WSU, School of Law

Hizikel B. (Asst. Prof in Land & Environment Law)

2020/21 A.Y

Land Law

Chapter 1: Introduction

- ✓ Land is one form of property.
- ✓ It is the main economic, political, social and cultural asset.
- ✓ It is the crucial source of livelihood for the rural society.
- ✓ It remains as an asset that farmers accumulate wealth and transfer the same to their future generations.
- ✓ The issue of land has not simply remained to be an economic affair, but also it is very much intertwined with the peoples culture & identity.
- ✓ Therefore, the issue of needs a serious consideration of the government.

Cont….

- Thus, the issue of ***land*** is **governed** by ***land laws (proclamations & regulations)*** & when there are gaps we can fill it by referring the ***Civil Code***.

1.2. Defining Property in General

- The ***meaning of property*** varies depending upon the context in which the word is used.
- In the **legal context**, it describes the ***relationship between the person*** & the ***property,*** i.e., **the right of a person to possess, use** &/**own the *property*.**
- To **William Blackstone,** property consists that rights on it, **"i.e., free use, enjoyment & disposal, save restrictions by the laws of the land."**

Cont...

- Under the ***Roman law***, *property comprises the right to* ***possess***, ***use*** *and* ***dispose*** *of the thing in all legal ways,* ***excluding all other person from interference.”***
- The French Code of ***Napoleon*** also defined it as, *the right to* ***enjoy*** *and* ***dispose*** *in an* ***absolute manner***.
- Similarly the ***1960 Ethiopian C.C*** under **Art 1204**(1) defines **property *ownership right as the widest right*** on a corporeal thing, which may ***neither be divided nor restricted,*** except in accordance with the law.

- ✓ **Art 1205: Scope of the right**
  1. Without prejudice to such restrictions as prescribed by law, ***the owner may use his property & exploit it as he thinks fit.***
  2. ***He may dispose*** of his property ***for consideration*** or ***gratuitously inter-vivos*** */when the holder alive/* or ***mortis causa*** */when the holder die/.*
- ✓ *But it has **some restrictions** for different purposes.*

Cont….

In general the "**property right**" refers: -

- ✓ An **entitlement** that is ***protected by law***.
- ✓ Those entitlements may be ***full title to a parcel of land, or other objects like car, personal property, intellectual properties (patents, copyrights), etc.***
- ➢ The ***law governs the relations of people*** in respect of property rights ***(its use, control and disposal) in order to bring fair allocation among people.*** Because it is a ***scarce resource*** in relation to human needs, while abundant resources don't need special protection, ***so far no conflict creates among people*** to have them.

Property Right Vs Ownership Right

- **Property right is a broad term** & it encompasses any right/interest & **ownership right is part of it** which **is the most important one**.
- The **attributes** of **ownership** includes: **-**
  - ***Usus*****:** the right to use the thing.
  - ***Fructus***: the right to benefit the profit that get from a thing.
  - ***Abusus***: the right to dispose of the thing either physically destruction or transfer.

Cont….

- ✓ **Ownership is** and **has never been absolute** & there is **always restriction on its use** & **enjoyment** for ***different purposes.***
- ✓ **Ownership right** includes **bundle of rights** **&** ***an interest on it can be exercised separately***; i.e., the ***right to sell, lease, mortgage, use, donate, etc***.

1.2.3. Major Concepts of Real Estate, Real Property & Immovable

- As per *Black's Law Dictionary*, **Real Estate** means land and anything ***permanently*** **affixed to the land, such as buildings, fences & other things** that attached with the buildings (**light & heating fixtures, water pipes, etc.**) ***which would be personal property if not attached.***
- Under the same dictionary, the term **Real Property** ***/Rights in Rem/*** is defined as **land** & ***all other things growing upon or affixed to the land,*** *that* ***includes*** the **surface of the earth**, **beneath to the center** of the earth and **the air above it**. It is **not only the attached things with the land.**

What constitutes Real Property in Ethiopia laws?

- **Art 1126: All goods** are **movable or immovable.**
- **Art 1130: Lands and buildings** shall be deemed to be an immovable goods.
- In a Civil law countries like ***Sweden Land Code*, Real property is only land** & ***it is divided into property units*** which includes a building, fence & other facility constructed in or above ground for permanent use, standing trees and other vegetation &/or natural manures.
- Building is simply part of the real property/land.
- But **in Ethiopia both land & buildings** are **real properties**, as per **Art 1130** of the C.C.

- This kind of approach bears problem of interpretation and application in Ethiopia.
- If we apply **Art 1130** as its, for **e.g.**, **Mr. A** built a house in **Mr. B**'s plot of land & if **Mr. B** transfer his plot of land to **Mr. C,** who is the owner of that building?
- Therefore, building should not be considered as real property equally with land ***rather it should be part of the land***.

1.3. Theories of Property Rights

- **Laveleye** on his book on Primitive Property ***developed 4*** **theories** concerning the ***origin of property.***

1. Occupation Theory

- According to the supporters of this theory, **ownership right** is acquired by occupying a things that does ***not have a real owner,*** with the ***intention of becoming an owner***.
- This mode of acquisition applies to **res nullius** & ***abandoned chattels*** and other things, like ***treasures***.
- In past, land is acquired by occupation or by mere cultivation. But now a days, it is **granted by the state**, even in countries where **land is owned privately**.
- ***Art 1194*** of the Civil Code makes ***immovable things without an owner, the property of the state*** and hence makes occupation theory inapplicable to it, **even before the nationalization of all land in 1975.**
- The FDRE Constitution under **Art 40/3/**, makes land and all natural resources the property of the state & the peoples of Ethiopia, hence, ***you can't get any unoccupied land***.

Criticism of this theory

- It ***presupposes*** the existence of land that does not have an owner & to become an owner, an intention /***a res nullius or unoccupied land/***.
- But today in everywhere there is **no any land** that is **without an owne**r, since non-private lands belong to the **community or the State.**
- Property right is also created by law.
- Property and law are born together and shall die together (**Bentham theory**).

2. Labor Theory

- This theory adopted by ***economists*** & labor is a base to establish a property right.
- **Locke** was the first person to develop this theory.
- He says *"**God gave the soil to mankind at large** & **no one enjoy it** unless he become the **owner** of it.*
- For him the ***state of nature*** is a peace situation ***which gave natural rights to men*** & in which ***men get land by his labor & respects the lives, liberties & estates of others***.
- The **limit** is the amount which one can cultivate by his labor & every one ought to have as much property as is necessary for his support. ***No restriction if his labor permit.***

Criticism of this theory

- If labor is the ***only legitimate source*** of property, the **tenant** my become the right holder ***after years tenancy work.***
- Property may be acquired by **succession or donation**.
- Can a person become an owner of a certain property **owned by somebody else** by **the mere fact that he added a labor on it?**
- What about **if you cultivate a land belonging to someone else?**
- In reality no legislation ever allow that labor or **specification was alone a sufficient title to establish property.**
- It does ***not determine*** **the extent of labor that required to** establish property right over common property.

3. Social Contract Theory

- According to this theory, **men** are ***born with all natural rights & freedoms,*** but this situation created conflict & instability among the societies.
- And according the ***proponents argument,*** it is only the ***establishment of society*** & ***conventional laws*** that are the **true source of property right.**
- Because through **social contract** **individuals surrender** their absolute right to the state including ***property rights.***
- Therefore, the ***origin of property right*** is the **social consent** /agreement/ & every right must spring from public authority.

Criticisms

- The convention of **past ages,** for which we have **no hint at all & it cannot bind the present generations** & consequently it ***cannot serve as the basis of property right today.***
- The law which create ***property right & the organ*** that can establish conventional law ***is not clear.***
- To enact a law that regulates a **property rights**, first we must necessarily know those rights.
- Hence, **the notion of property must precede the law which regulates it**.
- **And today land is granted by the competent authority at any level.**

D. Utilitarian Theory

- As per this theory **property right is originated:**
  - ✓ In its considerations of ***general utility;*** or
  - ✓ To maximize the overall happiness or utility, i.e.,
  - ✓ to provide **greater happiness to the greater number** of the society.

- **Land** is not created for an individual & appropriating /fixing/ a gift of nature to an individual person **is unjust**, because ***private property only benefits the possessor, not the whole society.***
- Hence, **Bentham** said men work hard **for his own interest** than for the public interest.

Its Criticisms

- If the property right was **granted** ***for maximizing happiness to the general public:***
  - ✓ **It cares little about** the distribution of wealth among the society;
  - ✓ **It do not** care about the sufferings of the minority rights; and
  - ✓ **It leaves out justice** & **equity** in property distribution**,** including the individuals **development**.

E. Economic Justification theory

- According this theory, the ***efficient user*** of the property must be the owner of that property.
- Land can easily **transfer from** the **passive user** to the **active one who can better use it.**
- In here, if the **supply exceed the demand, no any problem**, but the problem arise if it is vise-versa.
- The American social biologist **Garrett Hardin in his thesis** '***The Tragedy of Commons***' **criticized *common property ownership, stating that it exhausts the natural resources unwisely.***
  - ***E.g.*** pasture land open to all can easily be **deforested**.

Cont…

- According his thesis, if the land is owned by the ***public,*** it has **4 consequences**:
  - ***Struggle*** to control the resource, which **lead to conflict,**
  - **Over exploitation** of resource like ***fish, pasture lands,***
  - **Premature exploitation** of resource, like **Trees.**
  - **Under-exploitation** of resources like **land,** i.e., weak investment of lands.

- In here, the ***first consequence*** may be averted by laws, which may recognize **private** or **public ownership** of property focusing in its ***efficient enforcement***, while in the rest ***three consequences*** only **private ownership** is the only **solution** for ***G. Hardin.***

Cont…

- Because, **each herd's men** want to add additional number of herds on the pasture & bear only a fraction of the cost ***of the negative effects.***
- And in here, there is **no internalization of costs**, rather **exploitation of common resources.**

De Soto, Hernando, "The Mystery of Capital": *Why Capitalism Triumphs in the West & Fails Everywhere Else?* His reason was private ownership.

Criticisms

- It does not distinguish between common and open access resources.
- He is wrong in concluding that private ownership is the ***only way of averting tragedy of commons.***

1.4. Anti Private Property Argument

- Marx, Henry Gorge, Plato, Joseph **Proudhon**, Jean Jacques **Rousseau** and many other early **Christian philosophers** are **opponents of private property.**
- They argue that **property distribution is unjust**, ***because*** **God created it for all** & privatization increases concentrations of wealth in a few hands.
- This **growing inequality of wealth** is **morally unacceptable** & **leads to social instability.**
- And the solution is ***the total abolishment of private property ownership & replacing it with communism or an egalitarian form of property.***

Cont…

- In 19th C **Joseph Proudhon,** declared ***private property*** as a ***"theft"*** & according to him, ***unjust holding*** & ***accumulation of private property*** gives absolute power to the owner over others.
- Hence, for him **every interest on loan**, a **rent on a house** or the **mere exclusion of others from using one's property** is **a robbery made** against the original common ownership of property.
- **Rousseau**, who considered **private property** ***as a trick /deceitful/ by the rich & powerful over the poor considered private property as a yoke.***

1.5. Types of Land Ownership & Related Merits and Demerits

1.5.1. Scope of Rights to Land

- Can we say the holder of the land is an owner of everything on **the surface** & **beneath it?**
- According to the **Medieval period scholars concept,** ***land includes not only*** the ground or soil but also **everything that attached with it whether by nature**, i.e., trees & seedlings and **by the hands of man**, like houses & other buildings.
- Thus in a legal theory, land includes **not only the surface of the earth** but **everything under** and **over it up to heaven**.

Cont…

- ***But the Modern society limited*** this right ***for different reasons*** that is ***not only*** in relation to **aviations** but **also** for the reason that the ***state wants to control the natural resources below the ground.***
- The question of the extent of ownership of land is treated in Ethiopia by the 1960 Ethiopian C. C.
  - **Articles 1207 & 1211 generally express that:**
- *Ownership of land is* ***limited*** **beneath** & ***above the land*** *"****to the extent necessary for the use*** *of the land*."
- *Thus*, a person who **constructs** a house shall own the land ***beneath*** the earth to the ***extent that is necessary to put the foundation*** and **above** the ground ***to the extent*** of ***constructing the house.***

1.5.2. Different forms of Land Ownership

- There are different forms of land ownership in the World ***even in a given state,*** but a given state may choose one or more of them ***in order to ensure their economic efficiency, conservation of resource, avoidance of conflict and like reasons.***

✓ ***For e.g., holding grazing land*** or **open access** of resource ***commonly may be wise*** than making it ***private,*** because it may ***avoid conflict & immediate depletion of land.***

✓ Thus, currently we have **different forms of land ownership.**

1.5.2.1. Open Access of Land

- Open access/**ownerless** property regime/ **doesn't create any property right for any one.**
- Every person has **access right to use** & **enjoy it.**
- Every body has a right to use such things and the rest of the world can't object him/her.
- No one has a right to exclude others from using such land.
- **Public parks**, **walking paths** and **access to lake or sea shores** where every persons right to enter or walk without any form of restriction.
- In its pure form, **the rights to air** & **sun light** may be considered as open access properties.

1.5.5. 2. Private land Ownership

- This type of land ownership gives **full** and **exclusive right** of property to a single person (natural or artificial) or group of persons; and
- The owner/s will have a complete right, which includes **the right to;-**
  - ✓Use, exclude others, derive income from the land, sell the land & donate it to someone of his/her choice.
- Land ownership in Ethiopia is **not private Art 40(3)** of FDRE Constitution. It belongs to the state & people, **not subject to sale**.
- Rural land **proc.** included only "**holding right**" which is less than ownership right.
- However**, in urban area** land that **acquired** through **lease** or **gover't grant** is considered as a **private possession**.

1.5.2.3. Communal land Ownership

- Refers to a land which **is commonly held by the community** of a certain **village /locality.**
- In this case property **rights** are **conferred on the communities** and not on the individual members.
- Members of the communities have **non-exclusive right** to use all available resources in the land.
- But, individual members **have no transfer rights** rather than **using** the communal land **according to the local rules of the community.**
- The FDRE RLAUP identifies, **communal holding** under Art **2(12)** as a ***"land which is given by the government to local residents for common grazing, forestry and other social services."***

Cont…

- Like ***grazing lands, forest lands & mountains, fishing lakes, public streets, etc.***
- The **common feature** of such properties is; they are ***not destined to an exclusive use of an individual*** person, but **every member** of the community wants them **equally**.
- If they are left open access to all, most of them may be **exhausted**.
- Thus, the **internal rules** governing the use of the communal land are **prepared by members themselves** and their enforcement ***may need state intervention***.
- The main **difference** between **private** & **communal** ownership is that in the ***former case*** the ***owner can sell his property***, while ***in the latter case*** the members may ***not transfer their right*** by way of sale.

1.5.2.4. State /Public/ Ownership of Land

- It is known by different names like; **public ownership**, **government ownership,** etc names.
- Under the 1960 Civil Code, the term "**public domain**" is **used** for the same purpose.
- The FDRE RLAUP identifies, under Article **2(13)** defines **state holding** as: ***"Rural land demarcated and those lands to be demarcated in the future at federal or regional states holding includes "forestlands, wildlife protected areas, state farms, mining lands, lakes, trans-boundary rivers & other rural lands."***
- It also ***includes all other rural lands***" which is ***not held privately*** or ***communally***.
- Though it is not mentioned in the current **lease proc**, all **urban land** which is ***not occupied by private lessees*** is held by the government/***municipality.***

Public Domain:

- Art **1445** of C.C., **Property belonging to the State** or other **administrative bodies** shall be deemed to form part of the **public domain** where:
  - ✓ It is directly ***placed or left*** at the ***disposal*** of the public;
  - ✓ It is **destined** to a **public service**…

As per Art 1446: Immovable's

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

✓ **Roads & streets**, canals and railways;

✓ Seashores, **port installations** and lighthouses; and

✓ Buildings specially adapted for public services such as **walls** & **churches**.

1.5.2.5. Joint Ownership

- It is a type of ***ownership of land by two or more persons*** in which ***each owns undivided interest in the land***.
- This kind of ownership, **may include:**
  - ✓ ***Simple joint ownership*** of plot of land ***by two persons***,
  - ✓ Ownership by ***hundreds of people,*** like ***condominiums***.
- In Ethiopia it is **governed by both Civil Code** (Art ***1257 & following***) and different **recent laws**.

- The agreement is determined by the parties & in ***absence of agreement*** the law ***presumes equal right*** to the thing.
- They can **transfer it freely.**
- In **condominium** & ***like buildings***, ***common walls, parking's & corridors*** are **jointly owned** & **administered by the users** or **their association**.

1.5.2.6. Common Ownership

- Property ***owned in common by husband*** *and* ***wife*** each having an ***undivided*** one-half ***interest*** by reason of their marital status.
- FDRE RFC calls it a property within the marriage other than private property of one of the spouses.
- The nature of common property is, it cannot be divisible and each of the spouses has equal right to the whole property.
- Hence the law demands **joint consent** for the ***sale, exchange, mortgage or donation of it.***

1.6. Some Basic Land Legislation

- In Ethiopia, immovable property laws are found in different titles & parts of the **Civil Code.**
- We have ***no a comprehensive land/immovable property***/ governing ***code***, hence we have different dispersed land laws.

1. Real Property Registration Legislation

- ***Cadastre*** and ***land register*** are two important ***systems*** of effective administration of immovable properties.
- Still these ***laws are not effectively implementing*** in Ethiopia since its free conditions (property partition, subdivision, etc systems) ***not fulfilled***.

2. Planning and Building Legislation

- ✓ We have urban planning and building legislations;
- ✓ Civil Code Chapter 4 under Title IX, ***Art 1535 & ff***
- ➢ The basic urban planning law, ***Proc. No. 574/2008*** which ***repealed*** Proc ***No. 315/1987.***
  - Any process of urban plan initiation and preparation shall follow **some basic principles.**
  - For more information read your materials.
- ➢ The other laws are related to **buildings**, **Condominium** Proc ***No. 370/2003*** that also repealed Civil Codes provisions, **Art 1281-1308.**
- Read the Proclamations provisions and objectives.

3. *Environmental, Forestry & Cultural Heritage*

Chapter Two
History of Land Tenure System in Ethiopia

2.1. The Meaning of Land Tenure

❖ **FAO** defined **land tenure** as:

- The "***relationship*** between ***legally*** or ***customarily defined*** **person/s** (**individual** or **groups)** with respect to the **land** & **other natural resources**."
- Or it is **a rule** that **describes how** property right or **land** can be allocated within the societies: i.e.;

✓ How **access to land right** (**the right to use**, **control** & **transfer)** **is granted**;

✓ How **responsibilities** and **restrictions** associated with the land is stated; and

- ✓ How **institution/s** are invented **to regulate the behaviors** of the **societies.**
- ❖ In simple terms, the ***tenure system settle questions,*** like:
  - ✓ **Who can use,**
  - ✓ **What resources,**
  - ✓ **For how long period,** and
  - ✓ **Under what conditions**, & etc.
- ➢ Mostly, it is recognized & enforced in **two principal forms**: namely; **the customary & statutory form.**

- ***Customary land tenure system*** is **governed by unwritten traditional rules** and **administered by traditional leaders.**
- Most of the time, **community leaders** and **clan chiefs allocates & enforces** the rights.
- **In past**, **land rights** in Ethiopia were **governed** & **enforced** by **customary** systems.
- **Today**, **in Afar** and ***Somali Regions*** **customary land tenure** is **still operational**.

- But the ***statutory land tenure system*** is ***governed***;
- ✓ **by modern laws,**
- ✓ **supported by documentary evidence,** such as a **title deed** or **lease certificate**, and
- ✓ **Administered** by the **government.**
- ✓ Therefore, in general ***land tenure is a type of law that governs*** the **relationship of people to the land** they hold or own.

Tenure Security

- Is the ***landholder's degree of reasonable confidence*** **not to be arbitrarily deprived** or **evicted from their rights enjoying** or of the **economic benefits they deriving** from it.
- It is the **perception** **or** **feeling** **that;**
- ✓ Holders have the **right on a piece/s of land in a continuous basis,**
- ✓ **Free from imposition, interference & eviction** from **forceful outsider,**
- ✓ As well as the **ability to reap/gain the benefit of labor** and **capital invested** in that land either **in use** or **up on transfer to another**.

Importance of Tenure Security

- ✓ **It enhances economic growth, investment and productivity** among the society.
- ✓ It **reduces environmental degradation, &**
- ✓ It **plays a key role in national poverty reduction, & etc.**

2.2. Types of Land Tenure Systems in Ethiopia

2.2.1. Before-1975

- Since the ***time of immemorial,*** land in Ethiopia was **controlled** by the **kings & ruling elites.**
- As a result of the ***war expansion*** of the **ancient *Ethiopian rulers*** with their ***neighboring tribes***, they ***included*** a **vast territory of land.**
- Therefore, **pre-1975** Ethiopia is ***generally characterized as*** a **feudal state**; where most of the ***land was controlled by*** the **state** and **feudal lords** & in which ***citizens were using land under different tenure arrangements***.

Rist System

- ✓ Confers ***usufractury*** right;
- ✓ Is **common in North;**
- ✓ Based on decent /blood/ r/ship ***(hereditary to one's lineage family)***;
- ✓ ***Neither abridged*** **nor** ***abrogated*** under different causes (honouring of ***hereditary rights*** & denying access to ***outsiders***);
- ✓ Difficult to trace the **root**;

Gult /grant/ System

- ✓ Confers ***fief holding rights***;
- ✓ Found both in **North** (reserved **to royal families** and **local nobles**) & **South** (it extended to ***civil*** & ***military officials*** & ***supporters***);
- ✓ Government **origin;**
- ✓ ***Basis of administration*** and ***compensation*** for the ***service***
- ✓ **In lieu of salary;**
- ✓ **Non-hereditar**y;

Cont…

- ✓ Encouraged fragmentation & successive reduction in individual **plot size**;
- ✓ ***Sale of rist land to family member is allowed***, but **not to *outsiders* except rental** right; hence, *limited transfer rights*, **except inheritance**;
- ✓ Right to a portion of land but ***difficult to specify a portion for all inheritors***.
- ✓ **Exploitative** (***free services*** from the peasants who work the lands under the **gultegna control**);
- ✓ **Receives** all the **fines** which he may **impose** in **his judicial capacity;**
- ✓ **Keep 1/10** of land tax collected by him **to crown**,
- ✓ Created powerful landlords in the **South;**
- ✓ **Eviction** and **tenancy**;
- ✓ The **crown can withdraw guilt right at any time** since formal land ownership was vested in the state.

2. State /Government/ Land

- This refers to **a land owned by the government** and ***distributed to*** different people on the condition of **serving the state** at different levels.
- Such land might be **reverted to the state** in the ***event of non fulfillment of*** the **obligation** by the holder of that land.
- The **grand design** in the **whole property** arrangement was **that *land to serve as*** a means **to run the state functionary**.
- This **land was distributed** to ***soldiers, priests, local administrators, judges,*** & ***state servants at various levels as remuneration for their service*** throughout the country.

❖And there were **various types** of state land tenure systems. These are : **-**

A. Melkegna Rist/*Rist-gult*/Siso-gult

- **Rist-gult *was a part of gult land that is granted by Emperor Menelik II*** and his successors ***to members of the royal family, persons of influence*** **as well as military and ecclesiastical officials & some people for their meritorious services.**
- The ***holders*** *were* ***exempted from paying taxes until 1966.***
- They **collect tributes for their own purpose.**
- The **holders*/balabats/*** are the one **who fought local tribes** together with the king & ***brought a lot of land to the state***;
- Hence, some portion of the land was given to such persons **as a *rist* /a reward/** & ***gult land right over the rest portion***;

B. Maderia Land

- Is a land **granted for life**, mainly **to government officials**, **war veterans**, **people who carry tents**, **brought horses** and **mules to war fronts**, people who **built the palace** as masons, **prison guards** and other **patriots *in lieu of a salary or pension***;
- But the **state possessed a reversionary right** over these land grants.
- In other words, it was **temporarily given to government civil servants** who were assigned to work in some locality **in lieu of salary** and it was **returned** to the state or given out **to others, when the civil servant was transferred** or sometimes **dismissed** from his position.

C. Ginde-Bel Land

- Is a land that is ***given to a person who maintain*** various types of ***government works***, **such as: -**
  - ✓ *Ye-zemach meret*
  - ✓ *Ye-beklo-kelabi meret*
  - ✓ *Ye-dingay-felach meret*
  - ✓ *Ye-medf-changn meret*
  - ✓ *Ye-dinkuan-chagn meret*
  - ✓ *Ye-atiklt-tekay meret*
  - ✓ *Ye-postegna meret, etc*
- The person ***who feeds & raise*** the government ***cattle's*** were **allowed** to have their own ***maderia*** land.
- ***Maad-bet meret*** a land **special** *for the production of food to the imperial palace.*

C. *Samon* (church) land

- It constitutes **10** to **12%** of Ethiopia's total land;
- **Crown grant the rural land to the Church** to generate financial and material support for its services
- The land is **tax-free;**
- Church's **was not directly involved in farming**; but

✓ **lease it to local farmers** under **sharecropping arrangements** and **collected the rents as well as land taxes** (**tributes**) **that would have otherwise gone to the government treasury; or**

✓ it **is distributed to priests, deacons,** and **lay peoples who support** and protect the interest of the church at the royal court.

- The ***main difference between*** **individual *gult* right & the church gult right** is; ***unlike the former*** **in later case the government can't derive any benefit of land taxes.**

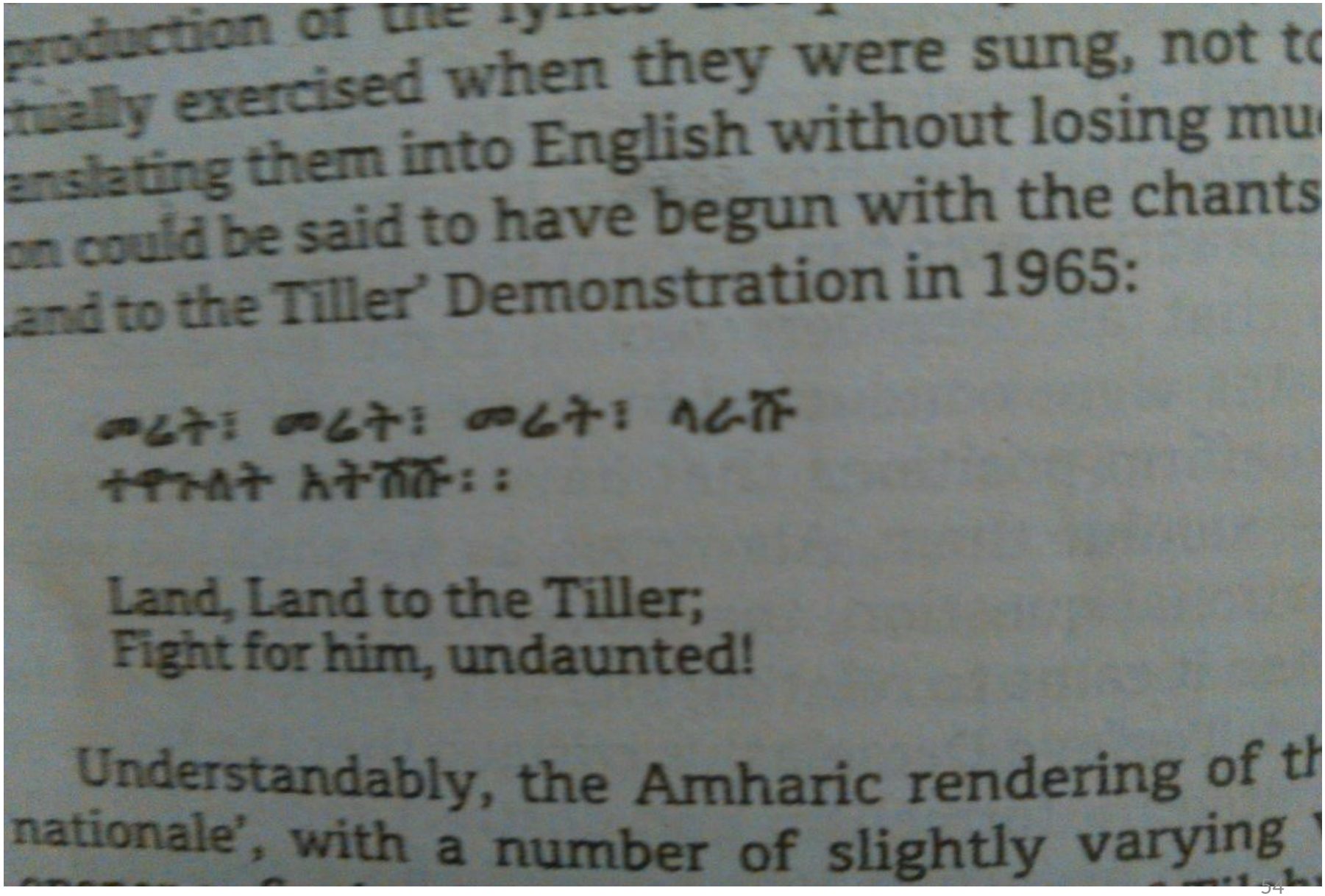
2.2.2. The 1975-1991 Rural Land Tenure System of Ethiopia (Derg)

- ✓ **The 1974 coup d`etat** by the Provisional Military Administrative Council (**PMAC**) **or Derg.**
- ✓ **Took different actions** that ***drastically altered*** the ***social, political & economic structure*** of the country.
- ✓ **One of such measures** the Marxist-oriented **rural land tenure reform.**
- ✓ In 1975, it issued **the 'proclamation to provide public ownership of rural land Proc No. 31/1975;**
- ✓ **Making the tiller the owner of the fruits of his labor (Land to tiller)**

Cont…

- ✓ Motto- '**Land to the tillers';**
- ✓ A sweeping **land reform in 1975;**
- ✓ Fundamentally **altered the land regime & agriculture;**
- ✓ Land was made **public property;**
- ✓ **Transfer** of land has been strictly prohibited, **Art.5**
- ✓ **PAs** were **established** to achieve redistribution of land among others;
- ✓ **Tenants** were **given priority right** to use land;
- ✓ **Landlordism was destroyed from its root;**
- ✓ **Socialism** was adopted as a system of government;
- ✓ **Properties** were **expropriated, especially large farms.**

Land to the tiller



production of the
tually exercised when they were sung, not to
anslating them into English without losing mu
on could be said to have begun with the chants
and to the Tiller' Demonstration in 1965:

መሬት፡ መሬት፡ መሬት፡ ላራሹ
ተዋጉለት አትሸሹ::

Land, Land to the Tiller;
Fight for him, undaunted!

Understandably, the Amharic rendering of th
nationale', with a number of slightly varying

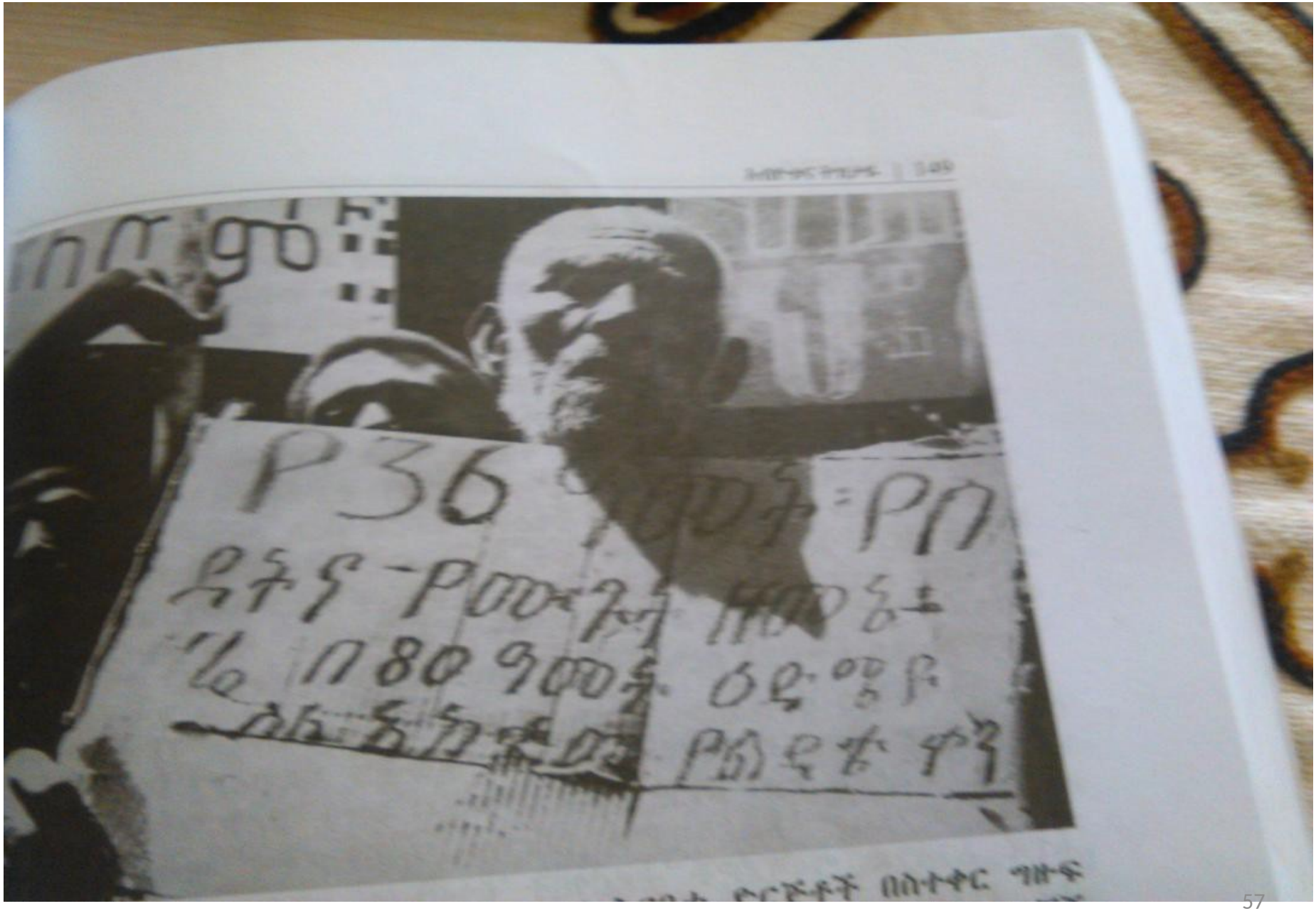
Land to the tiller



Land to the tiller



Land to the tiller



Cont…

- ✓ The ***land Proc No 31/75 eliminated*** the ***high-ranked officials*** of the imperial regime.
- ✓ ***All rural land*** are ***Nationalized*** & ***transferred to collective property*** of the Ethiopian people ***Art 3(1 &2).***
- ✓ ***No compensation*** for rural land and forests
- ✓ ***Abolished the landlord-tenant relationship***
- ✓ ***Relived tenants from any debt***, ***rent*** and from any other obligation ***Art. 6(3) and 21***
- ✓ **Secured** the distribution of land ***before privately owned to the tillers***.
- ✓ Tenants were **given** the right **to retain** agricultural **instruments** and a ***pair of oxen with compensation***.

Cont…

- **Prohibited transfer of land through: -**
- ***Sale, Exchange, Mortgage, antichresis, Lease, succession to other than spouses & child***, etc.
- Imposed ***uniform land tenure system*** in the country as whole.
- **PA** were ***established from tenants***, ***hired agricultural workers, landless classes, & landlords with less than 10 hectare land***) within a minimum area of 800 hectare of land for each PA.
- **Ordinary courts** were ***excluded from entertaining any land dispute*** **Art. 28**
- **Nomadic people** (Art 24-27) were given a ***possessory right*** & expected to perform their own associations.
- The ***Ministry of land reform*** was established and its functions were Art.12-16, ***helping the formation of PA;***
- And **at each woreda** **one land reform officer**.

- The ***justifications for the rural land reform***: -
- ***Historical justice***, ***to overcome the exploitative character of imperial agrarian relations***; and
- **Egalitarianism (equity),** providing ***each farm family with equal access to cultivation land*** according to their needs.
- But **tenure security** was **weakened** by the **PAs land redistribution**.
- **Prohibited** the ***hire wage labour*** in rural areas to ensure that the tillers remained the beneficiaries of the land.

- ***Forced into hastily organized producer cooperatives***, thereby **losing their individual rights** to land; and due to grain requisition to these cooperatives peasants were not beneficiaries of what they produced;
- Re-settlement without the willingness of the peasant. **Art.18;**
- No compensation for land expropriation, except for movable & permanent improvements ***Art 3(3), 7(2), 17***
- It transformed rural Ethiopia into a society of self-labouring peasants.
- And **it replaced the feudal landlord system by the state conducted land lord system.**

2.2.3. Current Rural Land Right System

1. The Transitional Period (1991-1994)

- Soon after the downfall of the *Derg regime*, **speculations** were running as to the direction of the land policy to be pursued by the new government, i.e., **EPRDF.**
- Once regime change came, **there was a wide expectation** on the part of the **advocates of private property** that the **land tenure issue** & **the restrictive policy of the military junta** thereto are **approaching to end.**
- During the **transitional period**, the government **chose to keep the options open** and maintained the position that **the matter has to be settled upon approval of the new constitution.**
- But at the end of the day, it has **retained** the land reform undertaken by its **predecessor** and hence, **the preservation of the public ownership of land has become a contentious issue.**

- ✓ The constitution settled the matter in favor of **the public ownership of land to the** dismay of **many scholars** and **international donors** and even **opposition parties** including **some sections of the people/citizen.**
- ✓ Many have written also that the opportunities for **unleashing the potential of land as** development agent have been closed.
- ✓ The **debate is still active** & policy fight is continued.
- ✓ Thus, **by inserting the land policy in the constitution**, the current government has **eliminated the possibility** of **flexible application of policy** matters pertaining to land.

- The government's position appeared **dominant** & **won** a place in the **constitutional arrangement**.
- Some of the ***reasons forwarded by the government*** **justifying** this **policy** can be collected from the **minutes of the constitutional debate**:
- There are ***two antagonistic political discourses*** on the **land question**: **i.e., free transfer or principles of private ownership Vs public ownership.**
  - ✓The discourse of **fairness & state protection** that is arguing for **state ownership** and
  - ✓The discourse of **privatization &/or efficiency.**
- The **former is the position of the government**

- In the year 1995 too, **beyond the expectation of many**, the government proclaimed land to be the property of the government and the public by **maintaining the previous policy.** ***Art. 40(3):***
  - ***Transfer of land through sale or other means of exchange is prohibited***
  - The Constitution granted a **"right to obtain land without payment" for:**
    - ✓ ***Art 40(4&5),*** *"Ethiopian peasants" and pastoralists for* ***cultivation*** *and* ***grazing*** *purposes;*
    - ✓ ***Art 40(4&5),*** there is also **protection against eviction** from possessions
    - ✓ ***Art. 40(6)*** Allowed **investors** to get access to rural land on the ***basis of payment arrangements***;

Cont…

- **Art 40(7)** every Ethiopian including **peasants**,…. have a:
  - ✓ ***full right to the immovable property they built*** &
  - ✓ ***to the permanent improvements they bring*** on the land ***by their labor*** &/or ***capital;***
- The Constitution also established **federal** and **regional government with different power with regard to enacting laws & administering land;**

  See ***Articles 46, 47, 51(5) & 52 (1) & (2)(d))***

2.3. Land Federalism

2.3.1. The FDRE Constitution

- **The division of power with regard to the land administration**

- ✓ **Art. 51(5);** enacting laws regarding utilization and conservation of land & all natural resource is the **power of the federal government.**
- ✓ **Art 52(2(d));** Allows the **administration task** **to the regional government.**
- ✓ From these provisions one may infer that ***enacting*** rural land ***utilization & conservation laws*** is ***inherent power of the federal government*** and ***administering*** it is the **responsibility of the regional states.**

- However, the **constitution** is not clear enough in specifying the **content of the federal rural land laws**, since it has ***not defined the phrase 'land utilization and conservation.***

Thus, what is Land Administration?

- The idea of **land administration** may not have universally accepted single definition;
- For many scholars the **power of the federal government to enact a law refers;**
  - ✓ defining the nature & content of property rights in land;
  - ✓ defining the conditions under which these rights can be exercised (hold, transfer, extinguish, etc rights.)

- ✓ The argument is to establish a single economic community in a country. Thus, the issues must be regulated uniformly all over the country.

➢ According ***FAO definition,*** **land administration** comprises **systems & process** to administer land like:

Land rights

- ✓ **Allocation** of land rights,
- ✓ **Delimitation** of boundaries,
- ✓ **Transfer** of land rights,
- ✓ **Adjudication** of disputes, etc.

Land use regulation

- ✓ Land use planning and enforcing rights on it.

Land valuation and taxation:

- ✓ Determination of values of land and buildings,
- ✓ Gathering of tax revenues on land and buildings,
- ✓ Adjudication of disputes that ***related with land valuation and taxation.***

❖ But, although the FDRE constitution **does not defined land administration, Art 2(2) of Proc No. 456/2005** defines **it** as:

- *A **process** whereby **rural land holding security is provided,** land **use planning is implemented**, **disputes between rural land holders are resolved** and the **rights and obligations of any rural landholder are enforced**, and **information on farm plots and grazing lands** are **gathered, analyzed and supplied to the users**.*
- This definition is more similar with **FAO** definition.
- **Regional States** are constitutionally **empowered to administer the land** & when they administer they can enact their own laws that enables them: -

Cont…

- ✓ ***To operate the rules of land tenures*** *defined by the federal government;*

- Article 17 of Proc.456/2005: Responsibility of Regions:
  - ✓ *Each regional council shall* ***enact rural land administration and Land use law,*** *which consists of detailed provisions necessary to implement this Proclamation,*
  - ✓ ***Regions shall establish institutions at all levels that shall implement*** *rural land administration and Land use systems, and shall strengthen the institutions already established.*

- **Article 97(2)** of the FDRE (state power to collect tax on land ***usufractuary rights***):

- Authorizes States ***to determine and collect fees for land usufruct rights*** with regard to their power of taxation.
- **Art. 50(9) of the FDRE const** & **Article 17 of proc. 456/2005, empowers** the federal government **to delegate** states, to perform the power of the federal government.
- However, sometimes either the ***federal government*** or ***states go beyond the power they are granted by the const***. ***For example***;

✓ The **federal** government ***enacts a detailed laws*** that ***should be left to regional governments*** and,

✓ **Regional** governments ***enact inconsistent laws.***

2.3.2. Federal Rural Land Proclamation

- The FDRE government enacted Rural Land administration & use proclamations (**RLAUP**) ***at different time***.
- ***Two years after*** the adoption of the FDRE **Constitution**, the Federal government enacted a RLAUP (**Proc No. 87/ 1997**) which **replaced** the **1975** (**Proc. 31/1975**) rural land law.
- And ***again*** Proc No. 87/1997 itself repealed & ***replaced by*** the current RLAUP (***Proc. 456/2005***) in 2005, which hereafter referred as ***FDRE RLAUP* (*Proc No. 456/2005*).**

Q. What is Rural Land?

- **Art 2**; "***rural land***" means any land **outside** of a **municipality holding** or a **town** designated as such ***by the relevant law***;
- **Art 2(2&3)** of Proc. 721/2011, lease Proc ***defines***:

✓ **2(2)** "**Urban land**' means land located within an administrative boundary of an ***urban center***;

✓ **2(3)** "**Urban center**" means any locality having a municipal administration or a ***population size of 2000 or more inhabitants*** of which ***at least 50% of its labor force*** is ***engaged in non-agricultural activities;***

- The proclamation follows the constitutional principle that ***creates free access to rural land;***
  - ***Art 5(1);*** declares that "peasant farmers and pastoralists ***engaged in agriculture for a living*** shall be given rural land ***free of charge***";
  - ***Article 5(1b***); a person, ***above the age of 18 years may claim land*** for agricultural activities;
  - ***Article 5(1c);*** **women** who **want to engage** in agriculture shall also have the **right to get and use rural land.**

- This **principle of free access to rural land** has also been **reproduced in** the **regional rural land administration and use proclamations, for e.g.;**
- **Art 5(1)** of SNNPRS RLAU **Proc No. 110/2007**;
- **Art 5(1)** of Oromia region RLAU **Proc No. 130/2007;**
- **Art 5(2)** of Amhara region RLAU **Proc No. 133/2006;**
- **Art 5(1)** of Tigray region RLAU **Proc No. 136/2007;**
- And currently enacted other regional states RLAUPs, like Beneshangul-Gumuz RLAUP, …..

- **Art 5(2);** ***family member of a peasant farmer***, Semi pastoralist and pastoralist having the right to use rural land may ***get rural land from his family by donation, inheritance*** or ***from the competent authority***.
- **Art 5(4);** ***private investors***, governmental and non-governmental organizations ***(NGO's)*** also have the ***right to use rural land in line with applicable law.***

Conditions to Access Rural Land

A. Age

- As per Art **5(1)** of the 456/05 FRLAUP):
  - ✓ Any person **who is 18 years** and **above**;
  - ✓ Almost the same rule is set under the ***above regional laws***

Exceptions:

- ✓ **Children** who ***lost their families*** by death or other conditions have the right to use rural land **until 18 years of age through their legal guardians;**
- ✓ **Women** who **want to engage** in agriculture, **Art 5(1(c)**
- ✓ The law give emphasis for women **because of customary background, to encourage them.**

B. Profession

- ✓ As per Art ***5(1)(b)*** of FRLAUP, to access rural land, **the person must have an interest to engage in agricultural activities** & ***agriculture must be his/her main means of livelihood*** or ***profession.***
- ✓ **Regional laws also stated the same provision.**

C. Residency

- ✓ This requirement is not clearly seen in the FRAUP;
- ✓ But, ***the regional laws clearly envisage it***; ***for e.g.;***
- ✓ **SNNPRS Art 5(2), Oromia Art 5(1) & Amhara** under **Art 5(2), 6 & 7(1), similarly** states that "***any resident of the region……., have the right to get….***
- ✓ **Tigray Art 5(1(d)) *"any citizen of the country";***
- ➢ **Thus, can we say that living in a rural area (residency) is a requirement to acquire rural land under Proc No *456/05* & under the FDRE Constitution? Why/why not?**
- ➢ The **rationale seems *shortage of agricultural land & population pressure*;** the law **not** intended **to give** land to those ***who live elsewhere*** (***absentee owners***) and ***those who earn income from other professions.***

- What are the ***critics of the residency requirements*** in the **regional rural land laws,** to access rural land use right?

Critics:

1. **It doesn't go in line with** the **Constitutional & FRLAUP principle** of **free access to rural land;**
2. **It locks down peasants on their own land instead of searching optional profession & additional income by staying in urban areas for longer period.**

3. **Regional states are abusing the requirement by misinterpreting nativity as a requirement' & denying land rights** to those who come from other regions, **for example:**

- ✓ In **2012** from ***SNNPS*** **(Bench-Maji, Gura Farda)** rural land holders who had migrated from different part of the country ***were evicted by the government authorities*** by saying that they are "**illegal settlers**."
- ✓ And **in 2013** from ***Beni Shangul Gumuz region*** a number of people were **evicted** and **expelled from their holding** by **justifying that they are the resident of other regions.**

Nature of Rural Land use Rights

- RLAUPs ***uphold the constitutional principle*** that ***denies private ownership to land*** and hence, it provides farmers only a "**holding right**".
- ***As per* Art 2(4) holding right** *is,* ***"the right of any*** *peasant* ***farmer*** *or* ***semi-pastoralist*** *and* ***pastoralist;***
  - ✓ **To use rural land for purpose of agriculture and natural resource development;**
  - ✓ **To lease** and **bequeath to members of his family or other lawful heirs;**
  - ✓ **The right to acquire property produced on his land thereon by his labor &/or capital;** and
  - ✓ **The right to sale, exchange & bequeath the same."**
- The same definitions provided **in the Regional RLAUPs**;

- From this we can understand that, peasant farmers will have all the rights of an owner, ***except the right to sale & mortgage***.

Duration of rural land use right

- As per **Art 7 (1)**, Rural land use right of ***peasant farmers***, ***semi-pastoralists & pastoralists*** shall have **no time limit**.
- **This gives tenure security** to the holders, ***since the use right is not threatened by time limitation.***
- **Art 7 (2),** the **duration of rural land use right** of **other holders (like investors)** shall be determined by the rural land administration laws of regions.

2.4. Means of Acquiring Rural Land

Q. By what sources (modalities) a person *who fulfilled the legal requirements* stated above can acquire a rural land use right?

A. Government Grant

- The government, through its different land ***administration bodies can grant rural land*** to those who are in need of it.
- ***From either unoccupied state land, Communal land, Land left without heirs & abandoned lands.***
- Or, **by conducting land distribution** after ***getting the consent*** of the **holders**, ***except irrigable land in some regions,*** *currently this is not possible*.

B. Inheritance &/or donation

Q. How a rural land use right can be acquired through inheritance & donation?

❖**By being a family member.**

❖***Proc No. 456/05***, Art **2(5)**; **states two requirements:**

✓**Residency element**; permanently living with the farmer under the same roof, &

✓**Management element; he *must totally rely*** on the **peasant farmer for his life** and **have no other income of his own.**

- Thus, a **laborer/servant/, who has no blood relationship** with the peasant may be considered as family member & **legible for inheritance.**
- On the other hand, **it is not possible** to inherit or donate rural land to **one's children who live elsewhere & engaged in other professions.**

- The **rationale** behind such law seems that, **since land belongs to the state** & the people and **not a private one**, **it has to be transferred to those who are in need of it**, **irrespective of their blood relations.**
- However, as per **RFC** of Ethiopia, **family members** are those who have an attachment with the person by **marriage**, **blood** or **adoption.**

Q. See your own regional rural land laws & come up with the concepts how it permits acquisitions of RLUR?

2.5. Transfer of Rural Land Use Right

- ✓ **Sale** is one of the main means of transferring real property, but **currently land is not subject to sale** in Ethiopia as per the edicts of **Art 40(3)** of the FDRE Const. ***because private ownership*** of land was **abolished since 1975** & **land belongs to the state & people of Ethiopia.**
- ✓ **Land is a common property** of the Nations, Nationalities, and Peoples of Ethiopia and hence **not subject to sale, exchange, or mortgage.**
- ✓ This signifies that the **state & the people have equal ownership right over it,** but ***practically farmers*** are exercising ***only usus & fructus rights,*** but s/he is ***not permitted to abuse it.***

2.5.1. Modes of Transfers

A. Rent /Lease/

- ✓ Art **8(1)** of Proc **No. 456/2005** reveals that:

"Farmers, semi-pastoralists & pastoralist ***who are given holding certificate*** *can* ***lease/rent*** *the land to* ***other farmers or investors*** *from their holding of a size sufficient for the intended development* ***in a manner that shall not displace them***, ***for a period of time determined by*** *rural land administration laws of the* ***regions***."

Cont…

➢ The ***general conditions to rent/lease contract are:***

1. Holding certificate:

- A farmer who wants to lease the land **must show that he has holding certificate issued** from the competent authority & ***without it there is no lease/rent rights.***
- But **pastoral lands are not registered** and hence, no certificate i.e., **no renting rights**.

2. No-eviction requirement:

- The **lease right is to be exercised** in a manner that ***does not displace the farmer*** from his livelihood source/**land.**
- Thus, the **lease rights can only be exercised** with regard to a **portion of the holders land**.

Cont…

- To this the ***minimum size to be determined by the competent authorities of each regions***.
- In the **highland areas** of Ethiopia this right does **not exist**, because of ***high fragmentation of land***.

3. Period of lease

- The period of lease is **not left for the contracting parties**, but is to be **fixed by the competent authority**.
- Hence, the ***regional land administration authority determines*** **how long time** a farmer should **rent his land to other farmers** or **investors**.
- But the law **laws differs from region to region.**

- **For instance,** the **SNNPRS Proc No. 110/2007** under **Art 8(1(a-d))** states that:
- ✓From **peasants to peasants**, the **duration of rent** of rural land shall be **up to 5 years.**
- ✓From **peasants to investors**, the **duration of rent** shall be **up to 10 years**.
- ✓From ***farmer to investor/s who cultivate perennial crops*** **duration of rent** shall be **up to 25 years.**
- ✓These **land shall be returned to the right holder** when the **duration comes to an end based on civil code.**

Cont…

4. Consent

- The landholder must secure the consent of all the members who have the right to use the land.
- All persons **who are of age** & ***sharing the livelihood by living & working with holder*** **must give their consent** ***with husbands & wives*** to the **agreement** .

5. Registration

- Finally, the **competent authorities must register the contract.**
- And hence, the **customary rent** which is quite prevalent in the nation is hereby **illegal**.
- Therefore, **all these preconditions must be fulfilled** to rent out rural land, **which practically destroys the rent right.**

B. Transfer through Inheritance

- **Art 8(5)** of Proc No. **456/2005** states that ***"any holder shall have the right to transfer his rural land use right through inheritance to members of his family and by doing so s/he ensures the benefits of the heirs properly."***
- **Inheritance** is another mechanism of transfer of land use right of the deceased person/s to those whom the law designates as heir ***by operation of law or by the will of the deceased that does not contradict the laws***.
- The farmers in Ethiopia are given the power to transfer their rural land holding right through **inheritance**.

Cont…

- But the **1960's Civil Code** provides:
- Under **Art 2410(1)** the **provisions applicable to contracts of sale shall apply** where a person transfers his **usus right of land for consideration**.
- Art ***2410(2)*** the obligation of the seller to transfer the ownership of the thing shall in such case be replaced by the ***obligation to transfer the usufructuary right***.

➢ On the other hand, in the Ethiopian **law of successions** there are ***two types of successions*** that are **regulated by different laws** i.e. **intestate** and **testate succession**.

Cont…

- **Intestate succession** requires the **estate** of the deceased to be **devolved b/n the heirs by the operation of the law** in a way that reflects the presumed intent of the deceased.
- On the other hand, in the case of **testate succession**, **the estate of the deceased person devolve b/n the lawful heirs in accordance with the will of deceased** person **Art 857(1)**, unless the will is **subject to invalidation** because of different defects.
- Today although the **farmers** do not have the ownership right over their holding, they **have the right to transfer their holding right through inheritance.**

Cont…

- ♥ Who is an **eligible person to inherit** the **land use right** of the deceased farmer?
- The **heir** are stated under **Art 2(4)** of the FRLAUP.
- Hence, it **includes family members & lawful heirs**.
- If we **interpret it strict anybody who is living permanently with the holder of the land & share his/her livelihood can inherit the deceased person.**
- As per this provision, the **major criteria is not blood or affinity relationship,** but the **concerned persons living with the holder depending on the income of the holder.**

Cont…

- The **other persons who can be competent to inherit** the deceased persons holding are **his/her lawful heirs,** as per **Art 2(4)** of the **FDRE RLAUP**.
- The meaning of **lawful heir** is **not** provided in this same Proc mentioned here above.
- Hence, we need to **go to the civil code so long as the latter law has not repealed it expressly**.
- The **Civil Code** it self instead of giving definition of **lawful heir,** it rather **stated the conditions that needs to be fulfilled in order to be lawful heir**.
- These are, **close blood relation, surviving the deceased and lastly not found to be unworthy**.
- Therefore, **anyone who fulfils these conditions is said to be the lawful heir as per the C.C.**

Cont…

- Some of the **salient features of the FRLAUP in relation to inheritance** are:

✓ **If inheritance causes fragmentation** of **land size** how the heirs can inherit?

✓ Can we **oblige them to use the plot jointly** or by other means other **than splitting it**.

✓ But the regional **laws provide the specific size beyond** which **parcelization of land is prohibited.**

✓ For example, **inheritance** should ***not take place in the manner that results in*** **parcellization of land *below* (0.25), (0.5) & (0·75) hectares** in **Tigray, SNNPRS & Oromia Regional States RLAUPs** respectively.

- **Art 2(16)** of the **Oromia** RLAUP No. 130/2007 states that **family members** are **children** of the land holder or **dependents** who do not have other income for their livelihood.
- However the **Tigray** RLAUP No. 136/2007 has ***no clear family member definition,*** but **Art 17(2) states that** land ***can be inherited up to the second degree*** (**ascendants of the deceased**).

- Accordingly, **minors get priority;**
- **If there is no minor/s,** the **children's** & **adopted Childs** who attained majority age & have no land;

✓However, children who resides in town and those who derive income other than agriculture will not be legible for inheritance.

Q. Can a servant inherit the land as per Tigray RLAUP?

Q. How do you see the Regional RL laws with the Federal RL law in case of Intestate successions?

- **Proc No. 456/2005, doesn't state the situation** of inheritance during intestate succession.

Q. Does this means that in such case can we apply the succession part of the civil code?

- However, the **Amhara regional state** RLAUP **Art 16(1)** & ***Regulation No. 51/2007* Art 11(7)** goes beyond the FRLAUP & **allows inheritance by will** & also **intestate succession to any farmer who engaged in agricultural work.**

- The **holder** of the rural land **can bequeath** it by **Will to any farmer engaged or likely to engage** in agricultural activities, **Art 16(1).**
- **However, in case of intestate succession, Priorities should be given**:

✓First **minor children;**

✓If there is **no any minor,** then **family members;**

✓Children of full age who have no their own land;

✓Children of full age who have their own landholding based on their land size;

✓In their absence, **parents**

- But **all are required to show their interest to engage in agricultural activities.**

Q. But today what are the practice of our courts?

C. Donation

- Is another method whereby land holding right is transferred from the holder to another person.
- It is regulated under Title XV, **Chapter 3 of the Civil Code as well as** the **rural land laws**.
- As per **Art 2427** of the Ethiopia C.C., **donation is a contract whereby a person (donor) gives some of his property or assumes an obligation with the intention of gratifying another person (donee)**.
- It is a **voluntary transfer of property without payment or consideration by the donee.**
- It is very connected with ownership, because to some extent it characterize absolute power of an ***owner over his/her property.***

Cont…

- However, **ownership right over property is not a necessary requirement to transfer** his/her right by donation, i.e., **one can donate servitude right, usufruct right, or the holding right.**
- A person who wants to donate may make either an **intervivos** or **mortis causa** donation (**Art 1205**).
- A donation is **intervivos**, if **it** is b/n **living donor** & **donee;** & if the donor intends the **donation**/gift to **take effect immediately or on agreed date**.
- On the other hand, a donation is **mortis causa** if the donor makes in **anticipation of his/her her imminent death /going to die/**.

2.6. Large Scale Agricultural Investment or Land Acquisition (Grab) in Ethiopia

Q. Why we say large scale agricultural land acquisitions as a 'land grabbing?

Reasons:

- ✓ It is grab **in the eyes of the locals**, *for its acquisition without proper participation of them*;
- ✓ It's not based on free, prior & informed **Consent of the losing people;**
- ✓ It causes **them to** loss sustainable **livelihood,** and
- ✓ It damage the **cultural values** of the **loser**.
- ✓ The **locals** consider it as a **'life grab.**'

Debate on the issue of LSAI

Against /Opponents/

- ✓ **Forceful** expropriation or invasion /land grab/.
- ✓ Accompanied by **eviction** of rural poor's that is **violation of HRs.**
- ✓ **Robbing** land which is a sole source of livelihood for poor's.
- ✓ **Contrary** to the customary land rights.
- ✓ The land is **used** largely for **bio fuel** production.
- ✓ Results environ'l damage; (forest clearing, water crisis, wildlife impacts), & so on.

For /Supporters/ of LSAI

- ✓ A means of economic development.
- ✓ Source of **Technology Transfer.**
- ✓ **Boosting** food security nationally & globally.
- ✓ **Sources** of employment.
- ✓ **Source** of export earnings.
- ✓ **Over all** national development.

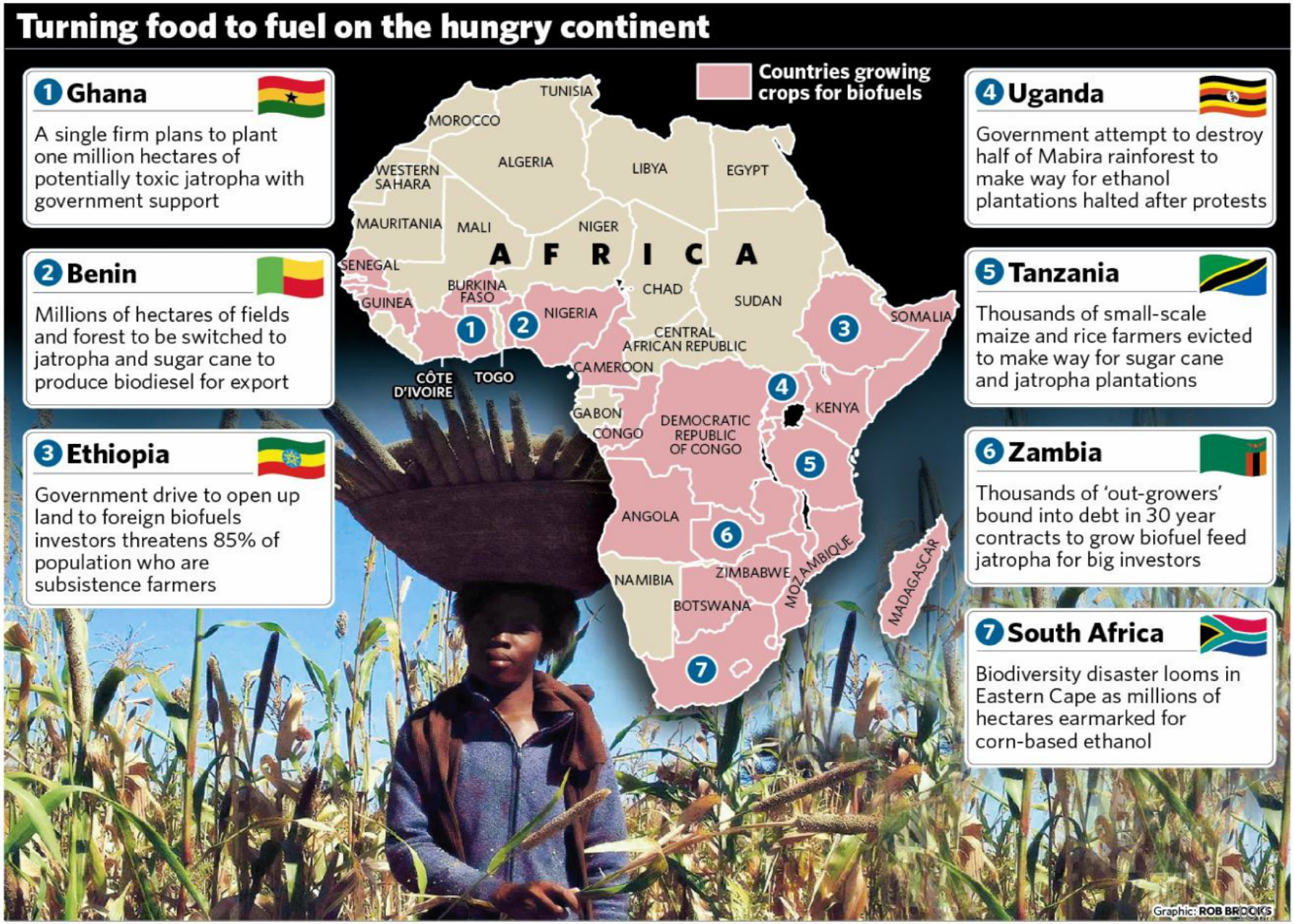
Causes of land grab:

- Global **food security** concerns.
- The international **financial crisis,** because of collapse in mortgage and stock investment.
- **Changing food habits** (animal based diets).
- **Increase in world population**, climate change and **massive urbanization**.
- **Weaker land governance** making way for easy access /acquisition/ of land in the **host state.**
- **Globalization**, the **liberalization of land markets** and the **worldwide boom in FDI** can all be cumulative factors.

Sources & Destinations of the Investors:

- **Investors** come from **Arab**, **India, china** and to some extent **European countries**.
- **Host nations** are **3rd world countries**, mainly **Africa** e.g. ***Ethiopia, Tanzania, Sudan, DR Congo, Mozambique, Madagascar***, etc).
- A **million hectares of land** taken **globally** & **Africa shares the lion part** of **bio-fuel production.**
- **Public ownership of land** is the **main cause** for grabbing or
- **Unregistered** or **unrecognized customary** rights,
- **Inefficient land administration institutions** in the **host states**, etc.

Countries & the purpose of their land grab



Cont…

- The Ethiopia government has put over 3.3 million hectare of land in its **Land Bank** by saying that it is ‘**unused', 'under-utilized’, bare or state land** located in **lowland areas.**

Land Types & its access ways

Private holding (PH)	Communal (CH)	State land	Lease
Rural land, majority of people fall here	Rural land	Any land which is not PH and CH	Urban land & rural land (FDI)
Free grant	Common use	Under government	For defined term
Usufruct right	Distributable	Pastoral land	Acquisition mode is contract
Limited transfer	Pastoral land	Unregistered	Can be mortgaged
Registered & certified	Land Bank	Land Bank	Transferable
Can be expropriated	Insecure use rights, FDI	Insecure use rights and FDI	Secure rights for both Urban & FDI

Land selection Criteria for LSAI:

- ✓ Based on **soil suitability**, **water availability** and lack of human settlement;
- ✓ FDRE constitution mandates regional government to administer their land, however now **if the land size** is **more than 5,000 hectare** it **delegates its administration power to federal government**.
- ✓ A **regional state selects the land & sent it to the land bank** under the federal gov't & the under MoA **FLAA** (federal land administration authority), which administers it and ***enter contract*** **with the investors** who need **more than 5,000 hec.**

The problems are:

- ✓ The **lease agreement, its nature & negotiations are secret;**
- ✓ The **public participation** is **nominal**; ***E.g.*** **Karaturi Agro products Ltd and MoA.**; lease contract of **300,000 hectares of rural land** for **50 years** for **20 birr rent per annum** (approximately **1 USD**) in **Gambella region**.
- ✓ By the guess of it **large size of land is granted for a long period of time;**
- ✓ The investors **use the land for other purpose**;
- ✓ **Rivers & underground water** are unfairly used;
- ✓ **Contractual obligations are not clear;**

- ✓ No one **cares for the land** & other NR;
- ✓ **Weak/no EIA**;
- ✓ The contracts are **very lax**, or it **unduly favours the investors;**
- ✓ **Low price;**
- ✓ No employment;
- ✓ Compensation are either empty or insufficient;
- ✓ **Human rights** and **environmental concerns** are **neglected**;
- ✓ Lack of controlling/enforcement/ mechanism;
- ✓ **Lack of transparency** and **check and balances** in contract negotiations and control.

What is Recommended?

- **Fair compensation** that enables sustainable livelihood income;
- **Registration of community land** there by **certifying** and **compensating** them;
- **Full & free participation** of the affected group;
- **Taking in to consideration of human rights** concerns;
- **Strengthen institutions** of **rule of law;**
- **Prior conduction of EIA**; &
- Finally, **these all will bring responsible governance of land.**

3.1. Urban land regime & lease System in Ethiopia

- During the **imperial regime** **urban land was privately owned.**
- Individuals can **freely access it** **from the owner.**
- Even **foreigners** are ***entitled to lease urban land*** from the proprietors; ***that rose the land values*** of Addis Ababa in the first decades of the 20th C.
- That resulted **urban lands to be owned by a few person's** & majority of urban dwellers **rentees**.
- There is an **arbitrary rent price** and **evictions** at the **will of the renters** that **aggrieved the urban /A.A/ dwellers**.

- During **Derg time** all **urban land** & **extra-houses** are **nationalized** by the Proc **No. 47/1975** ***(Government Ownership of Urban Land & Extra Urban Houses).***
- Hence, **all extra houses, industries, hotels & buildings for rent** had been **nationalized without compensation,** along with the **rural land.**
- **Rationale:**

✓ To **bridge the wide gap** in the **living standard** of urban dwellers ***by appropriate allocation*** of ***disproportionately held wealth & income***; and

✓ **To eliminate the exploitation of the many** by the few.

- Hence, **persons with many houses** had been allowed to **retain only one house of 500 m² land by s/he choice at one specific municipality** in the county, restricting free transfer of the same.

Q. What is its effect?

- Cities were ***on hold of development for the whole duration of the regime,*** because the law seen as a wave of shock for urban people to construct or invest in housing.

3.2. The Lease System

✓ **Since 1993** urban land is under a **lease system.**

✓ The **first lease proclamation was enacted in 1993 two years before** FDRE Constitution enactment.

- ✓ **Access to land** is **via grant, auction** or **permit**.
- ✓ The aim is **to alleviate dwelling house problems** & **develop the cities by generating revenue**.
- ➢ The 1993 **lease proc** was replaced by the 2002 lease proc No. **272/2002**, which again repealed by **Proc No. 721/2011, now** which governs the urban land Lease system.
- ➢ The aim of the law is:
- ✓ To increase the value of urban land;
- ✓ To avoid the permit system of land acquisition, which was **open to corruption;**
- ✓ To **transfer the land** by **open tender;**

- To encourage investors to venture on a business that develop urban land by giving secured land right.
- **All holdings prior to the enactment of the lease proc** are also required to **convert** in to a lease system **with in 5 years, since 2011.**
- Hence, **new acquisition of urban land is possible via tender & allotment.**
- Via **tendering, the highest bidder gets the land.**
- The lease right is **renewable** at the **expiry of the lease duration specified by the law.**
- The **longest duration** fixed for dwelling house is **99 years.**

- It is **mandatory** that the ***land has to be utilized for the agreed purpose***, even after transfer, if any.
- **Practically it prohibited** transfer of **bare land, initial & half constructions.** The **rationale is**:

✓ **to avoid profit** from it by **speculation** & to have a ***prudent & responsive land management***.

➢ **In case of allotment,** the **price of the lease is determined by** the **competent body**.

- **Once** if the lease **contract is signed** and a lessee **get** a **leasehold title**, then s/he has **multi-fold rights: i.e.,** s/he **can attach the holding as a surety** or s/he **can contribute it as a capital to the extent of the lease payment s/he made, etc.**

Cont…

- The **Proc** includes different **restrictions**.
- Under **Art 4** ***it prohibits any other holding of urban land except lease-holding.***
- It prohibits **invasive** ***enclosure*** & ***use of any other plot of land adjacent to one's lawful possession***.
- The **law intended to convert the old holding and regularize informal settlers** in order ***to regulate*** **the cities.** But **not yet, because majority of they are extremely poor** in order to take the lease price into consideration.

Cont…

- The appropriate bodies before putting the land on tender **must ensure that:**

✓ The land is ***free from any legal claims***;

✓ Have ***access to basic infrastructure***;

✓ Are ***parceled, demarcated, assigned with unique parcel identification number***; and

✓ Have **site plan** & other development requirements.

- The **tender should be prepared & advertised to the public.**
- Hence, **anyone interested can take part in the tendering process** by **buying bid bonds** & the **highest bidder wins it.**
- However, the ***bidding has soared land prices*** making it even ***inaccessible for the middle-class society***.

➢On the other hand, **urban land allotment** is **done *for***:

- ✓ **Office premises,**
- ✓ **Social service institutions,**
- ✓ **Places of worship,**
- ✓ **Manufacturing industries, and etc**.

- The **lease contract shall include:**

✓ **Construction start up time, completion time, payment schedule, grace period, rights and obligations of the parties as well as other appropriate details,** immediately followed by a **lease-holding certificate.**

✓ The **constructions** have been **divided into small, medium & large construction**, which has ***different completion periods of 24, 36 & 48 months,*** respectively.

✓ **Completing within the prescribed period is an obligation** & **failure to do so has devastating consequences** including the **taking back of the land**.

- If one is **aggrieved by the decision** of the government **taking back the land**, **the only place to appeal is administrative tribunal, not the regular courts.**
- The appeal from the decision of **administrative tribunal** goes to the **appellate tribunal**, the **decision of which is final.**
- The law permits **appeal to the regular court only the compensation issue** & the decision of such court shall be **final**, as well.

- The **incomplete transfer of constructions** also results in **severe indirect penalties**.
- From the government side, the **purpose** of this cumbersome law is **to deter land speculation**.
- **All in all, the new law is more restrictive than its predecessor.**

3.3. Urban Land Transfer: Beyond Lease System

✓ **The informal land transfer is happening and encouraging illegal settlement especially in peri-urban lands.**

- ✓ Land is often **purchased** through **illegal contracts (informal land deal)** and **houses are constructed** outside the official legal means, called '**yecherqa bet' (squatting settlement).**
- ✓ **The hope of buyer** is the city or the town in question would soon expand to it.
- However, the **purchasers are supposed to be registered** at the **rural kebelle as a proper landholder via corrupt means.**
- Then it is all about **waiting for the municipalities to expand the city territory.**

- Where the land is already within the city, **the long procedure of legalizing the land shall be awaited** and it often happens as a result of **political decisions during the time of elections.**
- After the decision to enclose the pre-urban lands to municipality, the long and burdensome legalization process may commence.

How urban Land Right can be Terminated?

✓ Upon the **expiry** of the **lease period if not renewed,** and/or

✓ **If the land is needed for public purpose.**

Chapter 4

4. Registration of Real Property /Land Rights/

- **Professor Jo Henssen** defined **Land registration** as: a process of **official recording of rights in land** **through deeds or as a title on properties**.
- It is **an official record (registration of rights on land)** or **of deeds** concerning **changes in the legal situations on the defined units of land.**
- It **answer** **the questions who & how.**
- ✓ Land registration **answers the question who,** because **it recognizes ownership title.**
- ✓ And also it answers the **question how, because it states the manner by which the ownership title transfer from the previous owner to the new one**.

4.1. Rural Land Registration and Certification Process in Ethiopia

- Ethiopia has vowed to **register all rural land** available in its different forms since the beginning of the new millennium.
- The registration effort in fact **started in 2003** with a **plan of completion by 2010.**
- In addition, it is **planned to be cost-effective** and **has to deploy local personnel, traditional tools, and customarily available know-how.**
- Hence, the registration process is supposed to be **done in two levels, i.e., first and second-level of registration and certification.**

4.1.1. Rural Land Registration

- The **first-level registration and certification** of rural land has been **done by using traditional instruments and local human labor**, in other words, **using robs, eye-guess measurement, etc.**
- The ***second level of registration & certification*** is to take place after the first-level is **completed by using modern equipment, like GPS.**
- Hence, the second level of registration and certification involved **modern cadastral survey** registration processes.

Cont...

- As far as the **first level registration** is concerned, **all the major regional states** have registered a **good level of success**.
- Some of the **regions** have even claimed to have **completed the first-level registration and certification process**.
- **Thus, the majority of Ethiopian highland farmers have gotten their land registered in traditional ways & have received certificates thereto.**

Cont...

- The **traditional registration** **of rural land has been praised on two counts; i.e., on its total volume** & **its cost-effectiveness:**
- The **registration** has been **taking place on a large scale** & a **big success has been registered by regional states.**
- The **registration cost** is also the **minimum**.
- It ***reduced land related conflicts emanating from boundary issues, inheritance rights,*** & so on.
- The **registration** ***commences at kebelle level with the awareness raising*** effort as to the need for land registration & certification & election of land administration committee **(LAC) members.**

Cont...

- ✓ The process secures by **local participation.**
- ✓ **Dessalegn Ramahto** confirms: **for peasants, the process begins with an announcement in the *kebelle*** calling on all landholders to attend a meeting on a specific date to discuss land & tenure issues.
- ✓ **At the meeting,** peasants are asked to ***elect four individuals from each gotts (precincts)*** of the kebelle to the Land Administration Committee.
- ✓ **LAC members & the officials from the district make all necessary ground work to undertake the** registration and certification works.

Cont...

- The registration is done **via kebele LAC in the presence of the landholder & all adjacent landholders after it being measured.**
- Thus, the plot is measured by ***using robs or other traditional measurements /tools/*** & other details are taken on the spot. **The details include:**
- **The name of the landholder & the spouse, names of the family members, names of the adjacent landholders, size of the plot, grade of the land (fertile, less fertile or barren) & finally the address of the plot.**

Cont...

- Accordingly, **temporary certificates will be issued right away** & **these facts will be transferred to the district authorities for the preparation** & **issuance of the holding certificate** (**green book**).
- The **certificate is issued jointly in the name of the husband & wife where the land belongs** to **couples**.

➢ Regional states have also started **experimenting with second-level or second-phase land registration** by way of pilot projects using **foreign donors' help.**

➢ This is done **by using GPS** and other modern equipment and in a **computerized way** as well.

Cont...

- **To start up the registration, first boundaries of kebelles were identified.**
- The certificate is given to the landholders after measuring the land (**each plot**) held by the land users; **there might be more than one plot of land held by the farmers.**
- However, **if the size of the plot is less than a quarter of a hectare, no certificate shall be issued, but** the simple fact will be **registered in the land registry /big book/.**
- Every plot is measured from **four corners** naming all landholders neighboring to the land being measured at the four angles.

4.2. Steps in Rural Land Registration Processes

- There are ***several steps*** involved in the registration & certification of rural land.
- The following are its **steps**:

A. Awareness Creation

- The **first step** in the land registration process is **awareness creation for the holders** by the concerned land administration organ.
- The **teaching** is concerned with **the need for the land registration & certification process.**
- The **merits of registration is duly communicated to the landholders.**

Cont...

- Awareness of the fact that land rights are ***very insecure*** in Ethiopia, owing to the frequent **redistribution** of land that happened during the **military junta,** & the aim of this registration is in order to **attain tenure security & serves as a guarantee against future doubts on the holding.**
- Thus, once the **ground-clearing job** is done, landholders are **encouraged** to **apply to the LAC for the registration.**
- For this purposed some regions **trained LACs** while others used **high school students**.

B. Plot Identification and Fact Gathering

- **Upon application of the landholder, LAC takes all the necessary facts that are required to prepare** the certificate of landholding. **Such details like:**

✓ **The names** of the holder, family size, name of the spouse, names of the adjoining landholders, size of the plot being registered and measured, and grade of the land shall be taken.

✓ All **farmers are encouraged to apply for the registration of their land.**

✓ It is often the case that landholders are **taught & encouraged to negotiate ahead of time** matters that affect or influence neighboring landholders' interest.

C. Temporary Certification

- Based on the facts gathered from the field, a **temporary certificate will be prepared and issued to** the landholders.
- Nonetheless, **complaints will be received for one month.**
- Thus, **any** interested party with **complaints concerning his or her property** interests can approach the administration.

D. Public Hearing

- Once the temporary certification is issued, such fact will be **posted on the sub-district office for one month**, and such complaints will be received.
- If there is any complaint, a **public hearing will be conducted to solve the matter.**

E. Registration

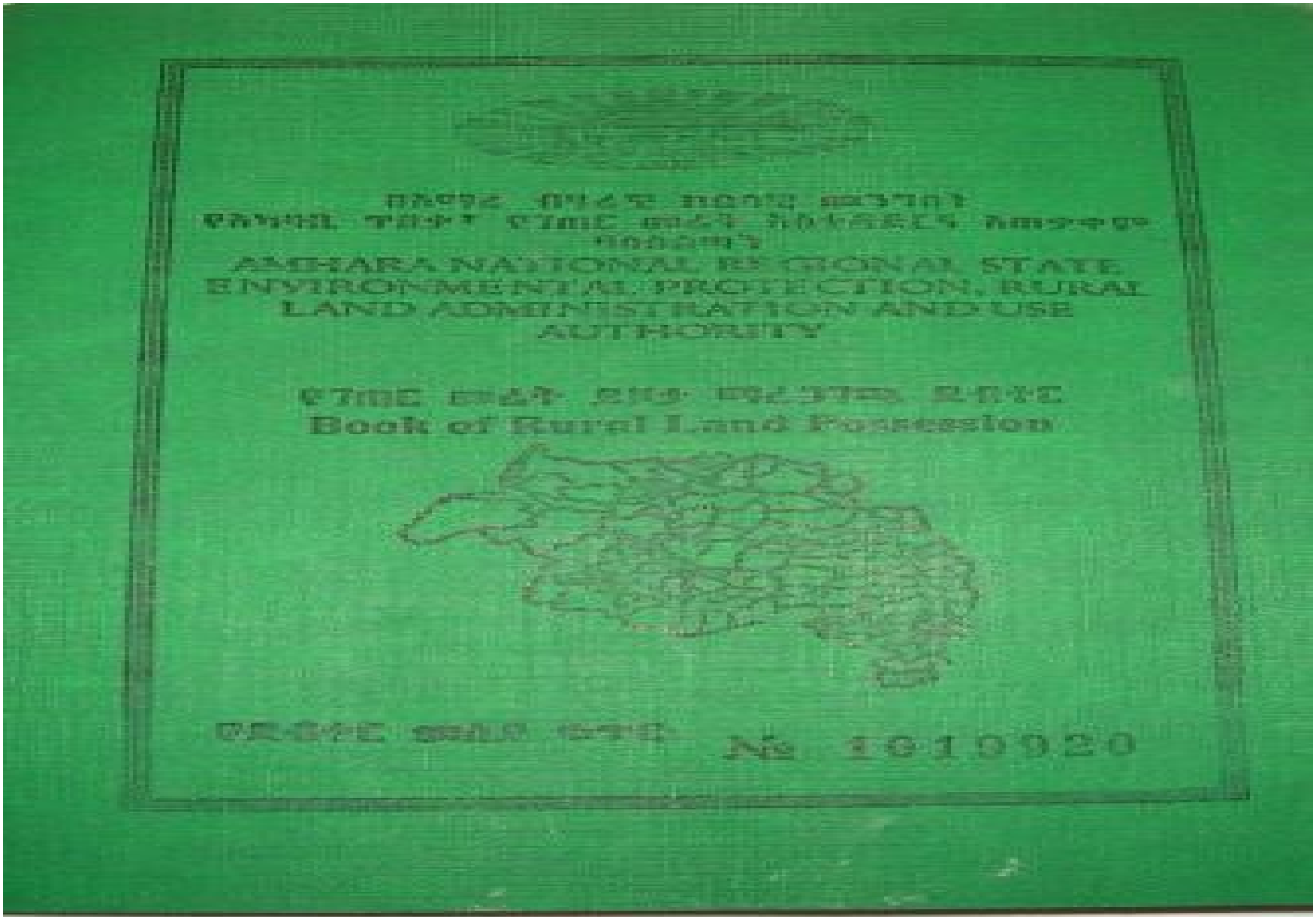
- After settling complaints, if any such facts mentioned in the **primary certificate** will be entered in **public records** or land registry book.

F. The Green Book

- Based on the details in the **public records** **a green book, which entitles the holding rights prepare by the district office & issued to the landholder**.
- This book **contains the name & picture of the owners**, **list of family members** & other details collected by LAC, as well as basic rights & obligations according to the law.
- It also contains the **official certificate of landholders' right to use the land, the primary certificate.**

♥ **But the second-level registration involves cadastral survey & modern computer software.**

Cont…


AMHARA NATIONAL REGIONAL STATE
ENVIRONMENTAL PROTECTION, RURAL
LAND ADMINISTRATION AND USE
AUTHORITY
Book of Rural Land Possession

Cont…



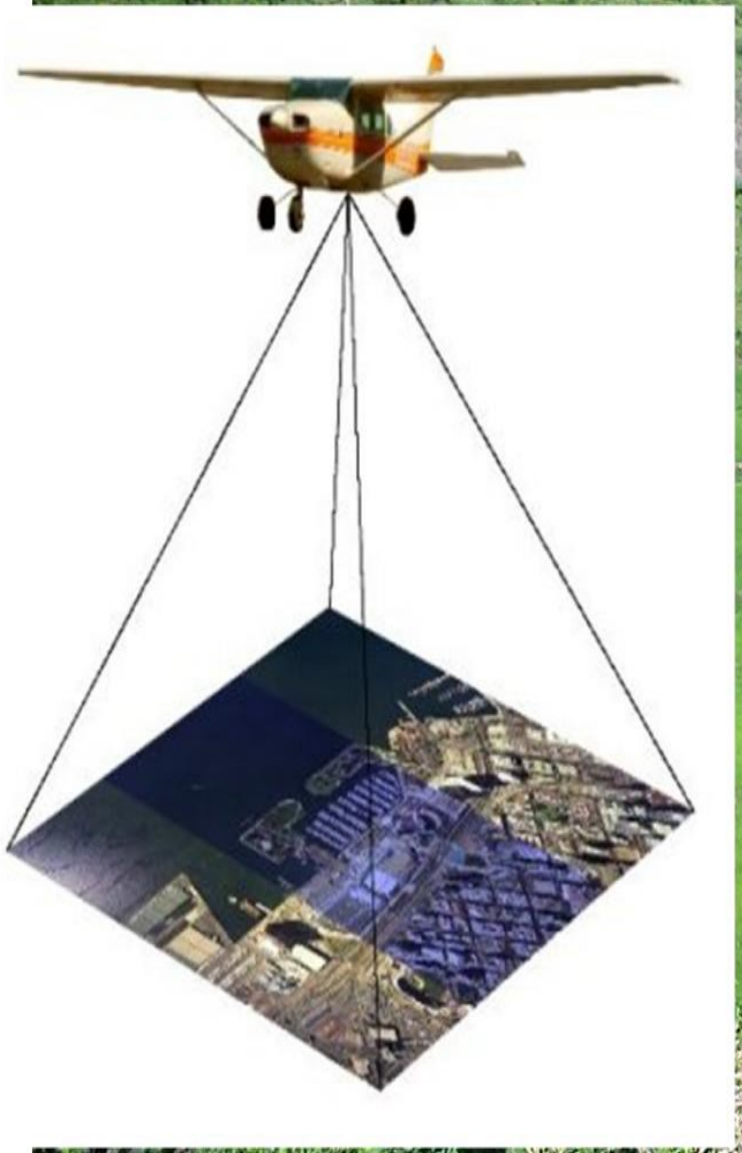
4.4. Benefits of Registration & Certification

- The benefits of the registration and certification process are:

✓ It **may enhance the land renting market,** thereby increasing **investment in land & sharecropping** practices**;**

✓ **It increase the ability to receive compensation if land was taken away by the gov't;**

✓ It **benefits women**, because it strengths their tenure security on the land they hold individually, or along with their husband so long as the **holding certificate make them the joint holder**.







4.5. The Need for Registration

➢ **Land registration laws are needed to:**

- ✓ **Create the institutional authority** that is responsible to administer the land.
- ✓ **Establish systems & procedures** for land transfer and registration of other interests in it.
- ✓ **Specify if the land titles** are to be guaranteed by the government (**e.g., in case of compensation**).
- ✓ **Art 1567 of the 1960 C.C states that; all acts, public or private** made **inter vivos** or **mortis causa** purporting **to recognize transfer**, **modify or extinguish the right of ownership** of one or more persons **over an immovable shall be entered in the register of property.**

Cont…

- So, **register of property** means **recording of acts like contracts, which establish** transfer, modify or extinguish ownership right over land or building.
- But we should understand that the interest or right over an immovable is not only ownership; it can also be other rights such as, **use right & possession**.

What acts are required to be registered?

a. As per **Art 1567-68,** Acts of ***sale, donation, contribution in a partnership, partition of land & contracts creating joint ownership***; or

b. Acts of heir or legacy in a **succession** relating to an **immovable** & the **judgments** which pronounce the annulment, revocation or dissolution of those acts; or

c. Judgments which pronounce sale by auction of immovable as a **result of attachment by creditors**.

Cont…

❖**Some other rights that are required to be entered in the register of property are stated under Art 1569**; These are:

- ✓ **All acts** purporting to create, recognize, transfer, modify or extinguish the **right of bare ownership** or **usufruct** or **contractual restriction** or **servitude** over an immovable's.
- ✓ As per **Art 1570** **legal actions which aim at obtaining a judgment recognizing, transferring, dissolving or extinguishing the right of ownership or another right in rem** over immovable's shall also be entered in the register of property.

Cont…

Art 1571 Leases & acts concerning rents

- The following ***shall be entered*** **in register of property**:

a. **Leases** relating to a dwelling-house or apartment, **concluded** for a period of more than 5 years; or

b. **Assignments of rents** for a period of **more than 3 years**; and

- Thus, all types of acts related to **ownership** & rights other than ownership (**leases & court judgements**) relating to immovable's are registered in the register of property.

Cont…

Art 3041 Register of Mortgages

- **Mortgage** is a system by which **debtors** may borrow money **by giving their immovable as a security.**
- Actually in Ethiopia, **it emanates from contract and the law or court judgment**.
- Its **nature, formation or attachment & effect** will be discussed in your **security device** & **general property law** courses, **because under the current legal system rural land can't be mortgaged.**

Cont…

Art 1575 Registration of immovable's

1. **Every** immovable existing within the district shall be registered in the register of immovable's **under its number in the cadastre, and a leaf be assigned to it.**
2. **The** register shall **contain**, **on each of its leaves, a summary description** of the immovable like, the **area, location, boundary, description, and level of fertility**.

- But **currently green book** is given for all rural land holders.

Cont…

- **Art 1576 Conformity with cadastra1 survey plan**

1. The **registration** & **description** of each immovable in the register of immovables shall **be made according to the measurements & indications of the cadastral survey plan.**
2. The register of immovable's shall **be kept in permanent & absolute conformity with the cadastral survey plan.**

4.5.6. Land Registration Authorities

- The Civil Code has the following say on **institutional set up of real property registration in Ethiopia:**
- **As per Art 1553;** registration of immovable property shall **be kept in each Awradja Guezat of Ethiopia, by the keepers of registers of immovable property.**

Art 1554; Organization of the Registers

1. The **appointment, the status of the keepers of registers, organization & regularity of their functioning** of immovable's shall be as prescribed by the Ministry of Agriculture.
2. It shall take the necessary measures for the keeping and the conservation of' registers of immovable property.

Cont…

- But today, **it was totally changed and the authorities of registration of real property are different for rural & urban land.**
- As to the **rural property**, the federal land administration and use proclamation makes it clear that **the regional governments can establish authorities for the purpose**.
- While **the registration of urban lands are handled by municipalities of each town.**

Chapter 6
6. Land Consolidation

6.1. Introduction

- Land consolidation **is a planned readjustment and rearrangement of** land **parcels and its title.**
- **It is usually applied to form larger and more rational** land **holdings.**
- It **is the reallocation of parcels with the aim the landowners to obtain larger parcels at one or more places in exchange of their former smaller and fragmented** land **plots.**
- **The word "**land consolidation**" comes from the Latin "commassatio" (grouping).**
- **It is** an effective instrument for rural development.

Cont…

- It can also be used to improve the tenure structure in support of rural development **by addressing land fragmentation seeking higher agricultural productivity and lower costs.**
- **Land fragmentation** is a situation where a farming ***household possesses several non-contiguous land plots***, often **scattered over a wide area.**
- It can assist farmers to **amalgamate** their fragmented parcels.
- ***For e.g.,*** a farmer who owns one hectare divided into **five parcels** ***may benefit from a consolidation scheme which results in a single parcel.***

Cont…

- Although the farm size remains the same, a larger and better shaped parcel may **allow the farmer to introduce better farming techniques.**
- It promotes commercially viable farm land.
- It is ***not a form of expropriation***, either fully or partly.
- It should **not dispossess people of their rights to land.**
- It may **offer opportunities** for land owners to sell their land to others but this should be done willingly.

Cont…

- It **needs active participation** of farmers and other rural residents in the process.
- Many countries in the world have implemented land consolidation.
- For example, a number of countries in Central and Eastern Europe have expressed interest in introducing land consolidation programmes to improve rural livelihoods and the use of rural space.

Cont…

- While **systematic & comprehensive land consolidation** may be the long-tem goal of a country.
- **For the first time it was initiated in Denmark in 1750s.**
- **It can increase the income of farmers by increasing the volume of production and decreasing its costs.**
- It can **enlarge holdings**, which may increase the environmental protections also.

Cont…

- It can also **save a time of farmers spending more time by traveling between fields than working the land** and resettlement may be a solution if families are willing to relocate.

6.2. Approaches to Land Consolidation

❖The most effective consolidation instruments of rural land were:

1. ***Comprehensive consolidation;***
2. ***Simplified consolidation;***
3. ***Voluntary group consolidation; and***
4. ***Individual consolidation initiatives***

1. Comprehensive land consolidation

- This includes the ***re-allocation of parcels together with a broad range of other measures*** to promote rural development.
- **Examples of such activities include village renewal,** support to community based agro-processing, **construction of rural roads**, construction and **rehabilitation of irrigation** and drainage systems, **erosion control measures**, ***environmental protection and improvements including the designation of nature reserves***, and the creation of social infrastructure including sports grounds and other public facilities.

Steps in Comprehensive Land Consolidation

- **Initiation of the land consolidation project:**

✓ Request for initiation; analysis of the situation; preparation of an initial concept plan and approximate costs & sources of financing; & its approval.

- **Design of the project:**

✓ Selection of consultants to design; precise definition of the area & scope of the project; preparation of cost-estimate & evaluation of projected costs & benefits, and its sharing.

Cont…

- **Inventory of the existing situation:**

✓ **Identification of boundaries** and the **legal status of parcels**; determination of the value of parcels; & then preparation of the draft consolidation plan showing the new parcel layout, location of new roads and other public facilities.

- Finally it may need **working out of compensation costs.**

✓ Final **updating of the cadastral map**, and issuing and registration of new titles.

Cont…

- As a result according to this approach, ***if the value of the holding is smaller after consolidation,*** **equivalency the farmer can get compensation.**
- If a farmer ***received poorer quality land after consolidation,*** the ***amount of land allocated should be suitably larger than the original holding*** to **ensure equivalency**.
- The **development of transparent rules** defining the natural yield potential of land can be important in defining values.
- The **principle of equivalency may be difficult to apply in practice.**

Cont…

- **Thus, challenges of consolidation** are:

✓ **Topographic conditions** that limits the arrangement of **new parcels**;

✓ **Lack of irrigation**, as well as variations in water conditions and supplies.

- Since land consolidation offers the opportunity for the owners to enlarge their holdings.

2. Simplified land consolidation

- It optimizes conditions in the agricultural sector through the **re-allocation or exchange of parcels**, and **the provision of additional lands from land banks.**
- It do **not include the construction of major public works**, but they can provide the framework for their construction at a later stage.
- **Procedures for simplified land consolidation projects tend to follow those of comprehensive projects** but some of the requirements may be **relaxed**.

3. Voluntary group consolidation

- Some countries provide for mutual agreement **with no element of compulsion**.
- As consolidation is **entirely voluntary**, **all participants must agree fully** with the proposed project.
- As a result, voluntary projects tend to be small, and tend to be best **suited to address small and localized problems.**
- **E.g.,** of country that applied it is **Denmark,** in which all land consolidation projects are ***carried out in a completely voluntary process based on negotiations among land owners.***

4. Individual consolidation

- Consolidation of holdings can take place on an **informal and irregular basis**.
- The **state is not directly involved** and so these initiatives **do not include the provision of public facilities.**
- However, the **state can play a significant role in encouraging consolidations** that improve agriculture by promoting instruments such as joint land use agreements, leasing and like schemes.

6.4. Principles of Modern Land Consolidation

- Land consolidation can promote ***improved management of natural resources***.
- It can facilitate **environmental protection** and can support better land use planning and land management.
- It can also help in addressing **potential conflicts** over changes to the use of land.
- It can play an important role in ***improving rural development by improving land administration systems***.

Farmers Vs Public Needs Regarding Land Consolidation

- Land consolidation is an **important tool for rural development,** but the economical, social and political conditions are not in direction to it.
- **Integrated land consolidation requests huge amount of capital.**
- Depending on the **Ethiopian condition**, simple land consolidation in **irrigable as well as rain fed agriculture can be effective.**

Land Exchange as an Alternative Means of Land Consolidation

- Land is the common in the study area.
- Many farmers exchange lands in **traditional ways**.
- It has no legal protection and was not registered in Woreda Land Administration offices.
- After some time passed the person who needs his former plot can **break the agreement** through reasoning different situations.
- These conditions forced farmers to prefer legal/formal land exchange, which has additional advantage to reduce dispute and saving time from litigation.

Cont…

- **The** law **doesn't** indicate **any time limitation** for land consolidation/grouping.
- As per some young farmers, not only fragmentation is problem, but the **reduction of land size becomes a major trouble that influences farmer's income negatively.**
- The **non existence of off farm employment access**, landless and small size of land holders **forced them to use crop sharing, renting of land or immigrating to nearest town**.

6.5. Compensation

- Proposal for compensation should include fertility and some aspect that may vary land qualities.
- The ***methodology used in valuing losses to determine the replacement cost, compensation for losses of properties and for temporary losses*** of land should have the same way of application.
- Respondents complain the application of different methodology to compensate the same value of property and temporary loss of land.

Chapter 7
7. Rural Land Use Restrictions
7.1. Introduction

- Ownership right of a property provides the owner the widest and most complete rights.
- It includes the right of use and enjoyment, lease, mortgage, inheritance, sale, exchange & so on.
- **Article 40(1)** of the FDRE Constitution states that:
- ***Unless prescribed otherwise by law on account of public interest****, every Ethiopian citizen has the right to the ownership of private property, which includes the right to acquire, to use, to dispose of such property by sale or bequest or transfer it.*
- In here private properties are those properties the holder of the land improve by his labour & or capital **(Art 40(7).**
- But they can be **restricted or limited on account of public interest.**
- Those restrictions are related to ***servitude*** and ***expropriation***.

7.2. Land Use Restrictions
A. Urban Planning Proclamation

- Proclamation **No. 574/2008** governs urban planning. Any change of building in urban area requires a ***prior permission*** from municipalities.
- Basically change can be divided in to **three categories**: construction of new building, work on existing building, and demolition of the building.
- This empowers municipalities to control land use in urban areas. According to **Art 25** of this proclamation, "***no development activity may be carried out in an urban center without a prior development authorization.***"
- In this case the word "**development**" is defined as, "***carrying out of building***, engineering works, mining or other operations under the ground or the making of any substantial change in the life of any structure or neighbourhood **(Art 24).**"

Cont…

- Hence, the above Article includes the **two aspects**, i.e., ***constructing a new construction and making a change on it***.
- So, people after getting a plot of land must get a building permission to construct a new building.
- Since, the law also provide that urban plans must contain rules about zoning, height of building, housing typology, etc (**Art 11(3))** and as a result **owner must secure prior permit**.
- The other point is that **owner of a building may not demolish it without a permission** as envisaged under **Article 32** of the proclamation.

Environmental concerns

- Other legislation which relate to environment (***Proc No. 300/2002***) ***provides different restriction on property owners concerning management and release of dangerous and hazardous activities*** that **may damage the environment.**
- It among others ***prohibits people from emitting or releasing, toxic substances, chemical, or radioactive substance*** from their property that ***harms human health and wellbeing, the biota and the aesthetic value of nature***.

Expropriation

- **Expropriation** is another form of **restriction** on land holders.
- It is a process whereby the state may take the land **without the consent of the possessor for a public purpose** accompanied by payment of fair compensation.
- This is an **inherent power of the state** which was recognized from time immemorial, where states used to ***take private land for public purpose*** development activities.
- Proclamation **No 455/2005** and an implementation **regulation No.135/2007** at federal level and different other regulations at state level governs an expropriation activities.

Cont…

- The **important elements** in any expropriation process and practice are, however:
- ✓ Expropriation is a ***taking of private real property;***
- ✓ It is an ***inherent right of the state;***
- ✓ It is ***done against the consent of the possessor;***
- ✓ **Fair compensation** must be paid
- ✓ The taking must be ***made for public interest/use***.
- ❖ **Its Valuation and Compensation mechanism is the heart part & *disagree the people with state*.**

Chapter 9

9. Dispute Resolution Mechanisms on Land

9.1. Introduction

- It is a common knowledge that land related disputes constitutes a significant proportion of case compilation in courts.
- This is especially so ***due to lack of efficient land registration systems.***
- The **dispute** may, for instance be ***related to boundary conflict, parcel trespassing, flooding, shading, grazing land encroachment, forest land encroachment, road side encroachment,*** & so on.

Cont…

- The **main laws** regarding the ***dispute resolution mechanisms and institutions*** are:
- The ***Civil Procedure Code*****,**
- ***Federal Courts establishment Proclamation No.25/96; and***
- ***As well as the Civil Code*** not to mention regional instruments.

9.2. At Federal Level

- The Constitution provides for **3 levels of Federal Courts**:
- The ***Federal Supreme, High*** & ***First Instance Courts***.
- Each of them has **their own jurisdictional limits** with regard to the kind of case ***they entertain both in civil and criminal cases.***
- The **FFIC** shall have first instance jurisdiction over civil cases involving an amount ***not in excess of 500,000*** (five hundred thousand) Birr.
- Therefore, **per Art 14 of the Proc**., Federal subject matter cases that involve an amount of ***less or equal to five hundred thousand birr*** will be **within the jurisdictional limit of the FFIC**.

Cont…

- The **Federal High Court** has ***original civil jurisdiction over cases*** involving an **amount in *excess* *of Birr five hundred thousand*** (**500,000**).
- The FHC, ***in addition*** to its first instance or original jurisdiction, ***has appellate jurisdiction over decisions of the FFICs per Art 13*** of the proc.
- ***Excepting application for change of venue from one FHC to another or itself***, the **Federal Supreme Court** does ***not have first instance or original jurisdiction over civil cases***.

Cont…

- It **only** has **appellate and cassation jurisdiction**.
- Pursuant to **Art 9** of the Proc., the **FSC** shall have ***appellate jurisdiction over decisions*** of the ***High Court rendered in its original jurisdiction***, and ***over decisions of the High Court rendered in its appellate jurisdiction*** **in variation** of the decision of the **FFIC**.
- Moreover, according to ***Art 10*** of the proclamation, where they contain ***fundamental error of law,*** **the FSC has the** ***power of cassation over: -***

Cont…

- **Final decisions** of the **FHC** rendered in its appellate jurisdiction;
- **Final decisions** of **regular division** of the **FSC**;
- **Final decisions** of the ***Regional Supreme Courts rendered in their regular division*** or ***in its appellate jurisdiction.***

9.3. At State Level

- The Federal Courts Establishment Proclamation, Proc. 25/96, **provides only for the jurisdictional limits of Federal Courts.**
- It lists matters which fall under the jurisdiction of Federal Courts.
- This in effect means that all matters or cases which are not listed under the proclamation to be federal matters are left to be within the jurisdiction of states.
- From this point of view, therefore, **states have residual jurisdiction.**
- With regard to matter falling within the jurisdiction of Federal matters, since the **material jurisdiction** is determined by the Proclamation, **provisions of the Civil Procedure Code dealing with material jurisdiction** are **impliedly repealed** by **Art 37(2) of Proc. 25/96**.

Cont…

- ***Matters falling within the jurisdiction of States,*** however, are not within the ambit of this Proclamation.
- Therefore, the ***jurisdictional limit of State Courts is determined on the basis of pertinent provisions of the Civil Procedure Code***.
- Accordingly, the **States High Courts** shall have ***jurisdiction over all cases regarding immovable property*** where the ***amount involved exceeds 10,000*** (ten thousand) birr, (see **Art 14(b)** of CPC).
- **Woreda Courts**, on the other hand, have jurisdiction in claims that involve cases up to ***10,000 Birr for cases regarding immovable property*** (Art 13(b) CPC).

Cont…

- **State Supreme Courts** do not have first instance or original jurisdiction in civil cases.
- This means that ***all cases in state courts must start either in Woreda or High courts***.
- Hence, the ***States Supreme court*** has only **appellate jurisdiction** and ***final cassation power over state matters.***
- But it does not cancel ***its first instance jurisdiction over federal matters in its constitutional delegated power.***
- Some states have **by legislation,** ***established social courts to reduce the congestion of cases in Woreda Courts.***

9.4. Informal Dispute Resolution Mechanisms

- Aside from the formal mechanism of dispute settlement normally called **litigation, informal methods are used**.
- They are called Alternative Dispute Resolution (**ADR**) mechanisms and if used widely and properly can **help achieve good results**.
- Under the Civil Code, Title XX, and in the Civil Procedure Code Chapter 4 of Book 4, are devoted to these mechanisms.
- They are ***compromise, conciliation, and arbitration.***

Cont…

- But the FRLAUP **Art 12** empowers the **RLAC** (Rural land administration Committees) to handle ***land related disputes before the case come to the regular court.***
- ***Without their decision***, ***any court can't entertain any land related disputes,*** even at the time of inheritance.
- Therefore, it is a **mandatory provision**.

Thank You for Ur Attentions!