LAND LAW

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- **What is property?**
  - Different people conceive property in different ways
  - the meaning of property depends upon ***the person who defines it***.
  - **If a layman is asked,** he is likely to say that

✓ ***'property' is something tangible (Like a car, house…) owned' by***

- ***a natural person (or persons),***
- ***a corporation, or***
- ***a unit of government.***

➢ ***Do you think this definition is correct? WHY/why not??***

- ***This is inaccurate as*** it confuses **'property'** with the **various subjects of 'property'**
- **For the lawyer**; '**property' is not a 'thing' at all**, although '**things' are the subject of property.**

- **In legal sense,** property describes;
  - ✓ **the relationship between people with regard to the right of a person to possess, use, or own things**
- Thus, It is not **the house that matters**,
  - ✓ rather the legally recognized interest or **right to own**, **possess**, **use**, **lease**, **sale** etc of the house.
- property law is about **the legally recognized relationships we have with each other in respect of things.**
- **It is not**, as many believe, a relationship between **people and things**

- Eg. it governs the relationship between
  - ✓ **a lessee and a lessor**; not between the **land/house and the owner**.
- Property **in its noun form refers** to **a thing**, **object of property law or property is;**
  - ✓ An **object** over which **an individual can exert control**, and in return, which gives him **rights in relation to its use** (**against the world**)
- The thing (object) may be;
  - ✓ **corporeal** (**tangible**) or
  - ✓ **incorporeal (intangible**) (eg. **copyrights**, **patent**, **trademark**….related with **intellectual property**)
- It may also be
  - ✓ **Movable or Immovable**.
- According to art. 1130 of the Ethiopian civil code, **land and building are deemed immovable**

- Some legal scholars **defined property in terms of exclusion**
  - as '**sole and despotic dominion** which one man claims and exercises over the external things of the world, **in total exclusion of the right of any other** individual in the universe
- ***Other legal scholars*** have tried to define property ***as a bundle of rights***.
- In this line, the legal essence of property is the right of any person **to;**
  - ✓**possess**
  - ✓**use**, **enjoy**, and
  - ✓**dispose of a thing** from a legal point of view (**alienation-**transfer **gratuitously** or for **consideration**).

- For the sake of our consumption, **“property”** refers **to entitlements to resources protected by formal legal institutions.**
- **As such,** the concept of property is the concept of rules governing access to and **material resources**.
- **Material resources;**
  - ✓ **capable of satisfying some human need** or want.
  - ✓ Are **scarce** relative to the human demands
  - ✓ **Scarcity** of resources **leads to conflict**
- Thus, this requires **a system** or **a method of allocation** that determines
  - ✓ **who is to have access**
  - ✓ **to which resource,**
  - ✓ **for what purpose**, **and when**.

- The system of rules, otherwise known **as property law, is a way of solving that problem**
- Property law is designed **to allocate** and **determine** the **distribution and access of MR**(movs. And imm, cor. and incor). **Land is one among those MR**
- **Real property, Real estate, Immovable**

• Property law, in systems derived from **English common law, is divided into**;

i. Real property concerns itself with rights;

- ✓ ***in rem***, or **relating to land**.

ii. Personal property concerns itself with rights;

- ✓ ***in personam*****,** or relating to **chattels**

- In the Civil law system, there is a division between
  - ✓ **Movable** and **Immovable property**.
  - **Movable** property roughly **corresponds to personal property,**
  - while **immovable** property corresponds to **real estate or real property,**
- Hence, the difference in terminology has no basic difference in the types of property.
- **What terminology do we use in Ethiopia?**

Ownership

- **What do you mean by ownership**?
- What distinguish **property from ownership right**?

- Some use ownership **as synonym with property**
- However, the two concepts are different and **ownership is part of property.**
- **Property is a broad term** which **encompasses** any interest in a thing
- There are many types of rights emanating there from, **ownership being the**
  - ✓ **most complete and important form of property right**.

- The concept of ownership was developed **by ancient Romans**
  - Romans, however, did not provide a **working definition for ownership**
  - Rather they dealt with the **attributes of it**.
  - The attributes of ownership, according to the Roman law are -;
    - ***usus-*** the right to use the thing,
    - ***fructus***- **the right to benefit of the profit offered by a thing**,
    - ***abusus***-*the right to dispose* of the thing either physically (destruction), or from a legal point of view (**alienation**-transfer **gratuitously or for consideration**).

- the Anglo American system, ownership is treated as a **“bundle of rights”** where it is possible to constitute property right over the same thing **by multiple bodies.**
- the reality reveals that ownership is and has **never been absolute;**
- there is and was always restriction on its use and enjoyment and it is not something indivisible.

- Rights in ownership of land -according to **Honor'e**, in a mature legal system an owner would typically have the following rights
  - **Possession** (physical control)
  - **Use and enjoyment**
  - **Right to manage the thing** (manage the use of)
  - **The right to the income** (fruit of a tree, offspring of an animal, rent of land, profit from investment on land)
  - **The right of transmissibility** of the above rights (this is right one is provided to transfer rights not the land itself)
  - **The right to transfer the land itself** (inherit, sale)
  - **The right to do away** (destroy a house), but it is limited for public safety and health reasons
  - **The right to exclude others** (ownership is a right claimed against the world, no one is allowed to interfere in one's ownership right)

Meaning of Land

- **Land, for most Ethiopians, is central to life.**
- From the land comes **sustenance**, **status** and **often political power.**
- In the agricultural societies of highland Ethiopia, to have rights over land is to be human: "**To be landless is to be sub-human."' (**Harrison C. Dunning**)**
- Land is;
  - ✓source of **all material wealth**
  - ✓a major **economic asset**
  - ✓an important social asset where **the status and prestige of people is determined.**
- Thus, the legal protection accorded to land is **always strict in nature**

- Different disciplines **define "land" differently**
- For **legal scholars land is**
  - ✓ considered as **the surface of the earth** and **any fixtures on it**, such as
    - **buildings**,
    - **fence**,
    - **tree plants**, and
    - **improvement to the land**
  - ✓ Ownership of land involves what is **above and below** it
  - ✓ Latin maxim '**Cujusestsolum, ejusestusqueadcoelum'** which means He **who is proprietor of land is proprietor also of everything on it**.

- Articles **552-554** of the **French Civil Code**
  - ✓ ownership of land "**involves ownership of what is above and below it.**"
  - ✓ land" signifies not only **the surface of the earth**, but also things found **beneath the surface** and **fixtures** above, and sometimes **the airspace**, above the ground
- **Under Ethiopian law,**

- property is either **Movable** or **Immovable** (art. **1126** of CC).
- **Land** and **buildings** are considered **as immovable's** (art. **1130** CC)
- **What difference have you discern from the above understanding????**

- Thus, “land” signifies the ground and other fixtures to the land **such as trees**, **grass, crops and so on, excepting buildings and other similar erections. Art.1133** CC
- **FDRE constitution Art. 40(3) and (7)**
  - ✓ ownership of land is vested **in the state and the people**
  - ✓ the land surface and the building over the land are owned **by two different bodies**

Regimes of Land Ownership

- **There are different regimes** of land ownership in the world even in a given state
- There is **no uniformity in this regard**
  - The **physical characteristics of the natural resource**,
  - **social circumstances**,
  - **technology change**, or
  - **population growth dictate one of the above forms of property ownership solution**
- one form may be more appropriate perhaps from ensuring
  - ✓ **economic efficiency**,
  - ✓ **conservation**/management of resource,
  - ✓ **avoidance of conflict** (ensuring justice) or other reason

I. Open Access Land

- open access/**ownerless/ no-property regime**
- **every person has access to use** and **enjoy the property**
- **each of us has a privilege to use** such things and the rest of the world **has no correlative right to object to us doing so**
- **No one has** right **to exclude others from such things**,
- nor do we ourselves have the right not to be excluded from use
- **Public parks**, **walking paths,** and **access to lake or sea shores** where every person has the right to enter or walk by without any form of restriction.
- In its pure form, **the rights to air** and **sun light may be considered** as open access properties.

II. State Ownership of Land

- It is known by different names like;- **public ownership**, **collective ownership** or **government/state ownership**
- **State or government ownership"** seems to **denote**
  - ✓ **the ownership of land by a political body, a central or municipal level**, while
- "**Public or collective ownership"** seems to signify the ownership of land by all the people or by the local community
- For example, the Chinese Land Law treats "**collective ownership**" and "**state ownership"** differently.
- **Collective is understood** as **a village land committee**, and farmers are forced to lease farm lands from **these committees**

- Practically, there are **no real differences between the dichotomy**
- In both cases **it is the government** that has the power to administer the land **on behalf of the people**
- In Ethiopia we find the same approach in reading **Articles 40(3) and 89 (5)** of the FDRE Constitution,
  - ✓ **joint owners of land and natural resources,**
  - ✓ but **the state is represented to administer it on behalf of the people**

- **The FDRE RLAUP identifies, under Article 2(13), "forestlands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands," as state holding lands.**

III. Communal land Ownership

- a property right allocation made **in the interest of group of users.**
- Refers to the land which **is commonly held by the community** of a certain **village or locality**
- **each member** has **a right to use holdings** of the community **in undivided share**
- **property rights** are conferred **on the communities and not on the individual members**

- members of the **communities have joint and non-exclusive right** to use all the available resources across the land
- individual members **have no transfer rights** rather than **using the communal land** according to the **local rules** of the community
  - eg. **Grazing lands**, **forest lands**, **fisheries, irrigation systems, underground water**, **water wells**, **village roads**, **neighborhood streets**, and so on.
- **Basic features;**
  - ✓ they **are not destined to an exclusive use of an individual** person

- ✓most of these **resources are exhaustible,** if left to anybody as open or free access.
- ✓the resources may **be quickly depleted** and individual members may **not be encouraged to conserve** unless the use and enjoyment is regulated by an internal sets of rules

- In Ethiopia according to Article **2(12)** of the FDRE RLAUP 456/2005, "communal holding"
  - ✓**is "rural land** which is given by the government to local residents for common **grazing, forestry** and **other social services**." illustrative…eg. land necessary for religious ceremonies, cultural festivities, or social gatherings …

IV. **Private land Ownership**

- **Full and exclusive rights** to decide about the property are given to a single person (natural or artificial) or group of persons.
- The owner/s **will have complete/full property rights** which includes the right to;-
  - **use**
  - **exclude others**
  - **derive income from the land**
  - **sell the land;** and
  - **Bequeath or donate** the land to someone of your choice.
- **Is land subject for private ownership in Ethiopia????**
  - ✓ Rural land- **holding right**
  - ✓ Urban land-**private possession**

- **Theories of property right**

- Theories are important tools to understand the origin of any concept
- There are different theories exposited in different times. Accordingly,

I. **Occupation theory**
II. **Labor theory of property**
III. **Social Contract Theory**
IV. **Utilitarian Theory**

- **Briefly summarize the above listed theories and try to pin point the draw backs of each theories**

❑ *Scope of Land right*

- ***who is a proprietor of land is a proprietor of everything on it***
- this is **in the air above the surface and in soil below**
- *Land…**includes not only the ground**, or **soil**, but everything that **is attached to the earth**,*
  - ✓ ***whether by course of nature**, as are **trees and herbage**,*
  - ✓ *or **by the hands of man, as are houses and other buildings**.*
- Modern society limited this right for different reasons that not only in relation **to aviations** but also for the reason that **the state wants to control natural resources below the ground.**

- Scope of land right in **Ethiopia is refgulated by the 1960 Ethiopian Civil Code.**
  - ✓ **Articles 1207-1211** generally express that ***ownership of land is limited* beneath and above the land *"to the extent necessary for the use of the land*."**
  - ✓ Eg. ART.**1207**- ***Ownership of sub soil.***
    - Ownership of land shall extend **below the surface of the land to the extent necessary** for the use of the land.

- 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**

✓ **Art. 12ll.** - *Ownership **above the land**.*

- Ownership of land shall extend above the surface of the land **to the extent necessary** for the use of the land.

✓ N.B. the civil code is applicable only on matters **which are not covered by other land legislation.**

Chapter two

Rural land law in Ethiopia

➢ Course objectives

- After proper completion of this chapter you will be able to;
  - ✓ Define **what land tenure refers to**
  - ✓ Elaborate **what tenure security** means and **what its elements are**
  - ✓ Know **the rural tenure history and tenure security of the country**
  - ✓ Pin point the **basic federal and regional rural land laws** of the country
  - ✓ Elaborate **what pastoralist land tenure system** and its status under the Ethiopian land laws
  - ✓ Explain **what large scale agricultural investment means** and its implementation in Ethiopia

- **Ethiopian Rural Land tenure system** and **tenure security History in Ethiopia**
  - More than **80 percent of Ethiopian** population live in rural areas. As such **Rural Land is** ;-
    - ✓ **Economically, socially and politically too sensitive**
  - o See also the preamble of **proc. No. 31/1975**
    - ✓ a person's **right**, **honor**, **status** and **standard of living** is determined by his relation to the land
    - ✓ **It won't be a surprise** when the issue of **rural land tenure is too sensitive**

- Before directly indulging to the historical overview , let us see as to **what we mean by land tenure** and **tenure security**
- **What is meant by land tenure?**
  - *It Refers to **the relationship**, whether **legally** or **customarily defined**, among people, **as individuals or groups**, **with respect to land***
  - *Rules of tenure define **how property rights to land** are **to be allocated** **within societies.***
  - *They define **how access is granted** to **rights;***
    - ✓ ***to use**,*
    - ✓ ***control**, and **transfer land**,*
    - ✓ *as well as associated **responsibilities and restraints**.*

- **In simple terms, land tenure systems determines**
  - ✓ ***who can use***
  - ✓ ***what resources***
  - ✓ ***for how long****, and*
  - ✓ ***Under what conditions****.*
- Mostly, land tenure is found in two principal forms - namely,
  - **the customary** and **statutory land tenure**
- **Customary land tenure system ;**
  - is governed by **unwritten traditional rules** and is **administered by traditional leaders**
- **Statutory land tenure system is governed;**
  - **by modern law** and **supported by documentary evidence,** such as a **title deed** or **lease certificate**,
  - And **administered by the government**

❑ Tenure Security

- landholder's **degree of reasonable confidence not to be arbitrarily deprived** or **evicted of the land rights** enjoyed or of the economic benefits deriving from them. **It has two elements**;-

❖ Objective Element

- Refers to **clarity**, **duration**, **assurance and *robustness of the rights*** of the rights)
  - ✓ **Clarity; whether the rights are stated clearly**
  - ✓ **Duration** -**right on a continuous bases for good or for long**
  - ✓ **Assurance of the right**- that the land rights **are not overridden by others** (conditions should **be specifically stated** and when occur landholders should be awarded compensation)
  - ✓ **Robustness**; **freedom to use and dispose the land**

- **Subjective Element**
  - indicates **landholder's perception or feeling** of the security of their rights
  - is inferred **when an individual perceive he or she has rights to a pieces of land on a continuous basis**,
    - ✓ **free from imposition** and **interference from outside forces**, as well as
    - ✓ the **ability to reap the benefit of labor** and **capital invested** in that land either **in use** or **up on transfer to another** holder
- **Rural Land tenure history of Ethiopia;**
  - Pre-1975
  - Post 1975-1991
  - The current tenure

Pre- 1975 Rural Land Tenure System of Ethiopia.

- ✓ Since **time immemorial**, land was controlled in Ethiopia **by the king and the ruling elite**
- ✓ As a result of the expansionist war of the ancient Ethiopian, rulers could manage **to annex vast territories to its rule**
- ✓ Then the land will be transferred **to favorites** and **supporters of the king**
- ✓ **The power of the kings** to allocate and revoke land **was incontestable.**
- ✓ The land remained **under imperial ownership** land rights emanated from the benevolent gift of the king

- Thus, the land tenure system was based on **a feudal system**
- As such the majority land was **in the hands of the Emperor** and **the church**
- Citizens were using land **under different tenure arrangements**
- Such tenure arrangements were **customary by nature** and **numerous in numbers**
- There was **regional difference** in the land tenure arrangement especially between the then **North and South.**

- **Reasons,**
  - ✓ **regional difference**,
  - ✓ **diverse geographical** and **cultural settings**
  - ✓ different **socio-political event**
- **The rural tenure system of the north before 1975**
  - different literatures written on the rural land tenure classified and described the tenure system differently
- However, in the **Northern Ethiopia** before **1975** land reform had taken the form of ;
  - **Private holdings** (Gult vs. Rist Land)
  - **Church land** (***samon***),
  - **Government land**

a. Rist Vs. gult

a. Rist Vs. Gult

RIST Land

- **Common in the north**
- **may have originated with ancestral first holders**
- **through government grant** for a loyal service**, clearance of forest..**
- **is based on decent or blood relationship (hereditary)**
- **is transferable by inheritance**
- **Grants usufractury right**
- **rist land was like private ownership except the holder lacked the right to sell the land**
- **transfer to outsiders is against the very nature of rist**

- neither be **abridged** nor a**brogated** under different pretexts (**honoring of hereditary rights and denying access to `outsiders**
- Encouraged **fragmentation** and **successive reduction** in individual plot size.
- **Land disputes related to rist land claims were rampant**
- **is a collective property**– land may be conceived of **as being held by those currently living in trust for their ancestors and those yet unborn**

Gult land

- **common in both north** (reserved to royal families and provincial nobles) **and south** (it extended to civil and military officials and supporters)
- **a kind of public office** instead of land right
- **Is a rewarded** for **the service and loyalty**,
- **not inheritable**
- **not transferable by inheritance** or **by sale**
- Entitled landlords;

- Grants Both **land** and **administrative right** (maintenance of peace, adjudication..)
- As such the gultegna`s can
  - **collect tribute from rist holders**
  - **Keep 1/10** of land tax collected by him
  - **adjudicate cases** arising among rist holders
  - **extract free services** from the peasants
  - **Receives all the fines** which he may impos in **his judicial capacity**
  - **Receive certain presents/gifts eg for Easter**
- **The crown can withdraw guilt right a any time** since formal land ownership was vested in the state.

B. **Church land (Samon land)**

- **arose when** the **Crown granted rural land to the Ethiopian Orthodox Church**
- It was to generate **support for its services**
- roughly constitute **10 to 12%** of Ethiopia's total land area
- Until the coming of the revolution **in 1974**, the church was said to be controlling **one third of the land in the country**.
- was prevalent in **both the North and South**,

➢ The right of the church was officially recognized under the **fetha negest-**

- .**Section 40, No. 1540 cum. 1541**
  - Let the king be generous with his wealth... **He shall exempt them from tributes**, presents, and the other favors to be paid to the rulers

- ✓ Church land was **free from payments of tributes and land taxes**
- ✓ Rather the church was **allowed to collect tribute and land taxes from users**
- ✓ **Usually, the land given to the churches and monasteries, as gult land, was vast**

- **As such,** church land was **distributed to;**
  - ✓ the **clergy, such as priests, deacons, church heads, teachers**, and
  - ✓ **lay people who support and protect the interest of the church** at the royal court
  - ➢ **The Church can leased out its lands** 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.**
- **What is the difference between Gult and Samon**

C. **The state tenure regimes/government land**

- Modern state machinery with salaried soldiers and civil servants is of recent origin; **it came after the Second World.**
- Therefore,land was given on the condition of **serving at different levels of state functionary in lieu of salary**
- Such land might be **reverted to the state** in the event of non fulfillment of the obligation
- As land was provided **to different people** based on **their service they rendered**, there are **various types** of state land tenure

❖ Accordingly,

a. Melkagna Rist/riste-gult/siso-gult

✓ Land granted to **malkagna or balabat, local gentry** Because of;

- he **cleared the forest and started to cultivate** it
- fought local tribes together with the king and **brought about a lot of land to the state.**

b. Maderia land

- ✓ land granted **, mainly, to government officials, war veterans,** and other **patriots in lieu of a pension or salary**
- ✓ **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 land given to persons **who maintain government works of various types,** such as;
  - ✓ soldiery, (ye-zemach meret)
  - ✓ those who look after government mules and horses, **(beklo kelabi meret**,)
  - ✓ those who transport mails and posts(**postegna meret)**, ….
  - ✓ the name goes in light of **the service rendered…**
  - ✓ The land right continues as far as **they continue providing the services**

Land Tenure System in Southern Ethiopia

- **The southern, south eastern and south western provinces of Ethiopia were brought under Emperor Menelik's between 1875 and 1889**
- **Voluntarily submission**
  - ✓ **traditional chiefs were allowed to retain their position and land the same as before**
  - ✓ **Eg. Wollega, Jimma, and Benishangul regions.**
- **Resistance;**
  - ✓ **After defeat their land was confiscated and distributed to ;**
    - **Nobles, the church,**
    - **Menelik's generals and soldiers,**
    - **while the people remained landless gabbars**

- The new rulers
  - ✓ took either **two-third** or
  - ✓ t**hree-quarters** of the land and
  - ✓ left **the remaining fraction** (**one third or one quarter**) to **the local chief which is called siso (a third) land**
- People **from the north were encouraged** to settle for two basic reasons

a. **to recompense for their service** in the war,

b. in order to create **effective occupation**

- **The native people,**
  - ✓ were paradoxically given **the name gabbars**.
  - ✓ Remained **landless**
  - ✓ Were subjected to **more onerous burdens than existed elsewhere**.
  - ✓ Were obliged to look after the settlers
    - o **by cultivating their land**,
    - o **providing labor**, **building houses** and **so on for free**
- **a person who got land in the south,**
  - ✓ **reserved some part of the land for his private use and distribute the rest to his gabbars**
  - ✓ **collected tribute (one third for himself) and**
  - ✓ **tithe (to the government) and allowed them to subsist on the remaining produce**

- Kenyazmach (commander of right wing) Arado was allotted **forty gashas (1600 ha)** of land for his service in **Kambata district**. He kept **twelve gashas and distributed the rest among his lieutenants** and **soldiers**. One of these, a man from North named Ayele, was given a total of four gashas. **The native people** who found themselves on the land granted to Ayele became **his gabbars** (the total family member was 40 people). Ayele settled in the nearby town of **Hosana**, the capital of Kembata district. Ayele divided his land in to hudad (good land reserved for him) and other which was distributed among the gabbars. **The gabbars cultivated the hudad and delivered the entire produce to Ayele**. Ayele also collected **a third of the produce from the other land as a tribute for himself,** and another **tenth which he turned over to the state as tithe**. The gabbars were also required to provide Ayele with **firewood**, to **grind his share of the grain and deliver it to his home in town**, and **to repair his house and warehouses**. In addition, they had **to offer him obligatory gifts on Christmas**, **Easter, and Maskal**. Ayele acted **as the judge for his gabbars**, and in his capacity **imposed fines and collected fees**. Whenever he visited his land, the gabbars were obliged to provide him **with a feas**t.(**Markakis)**

- The other characteristic of the southern land tenure system was
  - **The introduction of private ownership of land tenure.**
    - land was transacted through **sale from state to individuals** and **among individuals**.
    - There was a prolific land sale transaction at the period **for investors were interested in cash crop** (mainly for coffee production) by purchasing land from owners
- **During Emperor Haile Sellassie** era the government tried **to;**
  - ✓ **reduce the burdens of the southern gabbars** and
  - ✓ **to generate enough money to the state** by introducing **different land related laws.**

- Tax was collected in Kind (**grain**, **salt**, **honey**, **cattle** and so on) **tribute 1/3** and **tithe(asrat) 1/10**)

i. The 1941, 1942 and 1944 Land tax Decrees

- ✓ Entitled all government officials and **agents to salaries**;
- ✓ All tax was **to be sent directly to government treasury (** no intermediary)
- ✓ abolished **all 'manual labor**, firewood, grass and miscellaneous dues and taxes' imposed on the cultivators
- ✓ all land tax should be paid in Ethiopian **printed dollars rather than in kind**

iii. Land tax proc. No.70/1944

- ✓provided tax payments **in lieu of tithe and tribute tax**
- ✓it did not impose **same tax rate** for all parts of the country.
- ✓The **Northern provinces** were even allowed to continue with their **old system as their land was not yet measured in gashas**
- ✓Again repealed "**any other taxes, services and fees** heretofore payable".

Iv. Proclamation 230/1966

- ✓ Repealed the previous proc.
- ✓ dictated those people **who cultivate on lands subject to rist gult or siso gult** directly to pay their tax to **the Government treasury**
- ✓ eliminates **the traditional institution of gult system**
- ✓ Gult holders were allowed to change **certain part of their holding to private tenure** and the remainder **was divided among the gabbars**

- **In 1967** the government also introduced **agricultural income tax.**

- However, the land tax proclamations and land measurements which were meant to enhance the amount of tax, **initiated peasant rebellions**
  - **in Tigray (1943),**
  - **in Bale (1967-70) and**
  - **in Gojam (1968**)
- Generally, though the government tried to lift the burden, it **was to no avail**;
  - ✓ **the landlords in the south became more powerful**
  - ✓ **eg. In south vast tract of land was held in private ownership by absentee land lords.**

- **Generally, all land reforms were not successful because of;**

1. **Resistance of the peasantry population** (because of **ignorance on the advantage** of land measurement and registration
2. **Internal resistance from the landed aristocrats**, most of whom sit in both chambers of the parliament,
3. **lack of action by the government** to bring about change in the tenure system ….

- **Then**
  - **peasant rebellions**,
  - **popular unrest** and
  - **student movements** with the famous slogan **"Land to the Tiller"** became reasons for the **downfall of the feudo-capitalist** state in the country.

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

- **In 1974**, A committee (junta) selected from all the **army branches (**from the **air force**, **police force**, **navy**, and **ground force**)were established ;
  - ✓to negotiate things **with the emperor**
  - ✓and **to bring corrupt officials** of the ancient regime to justice
  - ✓Eg. The would be president (**Mengistu Haile Mariam**) himself was **a Major, representing ground forces from the city of Harar**
- **In september 1974** ***Derg*** (Amharic for 'council' or 'committees') overthrow the emperor **by coup d`etat**
- Then they established **Provisional Military Administrative Council** (**PMAC**), by promising the election of a popular government in the future

- The Derg took action that had **drastically altered the social**, **political** and **economic structure of the country**
- **One of such measures,** was **the rural land tenure reform**
- **On December 20, 1974** when Derg declared its **ten-point program** of **"Ethiopian Socialism**" it declared that
  - **the right to own land shall be restricted to those who work on the land or simply land would be privatized**
- However, **a year later**, it issued **the 'proclamation to provide public ownership of rural land No.31/1975** that

- **Justification for the proc. Is stated under the preamble which reads;**
  - **a person's right, honor, status,..**;…
  - Vast land was held by **insignificant number of feudal lords** while the masses **live under serfdom**; …
  - making **the tiller the owner of the fruits of his labour**
- This rural land reform stipulated on the proclamation **was justified by two principles:**
  - One - **historical justice** – **to overcome the exploitative character of imperial agrarian relations; and**
  - Two - **justice as egalitarianism (equity)** – **providing each farm family with equal access to cultivation land according to their needs**

- **This proclamation;-**
  - ✓ Declared rural lands shall be **the collective property of the Ethiopian people**
  - ✓ **prohibits private ownership ART. 3**
- ✓ _Had **abolished the landlord-tenant relationship**
- ✓ Relived tenants from **any debt**, **rent** and **from any other obligation Art. 6(3) and 21**
- ❑ provided opportunity;
  - For any person **who personality cultivate** the land **sufficient for his maintenance (Article 4.1)**
  - The size shall not exceed **10 hectar ¼ gasha Art. 4(3)**
  - Until, land is properly distributed tenants' and hired labourers were **given a possessory right Art. 6(1)**
  - Tenants were give a right **to retain agricultural implements** and **a pair of oxen with compensation Art. 6(4)**

- **Nationalized all rural land**
  - ✓ **No compensation for rural lands, forests and tree crops thereon..**
  - ✓ Promised fair compensation for **movable properties and permanent works on the land**.. **No compensation in practice**
- **Prohibited transfer of land through, Art.5**
  - **Sale**
  - **Exchange**
  - **Succession** (after death one of spouses or minor child and in their absence the child attaining majority)
  - **Mortgage**, **antichresis (transfer(requires**
  - **Lease or otherwise**
  - **No person was allowed to use hired laborers to cultivate his land (exception -weak,the sick, widow, and minors) Art. 4(5)**
- **imposed uniform land tenure system on in the country** as whole
- had different impact **on the northern and southern peasants**

- **kinship and village tenures were treated differently**
  - ✓ were guaranteed **possessory rights over the land they presently till** (Article 19)
  - ✓ The present land distribution pattern is made permanent by which precludes **the extension of new claims** against the rist tenure system. **Article 20**
  - ✓ PAs **were not allowed to distribute rist** land to landless Art. 23 and 10
- **The proclamation contains no direct statement about the holdings of the Ethiopian Coptic Church**
  - ✓ estimated to own **20 percent of all arable land** and **5 percent of all Ethiopian land**

- ✓ Art. **3(2)** abolish land ownership **by private person or any other organization**
- ✓ PA s can distribute land for organization that need for their upkeep(last order)
- ✓ The effect is more worse **in the south than the north**……

❑ Nomadic people (24-27)

- were given a **possessory right**
- relived from any obligation of **dues to balabats**
- were expected to perform their **own associations**
- the government was also responsible to dig wells and ***to settle nomadic people for farming purpose***

- **Peasant association were responsible for the implementation of the proclamation; ART. 8-11**
- PA were established within a minimum **area of 800 hectare (**with average membership of **250-270 peasant households)**
- Members of the PA were,
  - ✓ tenants, hired agricultural workers,
  - ✓ landless and landlords with less than 10 hectare land
- PA were responsible ;
  - ✓ for **distribution of land, to solve land dispute**
  - ✓ **conservation of land**, **forests.**.
  - ✓ To establish **credit and market cooperatives,**
  - ✓ To **undertaking villagization**….read art.10
- PA at **local, woreda** and **awraja level** were also established. See art. 11 them at the apex **Ministry of land re**form

- **When seen from tenure security perspective the land tenure of DERG;**

- **Erroneous state policies** (villagization, grain requisitioning, resettlement, agricultural, collectivization) No discussion at grass root level
- **The PAs which were given a wider role were finally hijacked** to do political work
- Tenure security was weakened by
  - ✓ **the ability of PAs to redistribute** land (lately in 1990 temporary halted).
  - ✓ Access to land was **contingent upon membership in peasants associations**, and **physical residency requirement**
  - ✓ Peasants only have **use rights on their plots of land**
  - ✓ **were prohibited not to hire wage labour Article 4(5)**

- Transfer of land through **sale, mortgage, lease, rent** and **Inheritance was severely restricted**
- **Settlement of land** that occurred **without the willingness of the peasant. See. Art.18**
- **Expropriation Article 3(3) and 7(2), 17**
  - ✓ **No compensation** to the land
  - ✓ Government can expropriate land belonging peasants and pay compensation to **peasant associations**

- Dessalegn Rahamato showed how far the *Derg* rural land reform affected the tenure security of peasants as follows:
- "The end product of the land reform **was that it failed where it succeeded**. It transformed rural Ethiopia **into a society of self-labouring peasants**. **To promote social equity it undermined peasant confidence**. It **redefined the land system in a radical way but in doing so made insecurity of holding an enduring element**. **It replaced the landlord with the state,** providing the latter **with direct and unencumbered access to the peasantry**."

The current rural land tenure system-since 1991

- Derg was **overthrown in 1991** by the Ethiopian Peoples' Revolutionary Democratic Forces (**EPRDF**)
- **Transitional government remained from 1991-1994** until the adoption of **the constitution**
- **TGE;**
  - ✓ **disbanded all collectivization** and **grain requisition (**allowing peasants to sell their produce at market value)
  - ✓ **Disbaned villegization** programs
  - ✓ Collective farms were **privatized to individual farmers**
  - ✓ adopted **new economic policy that advocates free market policy** in November 1991
  - ✓ In 1992 opted **to maintain the land policy** of the Derg until the matter is to be settled **by the coming constitution.**

- In the year 1995, **beyond the expectation of many**, the government **maintain the previous policy**. **Art. 40(3)**

- **FDRE constitution**
  - ✓ **prohibited Transfer of land through sale or other means of exchange** Article 40(3)
  - ✓ granted **"right to obtain land without payment" For ;**
    - **"Ethiopian peasants" and pastoralists for cultivation and grazing purposes Art. 40 (4 and 5)**
    - And a right to **be protected against eviction from the possessions**." **Article 40 (4 and 5)**
  - ✓ **allowed investors** to get to access to rural land **on the basis of payment arrangements – Art.40(6)**

- Granted every Ethiopian including , peasants,,, have
  - ✓ **a full right to the immovable property they build** and
  - ✓ **on the permanent improvements they bring about** on the ***rural land holdings*** by their labour or capital (**Article 40(7)**
- established **federal and regional government with different power with regard to land s**ee **Article 1, 46, 47, 51(5) and 52 (1) and (2)(d))**
- ❑ Accordingly, the federal government enacted Rural Land administration and use proclamation **No.456/2005**
- ❖ proclamation **No. 456/2005**,
  - ✓ guarantees **a 'holding rights'**, that include the right **to use**, **lease, donate** and **inheritance excluding sale and mortgage**. (see **Article 2(4)**
  - ✓ **Holding right has no time limit** and in case of expropriation there is a compensation scheme **article 7(1), (3), 8(1-3)**

- **Limited redistribution of land** though not totally avoided, to assure tenure security. **Article 9 (1,2,3)**
- Has obliged the appropriate organ to **issue land holding certificate to individual farmers**. **Article 6(3))**
- almost all regional states **enacted their own land use proclamation**

Current Land Policy: Debates on Ownership of Land

- The issue of land ownership has been **a contentious hotly debated/debatable issue**

- Rural land policy has remained **one of the sources of disagreement** and focus of debate among
  - ✓ **politicians**, **academicians** and other **concerned parties in Ethiopia**
- This is mainly between;
  - ✓ supporters of the status quo **lead by the ruling party** and
  - ✓ **advocates of tenure policy shift** in favor of privatization **(including opposition political parties and world bank and doners)**
- Reason; **the agrarian nature of the economy** and
  - ✓ **social** and **political history** of the count
- During the enactment of the constitution
  - ✓ voting **499 voted for public ownership of land**
  - ✓ **495 for private ownership of land**

1. For state ownership

A. The fairness principle purporting social equity(egalitarianism)

- state ownership **prevents** concentration of land in few hands
- **To prevent the condition before the year 1975**
- the government should have an opportunity of **distribution and redistribution to have it equitably shared**

B. the underdeveloped nature of the country's **present subsistent agriculture sector**

- more than **85% of Ethiopian live in rural**
- **undeveloped** i**ndustrial** and **service sector**
- allowing sale of land will open **a flood gate of influx of migrants**

C. **Lack of uniformity**

- Uniform private property rights to land across the country may not be possible to realize. Eg. **Pastoralist land**

D. The existence of a large portion of **land which is not yet cultivated and occupied.**

- **It will** allow the government to let investors cultivate those areas and derive benefit
- **Out of the 66% of arable land only 16.5 million hectare is being used. So..**

E. **Political point of view**

- **Allowing sell and free transfer of land right**s will have the effect of **destroying the identity of few minorities within the country**

2. Against state ownership/for private

A. Freehold as exercise of human right

- **Freedom of choice** (peasants should be **left free to decide what they want**- peasant should not be condemned to die as peasant)
- Should be **given full right to the land that includes sell**…
- **Land to the tiller** can be answered only by allowing private ownership of land
- Emancipating tenants from land lords and **not to replace them by the government**
- **No Democratic society** and state if private ownership of land is not guaranteed.

B. Private ownership promoting efficency

- state ownership of land **leads to**
  - ✓ **inefficient uses of land,**
  - ✓ **fragmentation of plot size (distribution)**
  - ✓ **Over population** in the rural areas and resource degradation
  - ✓ **prevents the emergence of a dynamic rural land market** that allows entrepreneurial agents **to access credit and land**
  - ✓ **perpetuate the legacy of Derg** with regard to **land redistribution**
  - ✓ **No free transferable right- no security and investment on the land**

C. Unreasonable fear of influx

- so long as other requirements **are fulfilled**, farmers will not migrate by leaving their land which creates **both economic and psychological attachment**
- most **farmers would rather rent their land during stressful periods** compared with any other alternative, such as selling it (**research by World Bank)**

D. Experience of other countries

- **eg. USA** only **3% of the people are farmers**
- private ownership creates **sense of belongings and incentive leads to productivity**
- on the other hand experience of **socialist countries showed that public ownership is ineffective**

E. From farmers perspective

- they should be given **the choice either to plough the land** or **transfer it to others** and **migrate to the area of his interest**. If not..
- **as you are born a farmer** so should you remain without education and betterment of life styles. **(Restriction to the right to movement)**

F. Policy inconsistency

- **Public ownership (socialist) of land** and **free market (capitalist) are diametrically incompatible**

❖ **Which argument is tenable for you? Why/why not?**

- NB. Many observers declared that **both sides of arguments were not supported by empirical studies rather they are based on merely ideological differences**

- For example;
  - ✓ The **opinion and interests of Peasants ,pastoralists** and **civil societies was not considered**
  - ✓ The matter has been settled **by the FDRE constitution**
  - ✓ **No conclusive evidence between ;**
  - **the type of land ownership** in a given tenure and **the economic and social merits it has**

- An empirical research conducted by **the Ethiopian Economic Association in 2002 ,**showed;
  - SNNPR, Tigray, Oromia, and Amhara regions majority of the peasants **favored the state/public ownership of land**
  - Majority of peasants form the Benishangul Gumuz opposed it.
- Desalegn Rahmato, **for farmers** rather than **the form of ownership** the issue of **tenure security seems to be a more important consideration**

Land Federalism

- **The FDRE constitution**
  - Division of power to **federal and regional governments** Art. **1,46, 47, 51 and 52 (express, residual and concurrent)**
- Division of power **with regard to land**
  - **Article 51(5) –** enacting laws relating **to utilization and conservation of land is the power of the federal government**
  - **Article 52(2(d))-** allots the task of **administering land to regional government**

- **N.B enacting land laws is inherent power of the federal government**
- **administering rural land utilization** and conservation in accordance with the federal laws thereof is the **prerogative of regions.**

- **For many the power of the federal government should enact a law that;**
  - define **the nature** and **content of property rights in land**;
  - define the **conditions under which these rights are**
    - ✓ **to be held** and
    - ✓ what these **rights consists of**,
    - ✓ **how they operat**e in the **holding**, **transfer** and **inheritanc**e
    - ✓ and how they **are extinguished**

- The idea of **land administration** may not have universally accepted single definition

- **FAO defines it as;**
  - the way in which **the rules of land tenure** are **applied and made operational** and it includes an **element of enforcement** to ensure that **people comply with the rules of land tenure".**
- **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
    - ✓ **the rights and obligations** of any rural landholder **are enforced**, and
    - ✓ **information on farm plots and grazing land** [holders] are gathered, analyzed and supplied to users.

- **As such regional governments can enact laws to establish**
  - **A system and process** to apply and **make operational the rules of land tenure** defined by the federal government and
  - **to perform the executive duties** thereto accordingly
- **Article 17 of proc. 456/2005**
  - Each regional council shall enact rural land administration and Land use law, which **consists of detailed provisions necessary to implement this Proclamation**, Art.17(1)

- **How to get access to rural land?**

❖ There are three sources

A. Government Grant/source

- **Free of charge.**
- See Art. **40 (4) and (5)** of the constitution and
- **Article 5 (1)** of **proc. No. 456/2005**
- **Regional land laws replicated the federal land laws**

- **What are the requirements in this regard? Requirements;**

I. Age.

✓ See art. **5(2) of proc. 456/2005**

❑ Basic contents of the current rural land laws

❖ The federal government enacted;

- ✓ Rural land administration and Use Proclamation, Proc. 89/1997 and
- ✓ repealed and replaced it with the current proc. **Rural land admin. and Use Proc. No. 456/2005**
- ✓ Expropriation **proc. No 455/2005** and
- ✓ **Regulation No. 135/2007**

- Recently, almost all regional governments have enacted their own rural land laws

❑ Overview of the contents of rural land related laws

- ✓ FDRE cons. Art. 40(3-8),

- Proc.No. **456/2005** (FDRE Rural land administration and use proclamation)
- **What is meant by Rural Land?**
  - **Art. 2** of proc. 456/2005
  - **land outside of a municipality holding**
  - **rural land designated by the law**
- **Types of rural Holding**
  - ✓ **Private holding-** Art . 2 (4) and 2(11)
  - ✓ **Communal holding-** Art 2(12)-grazing, forestry and other social service
  - ✓ **Government holding-** Art 2(13)-lands designated as federal/regional ands-includes forest, wildlife protectedarea,lakes,rivers and other rural lands

- ✓ **Any citizen of the country**
  - o **who is 18 years of age or above and**
  - o **wants to engage in agriculture shall have the right to use rural land**
- ✓ Exception, **minor children who lost their mother and father** due to death can use through their guardians

❑ Regional land laws;

- ➢ **Stipulate 18 years and above to get rural land for agriculture**
  - – Amhara **(proc.133/2006),** (Art.5(2) and 6(1).
  - – Oromia **(proc.130/2007),** Art.5(1)
  - – SNNPR **(Proc. 110/2007)** Art.5(2) ,
  - – Tigray **(proc. No.239/2006,** Art. 8(1 and 5)

II. Profession

- ***Engaging or desire to engage in agricultural activity for living*** (**livelihood or profession**)
- The **federal as well as all regional laws enunciate this requirement.**

III. Residency…

- **It is not clearly stated** under the federal land use proclamation
- **Amhara (Art. 5(1), 6(1) and 7(1)** Any farmer residing in the region_
- **Oromia, Art. 5(1)** Any farmer residing in the region
- **Benishangul, Art. 5(1)** Any farmer residing in the region
- And SNNPRS **Art. 5(2) any resident of the region**

- **Tigray rural** land use and administration proc. **No.239/2006** states,
  - **any farmer residing in rural area** and who wants to engage in agriculture can get rural land **for free**
  - The rest only residents of the region

➢ **Is living in a rural area (residency)** a requirement to acquire rural land under proc. No. 456/05 and under the FDRE constitution? Why/why not?

  - **What do you think are the rationales for stating such requirements????**

❑ Who can claim this right?

- **Peasants , pastoralists and semi pastoralist** and their family members
- **Women** who want to engage in agriculture
- **Any person** who fulfills the above stated requirements
- Save priority requirement, **private investors** that engage in agricultural development activities shall have the right to use rural land- Art. 5(3)cum Art. 5(4,a)
- **Governmental** and **Non-governmental organizations** and **social and economic institutions**" (FDRE Rural land **Proc. 456/2005, Art. 5(4) (b).**

- What about under other regional rural land laws?
- Is there any variation in this regard?

What is `holding right' and what is its nature?

- Proc. 456/2005, Art. 2(4)
  - Is a right of peasants, pastoralists and semi pastoralist

- **The right includes**;
  - **Using rural land for agricultural** and resource development purpose
  - **full ownership to the produce** collected there from
  - **Renting land** to fellow farmers and leasing the land to investors (they should respect minimum holding size)
  - **Donate or inherit** a land to **members of his family** or other legal heirs

- ***Includes all right except sale and mortgage***

Nature of holding right

- **is a life time right**. No time limitation **(see Art. 7(1) of proc. 456/05), the same is true under all regional laws**
  - **Good for tenure security**
- **Holding right versus pastoralist land right**
- **Do pastoralists have the right to rent, lease and donate their grazing land?**

B. Inheritance or Donation

- See proc. 456/05, **Art. 2(4) and 5(2)**
- Peasants, past, semi**...** do have the right to donate or inherit their holdings **to their family members.**
- **family member"** means any person **who permanently lives with holder of holding right sharing the livelihood of the later**
- **Controversy with regard to who members of the family are**
- See article **2(5).** 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, who has no blood relationship with the peasant may be considered as family and be legible for the inheritance.**
  - ✓ On the other hand, **it is not possible** to inherit or donate rural land to;
    - **one's child who live elsewhere and is engaged in other professions**
  - ✓ The rationale behind such rule seems that **since land belongs to the state** and **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**, Revised Family Code**, family are those who are related by **marriage**, **blood** and **adoption**
- What about under other regional rural land laws???????
- **Amhara region rural land law-** Proc. 133/2006
  - Art. 2(6) **similar** with the federal land use proc.
  - **However, Art. 16(1)** goes further by allowing inheritance of rural land **by will to any farmer engaged in agriculture**
  - Even it consider residents **in town with small income to be considered as farmers** (Art. 16(2)

❖**Oromia rural land proc**. No. 130/2007

❖Art. 2(16) family member means

- ✓ **children of the land holder or dependents who do not have other income** for their livelihood

- Art.9(2)
  - Without prejudice to Sub- Article (1) of this Article, heirs **whose livelihood is entirely dependent on** the income from that land, or **have no other income** **shall be given inheritance priority**

Tigray rural land proc. No.239/2006

- Art. 2(12) defines **family member as a relationship by affinity** to the **second degree**
- Art. **14(4)** **adopted children**, **children**, **ascendants** of a peasant who live **in town do not have the right to inherit rural land**
- Art. 14(3) Peasants having their own **rural land do not have the right to inherit rural land**

C. Rent and Lease

- ✓ Most often referred as **commercial land transaction** by peasants and pastoralists
- ✓ **Are of significant importance in that**
  - **Give access to land** to those **who are productive** but landless
  - Would give alternative to **non-farm activity**
  - Avoids **idling of land**
- ✓ Read Proc.456/2005, **Art. 8**
- ✓ Peasants, pastoralists and semi-pastoralists can **lease their land to other farmers or investors**

- **What about under other regional land legislation??**
- With regard to **the size and period of rural land** to be rented, **there is no similar approach**.
- **Federa**l- in a manner **that shall not displace them**
- Regions;
  - ✓ **Tigray and Oromia Art. 9**
    - **S**ize- **up to half of his holding**
    - Period- **traditional farming** up to **3years** and for **modern agriculture up to 20 yrs** (oromia 15 years)

- **Amhara- Art.18**
  - **No size limitation** is provided. What is its implication?
  - Period –**for a maximum of 25 yrs-** no distinction
- SNNPR- Art. 8
  - ✓Size- in a manner **that shall not displace them**
  - ✓Period-
    - **peasant to peasant- 5yrs**
    - **Peasant to investor-10yrs**
    - Peasant to investors **for perennial crop**-up to **25 yrs**

Termination of rural land use right

- Grounds are stated in different part of the proc.
- **Federal rural land proc.456/2005, art. 10 and 13**
- **Amhara, proc. 133/2006- Art. 12; Reg.No. 51/2007, Art. 17**
- **Tigray-,proc. 239/2006- Art. 10 and 11 and 13**
- **SNNP, Proc. 110/2007- Art. 13 Reg. No. 66/2007, Art. 13**
  - **Engaging in profession** other than agriculture
  - **Permanent employment**
  - **Absence/ Disappearance from farm land. Tig. 2 Amh.5**
  - **Fallowing** the land without sufficient reasons, Ahr.3yrs

- Failure to respect **different obligations**
- **Forfeiting land right** upon written notification,
- **Voluntary transfer** of land through gift,
- **Land distribution** (the loss will be partial), and
- **Expropriation** of land without replacement of another land

❑ Land Dispute Resolution Mechanism

- Read article 12
  - **discussion and agreement** by the parties
  - **arbitral body to be elected** by the parties
  - in accordance **with regional land law**s
- Regional Laws;

- **Amhara rural land proc.(133/2006) And regulation No. 51/2007**)
  - Art. **29 of proc. And 35 of the Regulation**
  - First, **agreement of parties**
  - And then **Arbitration**
  - If not successful, can bring the case **to Woreda courts**
- **Oromia-proc. 130/2006**
  - See art. **16**
  - Agreement-16(2)
  - Arbitration
  - If no agreement, woreda court
  - Dissatisfied party can appeal **to high court**
  - It the decision is altered **to the supreme court.**

- **Large Scale Agricultural Investment**
  - comes along with the **2008 world food crisis**
- **Reasons**
  - **Scarcity of land**, **water** and **demand for fuel**… in Gulf state, India and South Korea
  - **Demand for cheap land** and **labour from wealthiest countries** and **investors from middle east**
  - **2009**, such deal covered **56 million hectares** of land around the globe
  - Activists, the media and researchers called such incidents as **``global land grabbing''**
  - rush for **commercial land** in Africa for **the production and export of crops and bio-fuel**

- **Ethiopia**
  - the official acknowledged area of land in the **year 2009 and 2010** was **3 to 3.5 million hectares**
- **Bases,**;-
  - Art. **40(6**) of the FDRE constitution
  - Proc. No.456/2005, **Article 5 sub 4(a)**
- **Justification of the government**
  - **ensuring food security,**
  - **transferring technology,**
  - **developing infrastructure**, health centers, school..
  - **creating employment opportunities**,
  - **inflow of foreign income and capital and**
  - **saving import expenditure**

Against

- **increase rates of food insecurity** in the vicinity of land investments;
- absence of **limits on water use**,
- **absence of Environmental Impact Assessments (EIA),** EPA has endorsed this power to MORAD in exchange of letters and
- **little in the way of local benefits** associated with these land investments;
- **Very low rental price**..eg 15 birr per-hectar in Benish..135 birr per hec. In Oromia
- unpromising reality with regard to transfer of;
  - **technology;**
  - Equivalent payment for the **labour service.**
  - Furthermore, **since remittance** (sending back dollars out of country by investors) is free, **the country will not benefit from foreign income.**

- **Karuturi** (India)-given 300,000 hectar in Gambella and 11,000 hectar in oromia
- **Saudi star… Gambella**
- **In 2008**, **MORAD** was designated as the lead agency **to conduct Large scale land deals**
- In **2010** the **Council of Ministers** endorsed that MORAD will a receive and administer all consolidated investment lands measuring **5000 hectares** or more from the Regions
- Regions can lease less that 5000 hectar
- In region-regional investment commission

CHAPTER THREE

Urban Land Law in Ethiopia

Introduction

- The historical development and the current urban land tenure system of the country
  - ✓ **pre 1975**,
  - ✓ **post 1975**
  - ✓ **up to 1993 and from 1993 on wards**

❑ **History of urbanization in Ethiopia (pre-1975)**

✓ **Urb. is a recent phenomenon** of **19th and 20th century**

✓ **Donald crummey** state that **palace, market** and **church** are the major institution that shaped urbanization during 19th and 20th century. (pol,eco. and soc. Factor)

- **Reasons;** according to **Richard Pankhurst,**
  - **civil war**, recurrent **drought and famine,**
  - **disease** and **terrible governance**
  - history of **agricultural self-sufficiency** which has supported rural peasant life (***lack of surplus production for market)***
  - **lack of permanent capital city**
  - **continuous move of the royal camp**
  - **All prevented the emergence** to any great extent of urban property in land **through much of the middle ages**

- However, there were incidents that contributed **for the expansion of urbanization. These are;**

A. The establishment of Gondar in 1636 by Emperor Fasiladas (who ruled **from 1632 to 1667)**

- Establishment of ***different castles and churches***
- There was **allotment of land** in the area by the government **to the principal lords**
- **It was said that private owe. Of land was witnessed. But** there **was no written law that dictates** urban land to individually owned **except via customary rule**
- **Huge track of land was held by few landlords**

B. The establishment of middle- sized towns in Ethiopia 19th c

- such as **Ankober (capital of shoa province)**,
- **Dbre Markos (Gojjam)** and
- **Dessie (Wollo) during the 19th century**,

C. The birth of Addis Ababa as a capital city of Ethiopia,

- ✓ It was established **in 1886 by Emperor Menelik II**
- ✓ had brought a **significant change in the countries urban history**
- ✓ There was **grant of land to the nobility, chiefs *and* to others**
- ✓ brought **construction of relatively permanent and costly buildings** which **no longer go along with the previous temporal nature of land ownership** right
- ✓ IN 1900`s **Illness of emperor Menelik** triggered fear
- ✓ persuaded the then **Regent, *Ras Tesema*,** to agree that they should be given title deeds **'lest a future emperor should dispossess them**

- then the first **historical 1907's edict was proclaimed**. The edict;
  - **allowed private ownership of land**
  - **land could be sold both by the government and individual owners. Requirements;**
  - **Certificate should be issued with payment for the seal and the value of land**
- **Envisaged expropriation of urban** land **for public purpose with compensation**
- Dispute were meant to be regulated ***by judges in accordance with the law of the country***
- If not by **applying Napoleonic code**
- **The edict brought about urbanland tenure security** of the **then land lords**

- **Urban land during Emperor Haile Sellassie**
  - followed the foot step of Menelik II
  - **Art. 27 of the 1931 constitution**
    - Allowed private ownership of land
    - Land could be expropriated for public purpose
- **Art. 105 of The Revised 1955 constitution**
  - **Owning and disposing of private property i**ncluding **land was allowed**
  - **See also Art. 1535-1552 of the civil code**

- Generally, **the pre-1975 urban tenure system**;
  - evolved itself into **freehold land tenure system** (private ownership of land),
  - **ensured tenure security of land holders**
  - land could only **be expropriated for public purpose** with payment of **compensation**
  - **However the major problem of urban land during this period was related with ACESS TO URBAN LAND**
  - **the period saw extensive granting of land to** the **nobility**, **chiefs** and **other followers** of the then emperors

- ✓ This led **to high concentration of land ownership** in **the hands of few land lords**
- ✓ For example**, in 1960's less than 5% of the population owned 95% of the Addis Ababa's urban land**
- ✓ **60% of** in habited dwellings were **rented rather than owned**

- ❑ **Urban Land Law During Derg Regime (The Permit System) post 1975**
  - The previous promulgation of proc. **No 31/1975 in April, 1975, had triggered fear among the then** urban **landlords,** , **aristocrats** and **high government officials**
  - **In June 1975, Government Ownership of Urban Lands and Extra-urban houses *proclamation No. 47/1975 was proclaimed***

- **Rationale for the proclamation. Read the preamble**
  - **To bridge the wider gap** in the standard of living of urban dwellers
  - To eliminate the **exploitation of the many by the few**
  - Handful urban land lords **obstructed urban planning and development**
  - to extend **secure housing facilities to poor urban dwellers**
- The proclamation;
  - Nationalized **all urban land** and **extra urban houses-Ar 3**
  - **Abolished freehold tenure system** and **declared public ownership of land**. **See Art. 3,**

- **Abolished urban land lord and tenant relationship** Art.6(1)
- Granted **any person or family up to 500 square meters** for the purpose of construction of **dwelling house 5 (1)**.
- **use right** was allowed **to be transferred to the wife** or **husband** or **children up on the death of the holder**. Art. 5
- **Urban tenants and persons** who previously did not own their dwelling units, **were given a right to claim possessory right over** up to **500 squ. met of land they occupied**. **Art. 6(2) and 7(1)**
- **Freed tenants from payment to the landowner of rent, debt, and any other obligation**. **Article, 6(1)**

- **Prohibit transferring urban land** through **sale, antichreisis, mortgage, succession or through** any other means. Art. 4
- Compensation was guaranteed ***for houses and not for the land***. **Art. 3 and 18**
- a person or a family c**an no longer own more than a single dwelling house**
- **However,** any person or family or organizations may own **an additional business house if** allowed by the government**. Art. 11(3)**
- **Renting of houses b**y any **person, family** or **organization was expressly prohibited**.

- The right to rent was given to **the state and co-operate societies. Article 20**
- Save for pre-emption right of the government, free transfer of **urban houses through succession, sale** or **barter** was allowed . **Art. 12**
- Owners of houses were expected to **pay land rent and house tax**. **Art. 9 and 11**

- **Generally, when seen from tenure security issues,**
  - The proclamation was **warmly accepted by the then tenants and landless urban dwellers**
  - the proclamation **guarantees equitable access to urban lands**

- However, **the number of restriction imposed** on urban land **exacerbated urban tenure insecurity**. **Restriction on;**
  - ✓ inheritance
  - ✓ Transfer of house, pre-emiption right of the govt.
  - ✓ Renting house,
  - ✓ expropriation,
  - ✓ compensation,
  - ✓ grievance mechanism…
- This brought about **shortage of urban housing**
- **decay and deterioration of the many houses under *Kebele* administrations were witnessed during this period**

3. The Current Urban Land Tenure System (The Leasehold Tenure System)

- **TGE. in its 1992 economic policy**;
  - **Addressed Urban and Housing Construction Policy**
  - **Encouragement** and **participation** **of private investors in housing construction** and **the general people in condominium constructions**,
  - **maintained the state ownership of urban land**
  - Emphasized on the need for **secure ownership right over the houses constructed** that enable people **to use** and **enjoy**, **transfer**, and use them **as security for loans**

- It also underlined the need to limit the role of government to;
  - **equitable allocation of land** to those who **wish to construct houses**,
  - **prepare rules and regulations**, and
  - **ensure the availability of loans**

- **in 1993, the government adopted** urban lands Lease Holding Proclamation No. **80\1993**

- **justification for the proclamation;**
  - to satisfy **housing needs** of the various section of the population;
  - **to provide for the value of land utilization**
  - **to collect urban revenues** that would help to finance different **urban infrastructures**, **housing needs** of **urban dwellers**
  - **to avoid the non-transparency nature of the permit system**

❖**Scope of application;**

- The proc. **is not applicable on lands held before the proclamation** (lands acquired through the then permit system). **Art. 3(1)**
- Recognized **dual tenure system**
- However**, transfer houses other than inheritance** could only be done **through leasehold system. Article 3(1) and (2)**
- Was extended **to any urban land lawfully held** but used for any **other purposes than designated for the construction of dwelling houses**. **Art. 15**

- **Access to urban land and right to use urban land ;**
  - **Lease system (Contractual agreement)**
  - Through passing **competitive public tendering process**. **Art. 5(2), 7(2)**
  - **for definite Period of time** ranging from **50-99** years**. Art. 7**
- **Leaseholders can;**
  - **Transfer, pledge** or **mortgage** the lease right they acquired **to the extent of the rent** or **the lease price paid**,
  - **Contribute** it **in the form of share** **to the extent of the rent** or **the lease price paid**. **Art. 10**
- **N.B No profit should be gained by lessees during transfer of lease right**

- land could be given **for free or without public tendering** for
  - read **Art. 13**
  - **investments** that the government **encourage**,
  - **for social services** and for other purposes, which would **directly benefit the public**
- Termination of lease agreement
  - Read art. 11
  - **Failure to use the land** according to the lease contract
  - **For public purpose**
  - Failure to pay the **renewal rate of rent Art. 11 and 7**

- N.B **Renewing lease right was a right given for lessees** (it imposes a duty on land administrators **to renew the contract when required by** a lessee. See. **Art. 7(3)**
- **However, in 2002, Proclamation No. 80/1993** was repealed and replaced by Urban Lands Lease Proclamation **No. 272/ 2002, Rationale;**
  - **Promulgation of the FDRE const.**
  - the need to make leasehold system **an exclusive mode of urban land acquiring system**
  - the need to provide for **transparent and expedient dispute resolution system**

- **New amendments;**
  - scope of application was meant **to govern all those urban lands held by the previous permit holders**
- However, **the application of leasehold system on permit holders was suspended until**;
  - The then **regional and city governments decided** the **time and conditions** under which permit holders **could be converted in to leasehold system. Art. 3**
  - **Provided two methods to get access to urban land**, unlike its predecessor which only recognized **public tendering**
  - **Article 4 (1.b)** of the proclamation recognized **auction** and **negotiation** as the two modalities to acquire urban land.

- ❖ Nevertheless, **sub article 4, 1(c)** empowered regional cities to **come up with additional means of land acquisition for the construction of dwelling of residential houses.**
- Accordingly, besides the above two mentioned systems, **the Addis Ababa City Government came up with three additional methods**: namely,
  - **lot,** giving land through chance or lottery for free
  - **assignment** to civic association, charitable organization, embassies
  - **Award**
  - city government or region administrators may give Land **with low price or for free, read art. 8(2)**

- *for development activity,* ***investments that the government encourage,***
- *social services rendering institution,*
- ***low costing housing**, **private dwelling houses** and,*
- *similar purposes it purports to encourage*

❖ **Transferability of lease right**

- **Read Art. 13**
- Leaseholders can **transfer or undertake a surety on**
- or use it as a **capital contribution to the amount of the lease payment**
- Unlike its predecessor, this proc. **allowed free transfer of lease right**

❖**Lease period;**

- Read art. 6
  - It varied depending on the level of **urban development** activity or **the type of service**

❖in any towns

- **up to 99 years** for **housing, science, research, government office, religious institution**
- 15 years for urban agriculture

➢ For Addis Ababa and towns designated as A.A the maximum **year is 90 years to 50 yrs.**

➢ For towns not designated as A.A the maximum is **99 years and minimum for 70**

❖**Renewal of lease period**

- Read Art. 7
- lease contract **may or may not be renewed**
- if not renewed, **no compensation. Art. 15**
- However, Art. 11(3) of proc. 80/1993 provide **compensation in cases on non-renewability of k.**
- **Removal of the fixtures** at his/her own cost or else the appropriate may take or demolish them
- How do you see **it in light of urban tenure security?**

- This Proc. was **repealed and replaced** by the current Urban Lands Lease Holding **proc. No.721\2011**

- **The new proclamation, proc.721/2011, will be discussed later**
- **What do we mean by lease**
  - the Ethiopian Civil Code under article **2896 defines *lease*** as
    - Lease of immovable is ***a contract*** *whereby one of the parties,* ***the lessor,*** *undertakes to ensure to the other party,* ***the lessee****,* ***the use and enjoyment*** *of* ***an immovable****,* ***for a specified time*** *and* ***for a consideration fixed in kind or otherwise.***"

- In fact **the civil code is not currently applicable**

❖ Proclamation **No.721/2011** under **article 2(1)** defines "lease" as

➢ a "*means of system of land tenure by which the **right of use of urban land** is acquired **under a contract** of **a definite period**.* **(**what about consideration element?)

➢ NB. For our purpose, **lease is a contract** where by **a person enjoys urban land use for specified period** and **specified purpose with payment arrangment'**

- **While lease holding system is a system of obtaining land use by contract**

Objectives of the proclamation

- Read **the preamble** and **Art. 4**
  - ✓To bring about **appropriate administration** that can meet the increasing demand for land
  - ✓To build **accountable and transparent land administration** system-**preventing corruption**
  - ✓To realize the **common interest and development** of the people-priority to public interest
  - ✓To make **tender reflect the prevailing transaction** value of land

- **Important elements in the above definitions**
  - **Contract**,
  - **use right,**
  - **consideration** and
  - **definite period** and **purpose**
- **Advantages of leasehold system, Leasehold helps to;**
  - Enable governments **to collect revenue in the form of lease price**
  - **Fosters efficient use** of land and **deters wastage of land**
  - Enable governments **to retain land ownership** while allowing private parties **to use, transfer**, **inherit** and **benefit from the land**
  - **Offers possibility to reclaim back the land**
  - For **investors it gives assurance and saves money** as usually lease prices are **paid periodically**

Scope of application of proc. 721/2011

- Read art. **3 and 5**
- to all **urban centers** **within Ethiopia with regard to urban land**
- **Urban land** - land located **within administrative boundary of urban center. Art. 2(2)**
- **urban center** **is , Art. 2(3)**
  - ✓ **locality having municipality** or
  - ✓ a population size of **2000 or more** of which **at least 50% of its labor force** is **engaged in non-agriculture**

- **The application of the proclamation on old possessors (permit system)**

- What is meant **by old possession?-** Read art. **2(18)** of the proc.
  - Urban lands acquired during **the imperial** and **Derg era** and after that **w/o leasehold system**
  - **Replacement lands** given for old possessors
- **Art. 5- No person can acquire** urban land **w/o leasehold system** (exception art. 6)
  - Transfer of old possession **other than inheritance**, could only be effected through leasehold system. **Read art. 6(3)**

- **Merger of old possession with leasehold** could only be effected through lease- Art. 6(6)
- All such transfer are **mandatorily required to pay the benchmark lease price of the locality(art. 6(**
- Final transfer of old possession will be decided by **the Council of Ministers** based on the detailed study to be conducted by **Urban dev't and construction minister.**

Bottle neck issues surrounding old possessors

- There fate is **uncertain since 2002(**no clear property right)
  - Proc. 272/2002 **(the then regional and city administration**
  - Proc. **721/2011**-Council of Minister and Ministry of urban dev't and construction
- Conversion based on **urban plan** and **national standard** will force them either-(Art. 6(2a and b)
  - **to decrease-**payment for the property **not to the land**
  - **increase –**with payment of lease price
- Nonetheless, **how much to pay**, **how to afford the money needed**, **what will happen if the money needed is not affordable……** are some of the uncertainties that will be created

- **Transfer other than inheritance**
  - The person become the possessor **through lease. What does it mean?**
  - **The buyer will pay the house price to the owner and the lease price to the government.**
- **Expropriation-**
  - ✓ **Appeal** only on the amount of compensation-Art 29(3)
  - ✓ The definition of **public purpose-**
    - see **art 3 (1) and (2)** of proc. 455/2005
    - Art. **26(1) and (2)** of proc. 721/2011
  - ✓ **The size of substitute land**, proc. 455/2005;
    - Art. 8(4)- for old possession it will be determined by **urban administration**
    - Art. 8(6)-lease holders -**similar plot of land**
- **How do you see all such issues in light of tenure security issues??**

Modes of access to urban land

- Read **art 5, 7 and 13(1)** of proc. **No. 80/1993**
  - **Public tendering** and **for free** **(**for ***investments that the government encourages)***
  - ***for social services*** *and* ***for other purposes***, *which would* ***directly benefit the public***
- Read art**. 4 of proc. 272/2002**
  - **Art.4 (1,b) auction** and **negotiation**,
  - Art. 4(1,c)- **regional governments and city administration** were also allowed to come up with **additional modes** for allocation of land for construction of residential houses
  - Eg. A.A CITY Admi. **Lot**, **award** and **assignment**(to charitable, international organization..)

- **Proc. 721/2011**
  - The only modalities recognized are, **tender** and **allotment** (Art. 2(10)land lease transfer without auction)
- **Tender** (auction) read from **art. 8-11,**
  - **Preparation of land for tende**r-free from claim, conformity, access to infrastructure….
  - Information **on the grade**, **lease bench mark price** and others should be prepared
  - **Advertizing** and **putting bid document for sale**
  - **Amount of bid bond-not less than 5% of bench mark lease price**

- An individual can **only buy one bid document for the same plot**
- There should be **at least three bidders (exception see art.11(7 and 8)**
- The winner will be declared **based on the basis of bid price** and **the advance payment offered** Art.11(5)

Allotment(without tender)

- Read Art.2(10), 12 and 13
- **Allotment**- is applied for providing urban land by lease to institutions that **could not be accommodated by way of tender**
- May be allowed by the decision of **regional cabinet** and **city administrations**
- is allowed **for selected bodies which do have a paramount importance to the society**

- **Allotment is allowed for,**
  - Offices premises of **budgetary government offices**
  - **Social service institutions** run by **government** or **charitable organizations,** Projects having **special significance**
  - **Public residential housing**
  - **Manufacturing industries, Embassises** and **international organizations, Places of worship,**
- **Whether allotment of urban land is with payment of lease price is not clear.**
  - For example, hoe do you see Art. 12(2)?
  - **What about Art. 20 (7)??**
  - Period of payment and the different sub articles stated therein not applicable on allotment of **land for budgetary government entity and for religious institutions stated under art 12(1, a and d)**

- Nevertheless, they are also expected to pay **an amount equivalent to the compensation paid in the course of clearing the land**

- Formation of Lease Contract and lease period
  - Formation- read art. **16 and 17**
  - **Contract b/n the appropriate body and the lessee**
  - The contract shall include; **start up** and **completion time**, **payment schedule, grace period**, **right and obligation** of parties and other details
  - Then issuance of certificate-Art.17
- Period of lease is specified based on; Art. 18
  - **the purpose of** urban land

- **the nature of the lessee** and
- whether the land is going **to be leased is situated in Addis Abeba or in any other urban centre**

➢ In any urban center
- 99 years for **residential housing, science and thechnology**, **research and study**, **government office**, **charitable** and **religious institutions**
- **15 years for urban agriculture**

➢ **In Addis Ababa, Ceiling of 90, 70 and 60 and** In other urban centers, ceiling of **99, 80 and 70** years;
- ✓ for **education, health, culture and sport**; **industry**; and **commerce and others activities respectively**

Transfer of Lease Right

- **See art. 24**
- Like any other property right, lease right **is transferable to others**
- **Art. 13 of proc. 272/2002, no restriction** were stated.

- Leaseholders were able to transfer **bare leasehold lands** or lease right with construction
- Leaseholders were **getting the full profit of the transfer**
- As to the government such practices has **created problem of "rent seeking" activities**

- **Art. 24(1) of the new lease proc**. states:
  - "a lessee **may transfer** his leasehold right or use it as **collateral** or **capital contribution to the extent of the lease amount already paid**."
  - The last phrase refers to transfer of lease right through **collateral or capital contribution** and **partly to sale of uncompleted construction**
- **It restated** what had been stated under **the first lease proclamation**
- **Reasons/justifications**
  - To prevent **rent seeking activities**
  - To Prevent land **speculators** who sale leasehold land **without adding any value on it**

Strategies designed to prevent land speculation

- **There are Four major strategies employed. Accordingly,**

1. **The First strategy**
   - is stated under **Art. 24(7)**
   - **It prevents people who repeatedly transfer leasehold right, without completion of construction** in **participating in any future lease auction**
   - However for **how many times should people sale unfinished** house so that they can be prevented from lease auction is not clear
   - This will be determined on the **regulation and directives**

2. The second strategy

- Is stated under Article **24 (2)**
- Restriction on transfer of **prior to commencement** or **less than half completed constructions** in cases other than inheritance
- Such sale **should be transparent and wd be supervised by the appropriate body**

3. The third strategy,

- Transfer of **bare lease land** or **less than half completed construction** will not benefit the seller
- Half completed construction is defined under **article 2(16)**

- **What will happen if a lessee wants to transfer less than half completed construction or bare land?**

- A person who wants to transfer his leasehold land **before commencement of construction** or **half-completed construction will get**;
  - The ***effected lease payment*** including interest calculated at bank deposit interest
  - The value of **the already excuted construction**
  - **5% of the transfer lease value (profit)**

- **All the remaining profit will accrue to the government**

The fourth strategy

- Art.24(1)- Collateral/mortgage is limited **to extent of lease amount already paid**
- **Art. 24(4) and 22(3)**
- if the lease right is without any construction on it, the mortgage value will be equal to;
  - ✓ lease payment **already made**, **minus 7% of total lease price penalty and unpaid yearly instalments.**

- **Drawbacks,**
  - Buyers and sellers **may secretly agree the sale on higher price**
  - Shift from **sale of unfinished construction to finished one**
  - **Some argue is against Constitutional right to property art. 40(7)**
  - The same holds true **for mortgaging lease right**. **See art. 24(1) and 22(3)**

➢ NB. If, the construction is **more than half completed**, **then there is no such restriction**

Termination of lease contract

- Read art. 25. It recognizes **three scenarios**.

1. Failure to use **the land in accordance with article 21(1)**, (**violation of contract**)
2. **Expropriation** of the leased land for public purpose, and
3. **Expiry and non-renewal** of lease contract

1. **failure to use the land in accordance with article 21(1), (violation of contract)** it Refers;

a. Failure to use land **for the intended purpose within the time prescribed in the lease contract**

b. Failure to Commence construction.

C. Failure to complete construction.

Read art. 23

- The law sets **24,36 and 48 months** for completion of **small, medium and large** scale construction consecutively. Art. 23(2)-
- Classification of construction projects- will be determined by **the regulations to be issued by regional and city administrations (Art. 23(3)**

- **If he fails, the appropriate body;**
  a. transfer the building to others **through open tender for those who can complete and use the building. In such cases,** the appropriate body will deduct costs incurred for the sale and **return proceed to the lessee if any Art. 23(7, a) and 23(8)**
  b. **Clear the land as its own cost** and recover such cost from **the lease down payment** or **from the deposited money**

2. Expropriation

- Read Art. **25(1,b) and 25(4**)
- Will be discussed later

3. Expiry and Non-renewal of Contract

- ***What will happen after the expiry of the period agreed?***
- Read. **Art. 19 and 25(1(c), 25(5 and 6)**

➢ Lease contract may be renewed

- **Discretion is given** to city and regional land administrators
- **On what bases should** land administrators **refuse to renew the contract is not known**
- **No automatic renewal.** Rather the lessee should apply in writing to the appropriate body within **10 to 2 years before the expiry**.
- **Accontrario** reading indicates that failure to apply will **result non-renewal**
- Failure of the appropriate body will **result in approval of renewal of the period**

- **In cases of non-renewal;**
  - See art. **25(5)**
  - The lessee **should remove his property** **within 1 year**
  - If not, the appropriate body **will clear land and will take the property**
  - **No compensation (but not under proc.80/1993, Art. 7(3), 10)**
  - Problem with regard **to tenure security**
  - Eg **Botswana**, **automatic renwal is guaranteed**
  - In **Mozambique**, compensation will **be paid to the property to be removed**
- However, in Ethiopia….. **no automatic renewal and compensation.**
- How do you see this in light of Art. 12 and 18- **religious institutions?**
- How do you see it in light of tenure security issue???????

The Constitutional Base for the Urban Land Lease System in Ethiopia

- Article 40 (3,4,5,8)
- There are two Divergent arguments

1. The constitution is not the base for the lease system

- FDRE cons. Art. 40 (1 to 8) **nothing is provided that indicates** the manner how urban and is to be acquired
- **The constitution** was **enacted after** the first lease proc.
- Thus, the constitution can not be a base for leasehold system
- **As the constitution guarantees joint ownership** of urban land, **the limitation of access to urban land based on tender and allotment has no constitutional foundation**.
- **Additional modes** that would take in to cognizant of the **needs of the poor and middle income urban residents** should have been left to city and regional land administrators

2. The constitution impliedly endorsed the already existed leasehold system

- The constitutions silence, c**ould be taken as implied endorsement of the lease system**
- Additionally, free access **is only to peasants and pastoralists**
- Art. **40(6) private investors** could access land on payment arrangement. As this provision **neither specifically mentioned rural nor urban land**, **there is no problem if this is construed to include urban land**
- **Art. 89(5)** – government has the duty **to hold, behalf of the people**, land and other natural resources and ***to deploy them for their common benefit and development***, the government can enact laws **like the leasehold proclamation to administer urban land**

➢ Which line of argument is **plausible for you? Why/why not?**

Chapter Four

Restrictions on land rights in Ethiopia

❑ Introduction

- Apart from expropriation, there are some **other restrictions imposed on** rural and urban landholders.
- Such restrictions range from;
  - **limiting the use** and **enjoyment**
  - **to the complete taking of land**
- There are several restrictions imposed by both the federal and regional rural land laws and Urban laws. among them;

❑ Rural land restrictions

- ➢ Failure to conserve the land
- ➢ Engagement in non-farming activity
- ➢ Failure to observe residency requirement
- ➢ Making land Idle
- ➢ Land re-distribution….

✓ This has been addressed by your assignment

❑ Urban Land Restriction

- ➢ **not to use** the land in the manner of **disturbing neighbours-Nuisance**, Civil code Art. 1225
- ➢ Using urban land for legally allowed **plan-Proc. No. 574/2008-**

- **Securing building permission before construction-**
  - ✓ Building proclamation **No. 624/2009**
  - ✓ Any construction, **for residential** or **other uses**, may not be carried out without a prior building permit even for public institutions- Art. 5

Expropriation

- Definition of expropriation and its basic elements
  - It is known by different names like;
  - **compulsory acquisition**, **eminent domain**, **compulsory purchase**, **land acquisition and resumption**
- **FAO defines it as;**
  - " the power of government **to acquire private rights** in land **without the consent of its owner** or occupant **in order to benefit society**."
  - Does not encompass the need **for compensation**

- Expropriation is generally understood to be **the right of the state** or **of those to whom the power has been lawfully delegated** to **take private property for public use** without **the owner's consent** and **with payment of due compensation** to be ascertained **according to law**.

Four Basic elements of expropriation

- **First**, **expropriation is a sovereign power of the state**
  - No need of securing individuals consent
  - **State authorities** such as **municipalities** or **other public companies** or **private companies legally** authorized by the state execute expropriation..
  - But such organs **should be clearly known** (FAO)
- **Secondly**, expropriation proceeding **must follow legal procedure**
  - that warrant that the state must initiate proceeding that give landholders the right to;-
  - **have access to court or other organs in order to observe due process of law.**
  - **timely informed** that the government **is intended to acquire his/her land;**

- **to be heard** and **to negotiate** **on the amount of compensation**;
- The procedures, followed in general, **should avoid arbitrary takings of land by the state** **without fair compensation**

➢ **Thirdly**, expropriation **must be taken for public purposes**.

- **For what purpose should a property be expropriated**??
- The interpretation of the concept **differ from country to country**
- Different terminologies like; **public good**, **public interest** or **public purpose** are used interchangeably

- **the components of public purpose** and

- As to what constitutes public purpose **there are two approaches**: **broad** and **narrow views**

a. Broader view

- ✓ **anything which tends to enlarge the resources, promote the productive power of any considerable number of the inhabitants of a section of the state the creation of new resources for the employment of capital and labor**

b. Narrow view

- ✓ **public purpose is actual use or right to use of the condemned property by the public**
- ✓ **The indirect contribution the prosperity of the entire community resulting from activities from which only some individuals would profit was not sufficiently to justify the exercise of eminent domain**
- ✓ **It is necessary that the public possess a „right" to use the facility or service for which the property was desired).**

- **FAO** reveals that the following among the commonly accepted public purposes for compulsory acquisition:
  - **Transportation uses** including **roads, canals, highways, railways, bridges, wharves and airports**;
  - **Public buildings** including **schools, libraries, hospitals, factories, religious institutions and public housing**;
  - **Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs**;
  - **Public parks, playgrounds, gardens, sports facilities and cemeteries;**
  - **Defense purposes**

- These purposes are directly related with **social and economic development of the society and the protection of the natural environment**
- Controversy arose where **private land is acquired by government** and **then transferred to private investors**/developers and **large businesses**
- FAO recommends **public scrutiny to ensure** the balance between **public need** and **private interest**

- Three ways of listing components of

b. Inclusive listing

- contains **some list of permissible purposes**,
  - allows **the necessary flexibility**
  - limiting the scope for expansion only **to purposes similar in nature**

C. **Neither exhaustive nor Inclusive**

- leaves the determination of the public purpose to **the appropriate government body**

- Which do you think is preferable to land holders/owners? Why/why not?

iv. fourth; payment of commensurate compensation

- Compensation is defined as *'full indemnity or remuneration for the loss or damage* ***sustained by the owner/holder*** *of the land rights taken for the public use.'*
- **Compensation may either** *in financial form* **or** *replacement land*

➢ ***Justifications***

- protects **under-represented groups in** government from arbitrary and discriminatory decisions and
- to deter **hasty decisions**
- to encourage land holder **to invest more** and **improve the land**
- difference in **the manner and amount** of determination of compensation.

- terminologies used **like just', 'fair', 'adequate', 'due**' or '**commensurate'**

- **There are two theories** that indicate **the extent of the compensation. These are;**

a.) Owner's loss' theory

- the expropriated person **should be placed** in a good pecuniary position as **he was before the act**
- FAO guideline prefer this
- compensation **that is no more or no less than the loss**
- the land holder should be **neither enriched nor impoverished**

b). **Takers gain theory**

- the expropriator **is expected to pay only for what it gets** i.e. **the value of land rights**
- **incidental losses** caused due to the compulsory acquisition of land rights **will not be considered** in the assessment of compensation

Land Expropriation in Ethiopia

- The issue of expropriation **was introduced in Ethiopoia in 1907 during the rign of Menelik II.**
- **It was also recognized under the 1931 and 1955 constitution and the civil code-**Land could be expropriated **for public purpose with payment of compensation**
- **Art. 8, 1932 Decree issued by Emperor Haile sellassie I**
  - Expropriation for different purposes, **such as, market, churches, military operations, railways**, or for other **similar purposes** was allowed
- However, the systematic **definition of the concept** was given to it under the above legislations
- **Art. 1460 of the civil code however defines it;**
  - Expropriation proceedings are proceedings whereby **the competent authorities compel** an owner to surrender **the ownership of an immovable** required by such authorities **for public purposes**"

- Since, the civil code deals **private ownership**, it was suspended during derg era as land is transferred **to state ownership as it is also today.**

➢ Currently, in Ethiopia, expropriation is recognized and is governed by;

- **The FDRE Constitution**,
- Expropriation of **Land holdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005** and **Council of Ministers Regulation No. 135/2007**.

- Art. 40(8) of the FDRE Constitution,
  - ✓ clearly acknowledges the power of the state to expropriate **private property** **for public purpose** **in fact with** **payment of commensurate compensation** to the value of the property.
  - ✓ However, some other countries constitution go to the extent of **defining and listing the purpose** **f**or which land may be acquired. Even enshrine the right to contest the descion to court of law

- Proc. No. 455/2005, Art. 3 and urban land lease Proc. No.721/2011;
  - ✓ do not define expropriation, however, incorporate basic elements.

- **For example, Art. 26(1).** reads as
  - '***the appropriate body*** *shall have the power,* ***wherein it is in the public interest****, to clear and take over urban land* ***up on payment of commensurate compensation****, in advance, for the properties to be removed from the land.'*
- But, read art. **2(18) o**f Amhara regions **land use proc. 133/06. It reads**;
  - ***Expropriating land holding****'' means* ***taking the rural land*** *from the holder or user for the* ***sake of public interest paying compensation*** *in advance by government bodies, private investors, cooperative societies, or other bodies to undertake development activities by the decision of government body vested with power*

- However, what is meant by public interest is defined by Art. 2(5) Proc. No. 455/2005. it reads;
  - the use of land defined as such by **the decision of the appropriate body** in conformity with **urban structure plan** or **development plan** in order to ensure the **interest of the people to acquire direct or indirect benefits** from the use of the land and to **consolidate sustainable socioeconomic development**.
  - The same definition is adopted **under Art. 2(7) of proc.721/2011**
  - Is it broader or narrower definition???
  - **What difference can you grasp among**

- But, look at Art. 2(15) of Amhara rural land proc. 133/2006. it reads
  - Public Service" means a service given to the public directly or indirectly, such as **government office**, **school, health service, market service, road, religious institutions, military camps, and the likes**, and includes activities assumed important to the development of people by the Regional Government and to be implemented on the rural land.
- How do you see it? Is it narrow or broad?
- Does this include private investors?
- How do you see it in light of FAO`s list

- **Competent authorities to expropriate? Who has such power?**
  - **Federal Government** (for projects **falling under the jurisdiction of the federal government** for a **national interest**) and
  - **Regional government** (for projects **falling under regional interest)**
- **Which specific agencies has the power to expropriate rural and urban landholdings?**
- **Read art. 3(1) of proc. 455/2005**
  - **A *woreda*** or **an urban administration** shall, upon payment in advance of compensation in accordance with this Proclamation….. by themselves or

- **By the decision of appropriate higher regional or federal government organ.**
- The organ having that **power is not specifically stated.**

- However, these organs can be stated by other laws. **For example, in Amhara land law proc. No. 133/06,**
  - **the higher organ having such power is the** Amhara National Regional State **Environmental Protection, Land Administration and Use Authority with regard to rural land**.
  - with regard to urban land there is no

What procedures should be followed during expropriation proceeding?

- Rural land
  - Read art. **4(1) of proc. 455/2005**
  - **Notifying the land holder in writing the time** when the land has to be vacated and **the amount of compensation** to be paid
  - Notice period in any case should not **be less than 90 days**
  - A land holder should handover the **land within 90 days from the payment of compensation** and if he refuse taking the payment, from the date of **deposit in the blocked account**
  - **If no property** on the land a landholder should **handover from 30 days receipt** of expropriation order
  - If the landholder refuse to abide by the above rules, **a woreda or urban administer can use a police force**

- **Those dissatisfied by the amount compensation paid can bring action to a court,** Read art. 11
- **Procedure in Urban landholding**
  - Read **art. 27 of proc. No. 721/2011**

I. **Giving of a written clearance order which shows;**
  - **the time** to vacate the land
  - **the amount of compensation** to be paid
  - **the size of the substitute lan**d
  - **the notice** period **should not be less than 90 days**

ii. submitting grievance , Art. 28
  - an aggrieved person should submit his **grievance to the appropriate body within 15 working days after the notice**
  - if not satisfied a landholder can appeal to **appellate tribunal** established by the proc. This organ sd give its decision in **writing within 30 working days, Art. 29**

iii. **Appeal to court of laws, Art. 29(4)**

- a person dissatisfied by the decision of the appellate body can appeal to;
- court(**municipal appellate court** or in its absence to the **regular high court)** within **30 working days** **only on the amount of compensation**

Determination of compensation

- Read proc. **455/05, Art. 7**
- Compensation is paid to **the properties situatrd on the land** and **to the permanent improvements** made on such land
- The amount of compensation shall be determined on the basis on **replacement cost of the property, art. 7(2)**

a). Building

- **PROC. 455/05, Art. 7 cum, reg. no. 135/07, Art. 3 cum. Proc. 721/2011, Art.26**
- **Replacement cost** + **replacement land** + **1 year`s rent**
- It considers value in terms of **current cost of labour** and **material required** for constructing **a comparable building**

➢ The compensation includes

- Cost of **floor ties of the compound**
- **Septic tank and Structures attached to the building**
- **Cost of demolishing**, **lifting**, **reconstructing, installing** and **connecting utility lines**

- **Problems**
  - Failure **to update cost of labour** and **material cost**
  - Getting **land comparable in size and location**
  - **Location is not given value**
  - Damages to property/business a **a result of another project is not compensable**
- **Displacement Compensation, Art. 8**
  - **Rural landholders**
    - Farmers who lost their land permanently may be compensated through **monetary** or **replacement land compensation**

- **The monetary compensation for total rural land loss**
  - **Ten times** the **average annual income** he secured during the **past 5 years preceding** the expropriation
- Why ten? Why 5?????
- Assume a farmer produces **50 quintal wheat per year**
  - sales price per Q is **500 Birr** and his total income **is 25000**
  - Thus, the displacement compensation to be paid **is 25, 000x 10=250,000**
- **Temporal displacement from rural land**
  - **Average annual income secured** during **5 years X** (the period of time the land **is not returned to the holder** or **repossession of land**)

- If the landholder **is provided with the land** which can **be easily ploughed** and **generate comparable income**, the compensation shall only be
  - ✓ **the average annual income secured during 5 year**

- **Displaced Urban landholders, 8(4)**

- Shall be provided with
  - a plot of land **for the construction of dwelling house** (the size, grade… will be determined **by urban administration**
  - a displacement compensation of **the annual rent of the demolished house**
  - or should be allowed to reside in **a dwelling house owned by urban land administrator**
  - Similar procedure shall be followed with regard to **business houses.** Art. 7(5) of the proc.

Leaseholder

- Compensation as **per art. 7**
- Should be provided with **similar plot of land for** the **remaining lease period**
- If the new land lease price is lesser than the previous one, **he will be granted additional lease period**