguishing features. For instance, we put the list of properties one, two, three in yika, gulele and bole. We register plot one in yika then the size of the plot (five care meter), the location of the plot, the boundary of the plot in west, east, south and north and even the coordinates of the plot in the east degree, in the west east degree etc. We follow the same approach for properties two and three in gulele and bole respectively. With regard to property registration, we always list certain properties towards the owners.

The main concern of the registration target is primary identification of the property owned by the owner who is listed against the property. This is a difficult task which requires qualified man power and technology which is advanced enough to cut through the red tape of traditional property registration system. At the same time, it is very essential in respect of protection of property rights for it enables us clearly identify rights when conflicts to that effect so arise. For instance, in list of properties belonging to atanaw here in above does not clearly show the boundary of the plot. If charew illegally steps in the plot of atinaw and if controversies to the effect arise between the two individuals, we cannot easily determine the respective rights of the individuals on the plot. As is the case for property registration, since we have no detailed information of the plot in the register document, it will be an easy task to determine the extent of rights of the individuals to the plot. Under property registration, we will also have another type of registration in every transaction. We register the encumbrances and obligations assumed by the owner against the property. If the property is mortgaged, or pledged or kept restricted for reasons of bank debt and others, all these encumbrances and obligations will be registered in the same form against the property.

Apart from this, the torence registration system forms a kind of another property registration system. Torence is the person who first introduced such a system in Australia. In the very beginning, the registration system was devised to register ownership of ship. But, it also came to be convenient for other properties and hence was accepted by various countries. When Ethiopia commenced to modernize its laws in the 1960s, the civil code of the empire attempted to incorporate this concept (see article 1535). Registers of immovable property shall be kept, in each Awradja Guezat of the Empire of Ethiopia, by the keepers of registers of immovable property.[27] Devoid of practical applicability, the provision however remained to be sole paper tiger. Title X of this Code relating to registers of immovable property shall not come into force until a date to be fixed by Order published in the Negarit Gazeta.[28] Finally, the provisions on registration were provisionally suspended and the king passed away leaving the country with no registration system of properties.

[27] Supra note 1 article 15523
[28] Supra note 1 article 3363 (1)

As is indicated earlier, the Ethiopian law treats registration as property registration and registration of actus or documents. Particularly, in respect of immovables, registration is deemed to apply property registration and registration of actus and documents. With regard to the effect of registration of actus and documents, the Ethiopian law founds a mandatory link between the immovable properties and the registration type to prove the transfer or the acquisition relating to the property and the validity of the document. Registration of actus and documents mainly two aspects: A validity of the document. B transmission of the property. It is now the issue as to whether a document relating to immovable property not registered by the competent authority could be invalid. It will again be the concern as to whether transfer of immovable property could be effected through a document which is not registered in the competent authority.

Transfer of ownership could be made by law or the agreement of parties (see art. 1184 of the civil code). An entry in the registers of immovable property shall be required for the purpose of transferring by contract or will the ownership of immovable property.[29] In order for a person to make effective transfer of immovable property, in the first place, there has to be a written agreement to that effect as between the parties. Secondly, an entry of the written instrument containing the agreement in to the register of immovable properties should take place. In fact, there remains to exist controversy in respect of the validity test against documents not registered by the competent authority. In reference to the provisions of the civil code, we can raise two competing arguments on the validity issue. Some scholars suggest that the minimum requirement set forth in owing an immovable property is that it should be in writing. Proponents of this argument firmly assert to give umbrella for documents not registered by the competent. At least documents of such kind remain to be valid. A written instrument or a document held by certain individual enables him or her to assume ownership

[29] Supra note 1, article 11785,

status on the immovable property unless the contrary to it is proved. However, it does not owe capacity to confer a similar right upon third parties.

On the other hand, others argue that provisions of the civiler code: art. 1719, art. 1720 state the nature of written agreements or documents entitling ownership right as mere drafts with no legal effect. Thus, proponents of this scholastic foundation assert that registration is of legal necessity for both the validity of the document and the transfer of immovable property. Since this area has long been a source of controversies, we equally encounter the trend in the academics discourse and in the decisions of courts with variable understanding on the issue. In any case, it is not our goal to finally settle such controversies. Rather, it is to demonstrate what the registration of actus and document looks. As we have already said, we will consume more of our time on registration of the immovable property per se.

As a policy taken by a government, registration of immovable property could be either registration of ownership/owners or registration of titles. With regard to the position taken by the Ethiopian civil code, we cannot talk of much for it has remained suspended till now. The practice on registration of actus and documents however continued being the power of courts to effect the registration. Following the suspension of the provisions on registration, the same code maintained the customary rules of registration of property and the practice thereof) see art. 3364 and the following).

As we have tried to indicate in some elsewhere of this material, Ethiopia does not have uniform custom on preservation of property. In fact, we have almost similar customs by which we may anticipate the trend of registration. In rural Ethiopia, it has been the practice to register land which is real property or immovable property. Related to it, there was no need of issuing title document. In effect, the mode of transfer or acquisition of land was simply based on the custom and practice of the area which would expectedly vary from other customary rules of land transfer in the country. Accordingly,

some people used to agree on the transfer and after production of witnesses to that effect, the transfer would be effective. Others in some areas also used to produce their agreement on the transfer in writing before witnesses.

However, the practice was somehow different in urban areas. Though disorganized and incomplete, the practice of registering the land of houses has been the prevailing trend until recent times. Before two years' stastics on the issue in Addis, more than 50% of the land was not registered. Generally, it is the ultimate trend adopted in today's Ethiopia that registration of immovable of properties including land is mandatory prescription of the law. It is because if there exists no registration of the property (immovable property or land), title certificate will not be issued to the effect. It is also hard for a certain person claiming a better right on contested property to take the legal presumption in his favor unless he holds the title certificate the existence of which is dependent upon registration. Assume that kabora possesses a compound of more fifty residential houses on two thousand care meter inherited from his ancestors. He also earns a substantial income from agriculture practiced on a vast farm land donated to him by his grandfather dezmach yedilaw during the reign of haile slasie I. never the less, he does not hold a title certificate showing his possession of all these lands for there has been taken place no registration. Before two years, when the government wanted to construct roads in the area where kabora lives, it was all these lands of kabora that had been the target of the road construction program. Now, the government has got it easy to quickly commence the construction since the area is public domain. In effect the government argues that there is no need of invoking public purpose and hence will not be the concern of the government to waste time to resolve issues of compensation. In such cases, it is inevitable for individuals to attract the legal presumption in their favor. Though individuals in fact posses land or immovable property, the legality of such possessions could be questioned particularly while expropriation for public purpose.

In urban areas, like Addis, despite defective, there is in effect an attempt to devise a profound registration system with a view to filling gaps of the prevailing practice. Particularly, the promulgation of the proclamation on the lease system partially changed the trend. Since it is lease system, the condition to obtain land in urban areas, it is in most cases the current trend of the urban community to consider land holding not based on lease system or permit system as illegally controlled land (cherqa bet). A land held short of registration always remains to impose anxiety on holders unless certain policy changes legalize it so.

On the other hand, if it is the trend of registration which is the custom of the urban community with much controversy, it would be of no greater effort requiring us to conduct a deeper research to predict how defective registration of land could be in rural areas. The custom of the rural community devoid of registration for land continued for a very long period of time. Following the adoption of the FDRE constitution, there necessitated the issuance of rural land laws. Particularly, with promulgation of pro. No. 456/2005 on rural land administration and use, Ethiopia came to experience an attempt of registering land in rural areas. Many scholars strongly commented that land tenure security cannot be attained unless registration of land is effectively devised to easily delineate the scope of contending rights on land. At the same time, if individuals do not hold a title certificate proving bundle of rights, they always risk all possibilities of insecurity by third parties including the government per se. They frequently suggested that if the government does not have a mechanism of registering land, it will finally put the constitutional right of land tenure security under its blessing.

In response to strong comments and opinions of this kind, an attempt has started to register land since 2005 following the issuance of the proclamation to the effect. Since registration of land is amongst the principal ways of ensuring land tenure security which is a key constitutional right to land, the

process of registeration has already started in all regional states of the federation.

In the contemporary trend of rural land registration, it is the practice for land holders to pass through 2 stapes before they assume fully the status of land holder. Accordingly, we will have first level of land registration and second level of land registration. Under the first level of land registration, we will have an entry of the use right of the holder in to the register of land. This will be simply based on a rapid assessment of the holding status. It is to mean that the competent administrative organ checks a plot of land as to who holds it and provides the holder with first level certificate after the entry of Th use right in to the register of land. In this stage, there will not be as such stringent requirement for registration of land by the holder unless the holding status is contested otherwise. The competent organ will provide the public with the opportunity to raise any defense against holding status of individuals before entry of the use right in to the register of land takes place. The burden of proving the existence of a better right on the contested holding status shall lie with the testimony of the peasant association land allotment committee. There will be no extra reference to the legality of the holding. If the testimony of the peasant association land allotment committee proves otherwise of the original claim, the registering organ accepts the testimony with its all injustices and illegalities and effects entry accordingly. There is no way of looking backward to reinvestigate in to the issue based on independent evidences. Being the positive or negative of first level registration of land subject to subsequent paradox, we do not currently find a regional state or any woreda that did not complete first level of of registration of land. We all know that this is a fact of most peasants of Ethiopia in relation to their land tenure security.

On the other hand, the second level of registration of land or certification basically shares the features of registration of title type. This form of

registration of land uses modern technology. On account of this, it assesses the size of the land: takes Photographs; uses coordinates; delimits boundaries etc. it does not involve a rapid mode of assessment to determine the holding states of individuals in relation to their land. It specifies they are where the land is found. It determines the size in CM and meters. It also registers all adjacent lands in the south, west, east and north including the holders each land. The map of the land delimited and identified as to who holds after long process of filtration, will be registered in to the file of the holder which is put under the register of land. This system grants land holders a conclusive proof of to claim a better and legally established right on the land that they hold. At the same time, it enables the justice system to easily avoid conflicts between adjacent land holders.

However the second level of registration of land does not work or is limited in its infant stage. Though questioned its perfections, the instructor witnesses that there is the attempt in SNNPR around areas of alaba. Generally speaking, Ethiopia in the mean time does not have a perfect land registration system. In fact, parallel to the existing attempts, the parliament is in progress to come up with a national registration frame work law. When this law gets approved and comes in to effect, it is considered that the country will adopt a comprehensive registration system on land. But, as a system, we do not have a prefect and standing registration system except scattered attempts in provisions of regional laws.

As repeatedly stated title certificate which is given birth by registration contains the amount of the right that individuals assume on their house or land. In other words, we imply that title certificate to a house proves ownership right while it proves the use right of land holding. If we have a registration system producing document of such importance then we ensure land tenure security of individuals in relation to their lands for both urban and rural areas.

Mere control of corporeal chattels transfers a title right related to it to a third party with no extended procedure (see art. 1186 of the civiler code). This is not how ever the case for land immovable properties including some special movables. There will not be no free transfer of such properties unless registration to their effect is taken place by the competent organ. Though it is the general rule for movable corporeal chattels not to be registered we owe certain exceptions to it. Registration of movables or corporeal chattels emanates A from voluntary act. B from the law. No one is prohibited from registering his movables for better security. The law does not reject requests from individuals to register their movables. If it does not challenge the resource of the country, there is no systematic rejection to register corporeal chattels so long as the owners are voluntary to register.

However, the law requires mandatory registration of some movables. Corporeal chattels of these categories are grouped as special movables, they include among others, cars, airplanes, ships etc. as far as transfer of special movables is concerned, we follow the same approach in transfer of land or immovable properties except that the authority effecting the respective transfers is different. For instance, merew enters in to agreement with dilamu for sale of his car and his G plus 5 building found in the center of bolie, in the first phase, they will take the transfer agreement to the office in discharge of registration of actus and documents. Then the transfer agreement will be registered in registration of acts and documents. The transfer for both items will not be complete for mere registration of the agreement. This stage however adds up on the strength of the transfer which is validity of the agreement. In the first second phase, the parties will again take the transfer agreement which is now valid to another authority. It is this authority where the title is found. At this juncture, there will be departure of the items' trip. Accordingly, the transfer agreement for the car will be taken to road and transport authority while the agreement for the building will be brought to the municipal (mazegaja bet) or to the concerned

office of the sub city administration. Apart from this, then the respective authorities will receive the transfer agreement and register it accordingly. Then they take the map/title or the librie from the hands of merew the transferor and discharge either of the following tasks. As the practice goes, they simply put the name of dilamu, the transferee and the authentication of the office at the back of the titles. If the transferee, dilamu is not interested in maintaining the previous history of the properties, the authorities will with in a limited period of time prepare a newtittles for both items. But, there will be a temporary arrangement for the transferee, dilamu to hold the titles with their history. Finally, both authorities complete the transfer and hand over the titles to the transferee in our case ato dilamu.

We need to take note that land rights are not short of injustice. At the same time, they are category of rights that cannot be remedied. In other words, violation of land rights like denial of land constitutes lifelong breach of rights. Thus, it is not the obvious way for governments to go after violation of land rights to do away with injustice that follows. Governments on one hand want to ensure a sustainable system and to remedy violation of such rights that are in conflict with the system on the other. Governments also in most cases, prefer to keep systems sustained with a view to maintaining confidence in the public at the expense of individuals' rights to land. This is what happened during the first level of registration of land in almost all regional states. The registering organ preferred simply to expedite the registration process as a system other than letting delay for claims, counterclaims and other litigations on land. However, land registration should pass through careful and long process for it rescues life time rights. Particularly, we are required to effectively devise a just and profound screening process from the very outset. By other issues related to land, we need to create a strong Institutional frame work for land registration. Registration of land is not an easy task that we can do locally. Thus, we should have a national register of immovable properties in case land with its details. A kind of this institution

enables the government to connect all regional concerned land registration offices with the one center of land registration institution. The foundation of such institution serves as resource center and hence will be obvious for the citizens and the government to properly manage the resource of the country in general and land in particular. Though it was the expectation of the civil code of the empire to come up with a kind of this institution, it did not materialize following its suspension.

We do not still owe a legally established and independent institution for the register of land. As a result, most of the regions in Ethiopia are with weak institutional frame work of land registration. In rural areas, the registration system is incomplete, non comprehensive and scattered. The practice in most regions is to conduct registration of land in accordance with unstable directives. In fact, for complete registration of immovable properties, there is also a move for application of the cadastral survey, a type of property registeration system. In the near future.

## Restriction on right to land

To begin with one obvious restriction is the restriction on transfer of land. As it is clearly stated under art. 40/3 of the FDRE constitution, land is not subject to sale. Therefore, ownership system to land by private individuals does not entertain legal basis for the land tenure in Ethiopia.

Servitude is another restriction on right to land. Though we are holders of the land restriction may be set against us for the sake of ensuring others' counter rights. Servitude is an obligation that may be imposed on the property not on the holder. This is so in response to ensure respect for a right on another property. In case of servitude, we always experience the dominant and the servant immovable's. The dominant immovable always creates a scenario for the sake of which restrictions are imposed on another

immovable. Correspondingly, the survient immovable is the immovable on which the restriction is imposed.

Expropriation per se forms another category of restriction on right to land. It is legally accepted principle for the government to interfere with individual right when public purpose so requires. Therefore, public purpose for expropriation and public purpose and expropriation impose restriction on holding right of individuals in relation to their lands.

By right of preemption and by promise of sale, we might connote other forms of restrictions on right to property. They are both restrictions on sale of properties in the future. A certain person in joint ownership of a building with four separate rooms can promise to sell his share to third parties when he decides to sell the share within specified period of time under the agreement. The same goes with promise of sale. Promise of sales involves any private property to be promised for sale in the near future. Other than this simple distinction, right of preemption and promise of sale are otherwise identical for all purposes. However, since land is not subject to sale, the transfer aspect of land for sale is already made free of these restrictions to exist. Never the less, we can still apply these restrictions for other transfers as to rent, donation, inheritance etc to land. Finally, we should take note that both right of preemption and promise sales regulate priority right of third parties on transfer of properties when need for the transfer arises by the promising party.

## Land dispute resolution mechanism

Land dispute can be resolved either through formal litigation or by other alternative dispute resolution mechanisms. It is important point of discussion to deal with administrative powers on land and related issues. We remember that individuals in all regions nearly experience the same trauma in the first level of land registration. Since the link between the grievance committee and the peasant association land allotment committee is not clearly discernible, researches indicate

that the injustice or the grievance taken to the grievance committee was maintained even in cases where gross miscarriage of justice happens to exist against land holders. Following this trend, there have been long debated contentions between various commentators as to whether there should be a mechanism of taking land related grievances to courts in their first jurisdiction. Accordingly some legal commentators had the position that land disputes and litigations that follow should attain finality by administrative organs. Proponents of this argument make strong points that the administrative organs are near to the heart of the community and hence are in a position of rectifying the injustice rooted in the screening mechanism for first level of land registration. More importantly, they adhere to an argument that the Ethiopian community always naturally prefers litigation regardless of the value of the right involved. Nobody will in effect spend at home and every citizen or 85% of the Ethiopian community would prefer to spend most of the time in courts for the major or minor violation of right. This also increases the congestion in courts and hence will not dispose of cases out of land related issues thereby causing to refrain from their regular career which ipsofacto is entrusted to them.

For the instructor and other legal commentators, this argument does not how ever hold water. From their very counter argument, we take notice that rights cannot be measured. No right is small; no right is big. This is the paradox by which we cannot delineate a boundary between bigger and smaller rights. They assert that even if we reach a consensus that rights can be measured, there would be no major violation of rights other than violation of rights to land in general and for Ethiopian community in particular. It would be travesty of justice to be attained at the expense of justice that should have been attained. At least we should devise a mechanism by which justice accommodated other than denying access to courts. Particularly, the instructor believes that regional courts do not have a major issue to entertain other than the subject matter on land. He further argues that the most sensitive and thinly justice requiring subject matter in civil litigation of the rural Ethiopia remains to be the issue of right to land or the issue of right to housing. Therefore, he concludes that there should be a mechanism of conferring power upon courts to entertain issues of land dispute in their first instance jurisdiction. Being this forthcoming concern of rural land laws, it would be of great help to develop more on the issue.

Apart from administrative tribunals, we have said that individuals can use courts other alternate meanness to resolve land disputes. In fact, courts will at least have the opportunity to entertain issues of land dispute in their appellate jurisdiction. However, it would still be the pressing point to devise alternative dispute resolution mechanisms which are negotiation, mediation or arbitration. It is obvious that land disputes can be resolved by alternate meanses other than courts. It is again important to investigate in to the relevance of using these mechanisms and the corresponding arguments. When the law provides for alternative means of dispute resolution there has to be purpose. It does not make for the law to press litigants so that they resolve their disagreement by negotiation. Had it been possible not to enter in to conflict this way, it is the general sense that they would have not preferred to come to court. It would at least be mediation or arbitration that best support rejection of land disputes in reference to alternative meanses. Now, mediation chosen to dispose of land dispute in particular case, then the mediator should pass a binding decision. But, a mediator can pass a binding other than facilitating thee by which parties can agree initer se. from this premises, some people argue that there would be no purpose for the court a case of land dispute in reference to mediation. If parties do not reach a decision and if they are to file in effect to file a fresh suit in courts, it would Bo of non sense for the parties and the court. It is because it defeats the very purpose of referring the issue to mediation. They argue that courts devise this mechanism to minimize time, costs of litigation for parties congestion of cases etc. after all if we cannot reach all these expectation of our first plan, the process would defacto result in lengthy, costly and boring litigation. Proponents of this argument thus conclude that the law is for no advantage to incorporate mediation.

However, the law has purpose to incorporate mediation for the instructor. He asserts the when we press the parties to meet and talk on the issue freely through the instrumentality of mediation, we create a half way for agreement. if we follow this trend, 1. We increase the number of cases that can be resolved peacefully. 2. We minimize costs, save time and minimize congestion of cases in courts. 3. Since parties are free to agree on the finality of their agreement or the appeealablity of their agreement, it minimizes the number of cases that can taken to first instance or appellate jurisdiction of courts. 4. When parties agree and reach a decision, mediation will at least have a purpose. Based on this understanding, we will be looking in to the frame work law

on rural land use and other regional legislations to assess the nature of land dispute resolution mechanism.

Where dispute arises over rural land holding right, effort shall be made to resolve the dispute through discussion and agreement of the concerned parties. Where the dispute could not be resolved through agreement, it shall be decided by an arbitral body to be elected by the parties or be decided in accordance with the rural land administration laws of the region.[30] It is obvious that the law has incorporated the alternative meanses for land dispute resolutions. It is of frequent encroachment for lawyers when legal document is prepared in more than one languages. The frame work law in its English version puts arbitration or arbitral body to resolve land disputes. However, we do not find this concept of arbitration in the Amharic version. Rather it puts shiglina which is equivalent to mediation that we do not find anywhere in the English version. Be that as it may, since we have this tradition of authorizing the Amharic version over the English one, we can safely argue that the frame work law does not recognize arbitration.

The amhara regional rural land law for it both the English and Amharic versions also treats the concept of arbitration the same way in the frame work law. Though this law a mechanism by which land disputes can be resolved through arbitration, decisions of the arbitration body does not have any effect on subsequent recourses. It is to mean that a party dissatisfied with decision of the arbitration body can institute an action to a court. It leaves the discretion upon the parties to take their case to arbitration body or regular court.

When we come to other regional rural land laws, we find first the legislation of tigray. This legislation in a similar fashion to the frame work law vaguely recognizes arbitration and adds conciliation and other alternative mechanisms. If disputes cannot be resolved this way, the law devises other options by which parties can resolve their disagreements. Accordingly, the disagreement will be brought to the attention of the grievance committee at the kebele level. If the committee passes a decision in dissatisfaction of both or either parties, appeal will be lodged to the concerned worda court. If the worda court confirms the decision of the committee, it will

[30] Supra note 23, article 12

be final. If there is how ever variation or reversal it will again be taken to the zonal high court. There will be no extra recourse except the cassation for error of law.

On the other hand, the rural land law of the SNNPR perfectly recognizes negotiation, arbitration and mediation. With regard to the procedure, when land dispute arises it will be taken to the attention of the kebele administration committee. The parties will undertake the litigation based on the modes of their choice here in above. If arbitration is the mode preferred by the parties then they will choose their own arbitrators and the arbitrators will conduct the litigation and pass decision. If there is distraction by either of the parties, the case will be taken to the worda by way of appeal then to the zonal high court then to the Supreme Court if the dissatisfaction continues to be maintained. This procedure absolutely departs from the regular concept of appeal. Anyway, this is what we have in the rural land law of the SNNPR. Regulation no. 66/2007 of the same region has a different approach. Accordingly, it provides arbitration or conciliation as a neans of resolving land dispute. If the parties as per this regu. Do not reach an agreement, they will be given a letter that specifies reasons of their disagreement. Here, the proclamation lies appeal from the decision of the arbitrator while the regulation makes it mere attempt to resolve the dispute through arbitration. By the position of this regulation, it is to imply that parties can file fresh suit. But they should be able to bring a letter showing their failure to agree through arbitration. Generally we see these controversies as far as land dispute resolution mechanism in SNNPR is concerned.

The oromia rural land law also has the following trend on land dispute resolution mechanism. Any conflict or disputes arising on land shall be resolved as follow: First application shall be submitted to the local Kebele Administration, The parties shall elect two arbitrary elders each. Chairpersons of arbitration elders are elected by the parties or by the arbitral ciders, if not agreed up on shall be assigned by local Kebele administrator, The Kebele Administration to whom the application is lodged shall cause the arbitrary elders to produce the result of the arbitrations days. The result of given by rhc arbitration shall be registered al rhe Kebele Administration, anda copy with an official seal shall be given to both parties. A Party who has complaint on the rating elders, has the right to institute his case to the woreda court attaching the result of arbitration eiders within 30 days as of the date registered by the Kebele Administration, Woreda court should not receive the suit if the result given by the arbitration is not attached to it. The part\'

dissatisfied by the decision given by tlie woreda court shall liave the right to appeal to the high court. If the high court altered the decision rendered by the woreda court, the dissatisfied party may appeal to the Supreme Court. Q) The decision given by the Supreme Court shall be the finalas is the case for other laws, the English version of this law also does not make clear as regards the existence of appeal from the decision of the arbitration. The Amharic version makes it clear that parties aggrieved of the arbitral decision can institute a fresh action in courts.

As we have seen in the regulation of the SNNPR regional law, the ormiya rural land does not similarly give any value to the effort of the arbitration. This also makes the whole effort of the arbitration short of purpose as has been argued by some people.

The confusion in rural land laws arises from problem of understanding the law per se. it seems that regional laws have incorporated rules of alternative meanses to solely apply the principle in the frame work law.

As has been clearly indicated earlier, the frame work also has its defects in designing rules of alternative meanses. For instance, the tigray proclamation [31] does not practically provide opportunity for the parties to control the arbitration process though it has a clause for arbitration. The kebele land administration committee has the power to say any on the process. It does not seem arbitration body. Rather it is a kind of administrative tribunal.

Ultimately speaking, there is a policy problem in relation to conflicts arising from rural land in the country at large. In fact, it is very essential for a country to establish an ADR mechanism which is strong to support the justice system and to create smooth and sustainablerelaship as between the members of a community. However, this has its own constraints. The arbitration system we have is not equally accessible. The process is per se discriminatory and partial. It segregates certain sector of the population. On the other hand, we all know that 85% of the population depends on land for its livelihood. Conflicts on land thus require speedy litigation. If we are not able to give speedy justice based on the law, then the average miscarriage existing in

[31] Supra note 4 article 16 (1)

the country remains to lie with conflicts on land issues. Finally the law will end with injustice and hence will be defeated the whole objective underscored.