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LAND GOVERNANCE IN IGAD REGION



ETHIOPIA Country Profile

Assessment of Land
Governance Framework,
Training & Research Land
Governance Institutions

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1.1 Ethiopia

1.1.1 Country Context

The Federal Democratic Republic of Ethiopia (FDRE) is located in the horn of Africa, bordering with Eritrea in the north, Sudan and South Sudan in the west, Somalia and Kenya in the south and Somalia and Djibouti in the east. The total land area is 999,541 Km² (385,925 sq. miles) and is home to 73 million inhabitants. It covers an area of 1,127,127 square kilometers, of which an estimated 34% is agricultural, 9.6% is arable, an estimated 3.6 is forested, and 48.9% is covered by woodlands and shrubs. Only 4.5% of arable land is irrigated. Protected areas encompass 14% of Ethiopia's land area. An estimated 15 of Ethiopia's approximately 80.7 million people live in urban areas, making it one of the least urbanized counties in the world.

The Federal Democratic Republic of Ethiopia (FDRE) comprises of the Federal Government and the State members. Ethiopia is a Federal State which is constituted of two special administrative cities (Addis Ababa and Dire Dawa) that are accountable to the Federal Government and nine other administrative national regional states governed by their own State Councils. The powers and responsibilities of the Federal and State Governments are provided in the Constitution. Except for those powers exclusively vested with the Federal Government, Regional States have full power to decide on their internal administrative land matters.

1.1.2 Policies and Laws Relevant to Land Governance in Ethiopia

(a) The Ethiopian constitution of 1995

The Constitution is the main source of the basic law regarding land ownership, management and administration. Article 9(1) of the Ethiopian constitution 1995 states that: “the Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect”.

Article 40 of the Constitution deals with right to property and provides details about land rights in Ethiopia. Specifically, Article 40 (3) addresses the core question of who owns land in Ethiopia. It states that: *the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.*

The Constitution provides the following land rights:

Right to land of peasants and pastoralists

Article 40 (4) gives the Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. Likewise, concerning the pastoralists of the lowland areas, Article 40 (5) declares that Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their possession. It is important to note that although the peasant is denied private ownership rights to the land itself, he or she is guaranteed a “full right to the immovable property he builds and to the permanent improvements he or she brings about on the land by his labor or capital. This right includes the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim

compensation for it” (Art.40 (7)). Thus, peasants have full right to their produce and can sell it at market value. Moreover, the constitution guarantees peasants against arbitrary eviction from their land by the state. The Constitution clearly says: “... the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property” (Art. 40(8)).

Right to land of women

Article 35(7) states: “Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.”

Women in Ethiopia have equal access to land rights and to full consultation in the formulation of national development policies. They have the right to acquire, administer control use and transfer their holding in property. They thus have equal rights with men in respect to use, transfer, administration and control of land. They therefore enjoy equal treatment in the inheritance of land. Despite such rich provisions of the law, women in Ethiopia still face constraints in achieving equal rights on land with men. This is largely because the women are not sensitised about their rights to land due to the high levels of illiteracy among the women in Ethiopia.

Right to land of investors

This is addressed in article 40(6) of the constitution, which states that “without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law.”

Right of individuals

In article 40(7) it is stated: Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by

his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law. Article 40(8) states that “without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.”

Article 51(5) requires the Federal Government shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects and Article 52 (2)(d) empowers the regional states to administer land and other natural resources in accordance with Federal laws.

Article 55 refers to the powers and functions of the House of Peoples’ Representatives. In sub-article 2, it states: “Consistent with the provision of sub- Article 1 of this Article, the House of Peoples’ Representatives shall enact specific laws on the following matters: (a) Utilization of land and other natural resources, of rivers and lakes crossing the boundaries of the national territorial jurisdiction or linking two or more States”.

Concerning urban land, the Constitution is silent about the acquisition and transfer of land by urban dwellers. Nevertheless, some interpret the next sub article, 40(6), that deals with right of investors to get land, as one that includes urban dwellers as well. Article 40(6) of the constitution envisages that private investors may get land on the basis of payment arrangement.

In other words, unlike peasant farmers and pastoralists, investors must pay a reasonable fee for the land they get from the state. Literally, an investor is a person who uses the land for business activities and his main objective is to reap profit. So, it is obvious that urban dwellers cannot be categorized as investors. Noticing this problem, it seems, some regional constitutions replaced the word “investor” by another word “proprietor” For example Amhara National Regional

State’s Constitution Art. 40.6) the effect of such change is that urban dwellers may be included in this definition, since the word proprietor may also include any person who owns a property.

The Constitution also states under Article 51 (5) that the Federal Government shall enact laws for the utilization and conservation of land and other natural resources. Article 52 further states that Regional Governments have the duty to administer land and other natural resources according to federal laws.

Complaints and appeals

Section 3, No.8 (11) (1) of the Proclamation to Provide for the Expropriation of Land Holdings for Public Purposes and Payment of Compensation 2005 states thus “rural areas and in an urban center where an administrative organ to hear grievances related to urban landholding is not yet established, a complaint relating to the amount of compensation shall be submitted to the regular court having jurisdiction; and in (2), Where the holder of an expropriated urban landholding is dissatisfied with the amount of compensation, he may lodge his complaint to the administrative organ established by the urban administration to hear grievances related to urban landholdings”. Section 3, No.8 (11) (4) of the expropriation proclamation 2005 states “A party dissatisfied with a decision, rendered in accordance with Sub-Article (1) and (3) of this Article may appeal, as may be appropriate, to the regular appellate court or municipal appellate court within 30 days from the date of the decision. The decision of the court shall be final; and in (6) An appeal submitted, pursuant to Sub-Article (4) of this Article, by any landholder served with an expropriation order may be admitted only if it is accompanied with a document that proves the handover of the land to the urban or *woreda* administration”.

Dispute resolution

Rural Land Administration and Use Proclamation 2005 Section 2, No.12 states “Where dispute arises over rural landholding right, effort shall be made to resolve the dispute through discussion and agreement, of the concerned parties. Where the dispute could not be resolved through agreement, it shall be decided by an arbitral body to be elected by the parties or be decided in accordance with the rural land administration laws of the region”

(b) Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation NO. 456/2005

Under Art. 5 acquisition and use of rural land, peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge and any citizen of the country who is 18 years of age or above and wants to engage in agriculture for a living shall have the right to use rural land; children who lost their mothers and fathers due to death or other situation shall have the right to use rural land through legal guardians until they attain 18 years of age: Women who want to engage in agriculture shall have the right to get and use rural land.

Rural land Measurement, Registration and Holding Certificate is provided for under the proclamation. The sizes of rural lands under the holdings of private persons, communities, governmental and non-governmental organizations shall be measured as appropriate using cultural and modern measurement equipment; their land use and level of fertility shall be registered as well in the data base center by the competent authorities established at all levels.

The land holding of every land holder is in perpetuity as Article 7 provides that rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit. Peasant farmers, semi pastoralist and pastoralists who are given holding certificates can lease to other farmers or investors land from their holding of a size sufficient for, the intended development in a manner that shall not displace them, for a period of time to be determined by rural land administration laws of regions based on particular local conditions.

Art. 9 provides for distribution of rural land where farmlands whose holders are deceased and have no heirs or are gone for settlement or left the locality on own wish and stayed over a given period of time shall be distributed to peasant farmers, semi pastoralists and pastoralists who have no land and who have land shortage.

Art. 10 imposes obligations on rural land Users while Art. 11 makes provision for determination of minimum rural land holding size and encouraging land Consolidation. Art. 12 on dispute resolution provides that where a dispute arises over a rural

landholding right, efforts shall be made to resolve the dispute through discussion and agreement of the concerned parties. Where the dispute could not be resolved through agreement, it shall be decided by an arbitral body to be elected by the parties or be decided in accordance with the rural land administration laws of the region.

Art. 13 provides for land use planning and proper use of sloppy, gully and wetlands and Art. 14 provides for utilization of rural land for villagization and other social services where a strategy of settlement, villagization and development of social services that helps to bring about a better system of rural land utilization shall be formulated.

Art. 15 caters for rural land administration and use study and states thus a system of study that focuses on identification of problems on land administration and use, and recommends solutions shall be established.

Art. 16 make provision for responsibility of federal ministry of agriculture and rural development; to implement the Proclamation by providing the necessary professional support and by coordinating the competent authorities; initiate, on the basis of the information gathered at national level and those to be obtained from time to time through monitoring and evaluation, development of new policy ideas, and the amendment of the existing policy, as necessary; and create the system for the exchange of information between regions and the Federal Government pertaining to rural land administration and use,

Responsibility of each regional council under Art. 17 to enact rural land administration and Land use law, which consists of detailed provisions necessary to implement this Proclamation, and to establish institutions at all levels that shall implement rural land administration and Land use systems, and shall strengthen the institutions already established.

Art. 5 deals with the right to acquire rural land where any resident of the region, aged eighteen years and above, whose livelihood depends on agriculture and/or wants to live on, have the right to get rural land free of charge. By the proclamation, women have equal rights with men to possess, use and administer the rural land

Art. 6 provides for land use rights where any peasant or pastoralist, or semi pastoralists who has the right to use rural land shall have the right to use and lease on his holdings, transfer it to his family member and dispose property produced there on, and to sell, exchange and transfer the same without any time bound . The Proclamation prohibits the selling of fixed assets like coffee, mango, avocado, papaya, orange etc., However, the selling of products of fixed assets like products of coffee, mangoes, avocado, papaya, oranges etc., shall be possible if and only if the following conditions are fulfilled vide; the land occupied by the product to be sold shall not exceed half of the total land holding of the individual and the product shall be sold for three (3) years only.

Art. 9 Transferring Land Use Rights Through Inheritance or Donation of Land Any peasant, pastoralist, or semi pastoralist landholder, shall have the right to transfer his land use right to his family member who have inheritance right according to the lava

(c) Lease Holding of Urban Lands Proclamation

The objectives of the proclamation as envisaged in the preamble are two: to satisfy the growing urban land demand resulted because of the fast economic growth of the country; and to ensure good governance for the development of efficient land market and a transparent and accountable land administration system (Preamble of Proclamation 721/2011).

The scope of application of the law is “to an urban land held by the permit system, or by lease-hold system or by other means prior” to the coming of the proclamation “as well as to an urban land permitted hereafter.”

It provides several important definitions. A lease is defined as “a system of land tenure by which the right of use of urban land is acquired under contract for a definite period” .An urban centre is “any locality having a municipal administration or population size of 2000 or more inhabitants of which at least 50% of its labourforce is engaged in non-agricultural activities” Public interest is defined as “the use of land defined as such by the decision of the appropriate body in conformity with an urban plan in order to ensure the interest benefits from the use of the land and to consolidate sustainable socio-economic development”.

The law recognizes only tender (auction) and allotment (land lease transfer without auction) as the two basic means of lease transfer from government to citizens (art.6). Under the law leasehold right is a right to use the land for fixed period of time against payment of agreed amount of money. The assumption is that any person who fulfills the requirements is entitled to get land by way of lease. Pursuant to article 4 of the urban landholding lease proclamation, an urban land shall be permitted to be held by lease:

The proclamation clearly declares that all land in urban areas shall henceforth be transferred in to lease system (Art.5)

(d) Proclamation to Provide for the Expropriation of Land Holdings for Public Purposes and Payment of Compensation 2005

This law defines compensation as “payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding.” (Article 2(1))

Land lease holding may be expropriated unless the lessee has failed to honour the obligations he assumed under the Lease Proclamation and Regulations or the land is required for development works to be undertaken by government. It entitles a landholder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land and the amount of compensation for property situated on the expropriated land shall be determined on the basis of the replacement cost of the property.

Under Article 3(8)a rural landholder whose landholding has been permanently expropriated shall, in addition to the compensation shall be paid displacement compensation which shall be equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land and a rural landholder of common land whose landholding has been provisionally expropriated shall, in addition to the compensation payable shall be paid until repossession of the land, compensation for lost income based on the average annual income secured

during the five years preceding the expropriation of the land; provided, however, that such payment shall not exceed the amount of compensation payable .

Under Article 4 an urban landholder whose landholding has been expropriated under Proclamation shall be provided with a plot of urban land, the size of which shall be determined by the urban administration, to be used for the construction of a dwelling house; and be paid a displacement compensation equivalent to the estimated annual rent of the demolished dwelling house or be allowed to reside free of charge, for one year in a comparable dwelling house owned by the urban administration.

(e) Regional land proclamations based on federal rural land proclamation

The Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation 2005 requires regions to develop their own legislation based on it. The following Regional Proclamations have:

- *Revised Amhara National Regional State Rural Land Administration and Use Proclamation 2006:* This has two aims: (i) to design and implement a system based on the objective realities of the region pursuant to the power vested in regions by the Federal Constitution to administer the land and the natural resources and strengthen the farmer, the investor and appropriate organizations in their participation to use land maintaining it properly, use and keep, and to coordinate it with the development objectives of the government. (ii) To incorporate, in detail, the basic rights of farmers, and ensure the implementation and inclusion of the laws of the federal government.
- *Proclamation to Amend Proclamation No. 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration:* This proclamation is similar in content to the Amhara proclamation. Some key differences in the Oromia proclamation are that in maintaining existing farm plots, the holding size for the future shall be not less than 0.5 hectares for annual crops and 0.25 hectares for perennial crops (section 7(1) and the “plot size for new settlers shall take into consideration the average holding size of the community in that specific locality” Section 14(1) states that the

“Redistribution of peasant or pastoralist or semi pastoralist’s land holding shall not be carried out in the region, except irrigation land”.

- The Revised Amhara National Regional State Rural Land Administration and Use Proclamation. Proclamation No. 133/2006

The Proclamation is gender inclusive Art.3 The provisions of this proclamation set out in the masculine gender shall also equally apply to feminine gender.

Under Art.5, ownership of land is vested in the state and the public. Hence, it is impossible to transfer the land holding to other in sale or in exchange by another property. Any farmer residing in the region shall, despite gender or any other reasons of deference, have equal right to get land in holding who shall hold it in perpetuity. The working system that gives priority to women, disables and orphan children shall be executed during the time of land distribution.

Under Art.6 any person, who is 18 years and above, residing in the region and in need of engaging in agricultural activity shall have a right to freely acquire holding land. Where such a person is an orphan then they are entitled to acquire land for agriculture through their guardian or representatives. Private investors shall only acquire land, to use on, by rent from the government or from any other rural land holder on the agreement to be made.

Article 7 The land can either be acquired by distribution from the kebele administering the land in which the person so intending to acquire it regularly resides or wants to reside or by bequeath or gift, the detail to be determined by a regulation to be issued to implement this proclamation, anywhere in the region.

The land in the region under Art. 10 may be held individually, as a group, communally, or as the government. Under Art. 11, no person shall be expropriated from his holding without his consent, unless it is done by redistribution according to decision of people or for the purpose of public interest.

The detail to be determined in regulation, where he is engaged in non-farming activity and earns for his livelihood thereto;

Under Art. 12, a person may lose his holding in land where he disappears from his residence for 5 consecutive years without notifying his where about and not renting his land or without assigning a representative to administer his land; where he fallows his land for consecutive 3 years and above or 1 year and above where the land is cultivable in irrigation; the detail to be determined by a regulation, where gross damage occurs over his land due to his mismanagement; where he notifies to the concerned body that he has withdrawn from his holding right.

Any person provided with rural land holding may, as stipulated herein under, transfer his holding right in bequeath or donation. However this option is not available for organisations.

The law imposes obligations on land users under Art. 20 to protect the land under his or her holding or land obtained in rent and conserve the surrounding; plant trees around his land and properly protect them to grow; follow the land holding system that decreases soil erosion and collect water concerning the lands under 30 per cent slope; undertake trench terracing and favourable soil conservation activities to use the land forms which are 31 to 60 per cent slope for perennial plants; take care of water sources not to go dry due to improper farming; not to violate delineations of lands and close roads thereto; use land based on land use plan when asked by pertinent body in writing to use it same; exercise proper care for wild lives and birds found around his holding; cooperate with pertinent body when asked for measuring or undertaking surveying on his land; take and hold a certificate where he is a land holder and land holding certificate is issued; and return back to the pertinent body, the land holding certificate, when he is deprived of holding.

Art. 22 provides for registration of land where any Rural Land given to users in holding, held for common usage by the community of an area, or forestry development, or conserved for any other similar activities shall be measured and the map get prepared by the Authority in traditional way or modern tool. Any land measured by the Authority shall, be registered in rural land registration book.

Upon registration of the land, any person, granted rural land shall be given the land holding certificate in which the details of the land is registered by the Authority prepared by his name and his photograph fixed thereon.

- Benishangul Gumz Regional State Rural Land Administration and Use Proclamation, Proclamation No. 85 /2010.

Art. 5 provides for the right to hold land where land is the common property of the state and people and it shall not be subjected to sale or other means of exchange. Any peasant who resides in the region shall have the right to hold land irrespective of gender or any other discrimination. Art. 6 makes provision for the right to acquire and use land where priority is given to farmers. Under Art. 7, provision is made for land acquiring means and holding size, where land can be acquired either from land administrator of his kebele in which he permanently reside or by bequeath, donation and rent the detail shall be determined by the regulation. Art. 9 covers land re-distribution and distribution.

Art . 10 makes provision for the procedure of land provision and minimum area of land to be provided, Art. 11 provides for types of holdings which may either be held individually, as a group, communally or the government. Art. 12 covers respectation of holding and using rights. Art. 13 provides for conditions under which any holder of a right over using the land may be deprived of land, 14 provides for utilization of land on plan and study and 15 makes provision for irrigation development.

Part three of the Proclamation caters for transferring land holding and using right and obligations where Art.16 specifically provides for transferring holding right, 17 provides for transferring possession right in bequeath, 18 makes provision for transferring possession and use right in gift, 19 provides for transferring use rights in rent. Art. 20 rural land rent which is in two categories vide, private land rent and land lease by government. Art. 21 covers mortgage of rural land use right obtained in lease system, 22 provides for obligation of rural land user, 23 caters for effects of non-performance of obligations while 24 provides for reserved and protected forest and wet lands.

Part four of the Proclamation provides for among others, land measurement under Art. 25, registration and data maintaining in Art. 26, land holding certificate under Art. 27. Art. 28 provides for making possession adjacent and 29 covers prohibition of grazing and communal land holding

Part five makes provision for the responsible bodies where Art. 30 covers the responsibility of various offices, 31 provides for the responsibility of woreda accountable office of the authority and 32 provides for kebele and sukebele land administration and use committee

Part six covers miscellaneous provisions under which Art.33 provides for expropriating land for public use, 34 provides for conflict resolution and applicability of customary laws. Provision is also made for among others the transitory provision, penalty, collaboration obligation, the power to issue regulation and directive.

- Tigray National Regional States Land Usage Proclamation NO. 23/1997

Art. 5 of the Proclamation provides that land is the joint property of the state and the people. It prohibits the sale, exchange, forbids the use of land as a bond, or permission to give land on lease for an indefinite time. Under Art. 7, land can be given on a lease and a farmer may give his or her land on a lease to individuals

or organisation who want to derive benefit by developing it. However such a lease can only be to a maximum of ten years where technology is used rather than traditional farming methods while a maximum of two years for a lease where traditional farming methods shall be used.

Under Art. 8 of the Proclamation, the state can give land to a leaseholder through contract with the responsible bureau. Such contract should not be realized to the disadvantage of the farmer and such a lease by the state can be up to a maximum of 50 years. Art 9 provides for the usage of cultivated land where a farmer should cultivate his land without damaging the trees thereon and should not damage the edge between farmland and cultivated land. Cultivated land must be 3 mts away from a rivers beach. The Proclamation under Art. 10 provides for trees grown on cultivated land which shall belong to the land possessor. It forbids the planting of fig, eucalyptus and other similar trees.

Article 11 provides for land administration where land shall be administered by councils at all levels. Except by authorisation and directive from the regional state, it is prohibited to hold and demarcate any land. It further provides that the state can take over private land where it is necessary to use the same for the people's social and economic activities subject to paying fair compensation or giving similar land in another place.

Article 12 of the Proclamation provides for uncultivated (barren) land and states that such land shall be used for residence, mosques, churches, cemetery area, schools among others. Provision for land for agricultural investment is made under Art. 13 and the investors shall be granted an investment certificate after the regional administration finds a suitable land and approves it and it is free from any problem. Art. 14 imposes an obligation of an investor who has obtained a lease from the state to maintain properly the land he obtained and allocate part of it for tree development.

Article 16 makes provision for inheritance where every farmer has a right to use land he has got by division or distribution until his death. A son can inherit his father's land and the father where the son hadn't left children can inherit his son's right to use land. Where there is nobody to inherit the land, it shall be returned to the council and given to the landless.

The Proclamation under Art. 17 provides for land to be given to build a residence to males who are 22 years old and females who are 16 years and youth above that age and new returned immigrants who did not receive land earlier for building a residence. Under Art. 18 provision is made for grazing land to be used in accordance with the tradition, which is accustomed in the surrounding. Art. 19 provides for usage of running water and land for development around the reservoir from the land. The county of the surrounding must maintain the survival and service of the reservoir.

- The southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Utilization Proclamation. Proclamation No. 110/2007

Section two of the Proclamation provides for the right to hold and use rural land where under Art. 5 peasant farmers, pastoralists and semi pastoralists engaged in agriculture shall have the right to get rural land freely women too can get land and for the residents of the region they have to be 18 years and above in order to get the land. It further provides that a husband and wife have equal rights on their common land holdings.

Article 6 provides for rural land measurement, registration and certification to be done by competent authorities and given cadastral mappings showing their boundaries. It also provides for joint ownership of land by the husband and wife in which case the title shall be in both names. Under Art. 7 the land holding interest shall be in perpetuity for peasant farmers, semi-pastoralists and pastoralists while for other rural land users, it shall be limited. Any eviction from

land shall be subject to compensation at a rate to be determined based on the federal land administrative law.

Transfer of land is provided for under Art. 8 where peasants, semi pastoralists with land holding certificates can rent out land for farmers or investors from their holding for a size sufficient for the intended development in a manner that shall not displace them. Art. 9 provides for re allocation of rural land where farmlands whose holders are deceased and have no heirs or have left the locality on their own wish and stayed away for a given period of time shall be re-allocated to the landless or small land holding peasant farmers, semi pastoralists and pastoralists.

Art. 10 imposes obligations on rural land users to properly use and protect his land, where irrigation canals are constructed, the holder should allow the construction to cross over his holding and to co-operate when requested by the competent authority. Under Art. 11 provision is made for determination of minimum rural land holding size and encouraging land consolidation.

Dispute resolution is provided for under Art.12 such dispute shall be brought to kebele land administration committee which shall dissolve it by negotiation and arbitration through local elders set by the choice of the two parties. Where one is not satisfied by the decision of the committee they appeal to the woreda court. Any further appeal lies to a higher court to the highest court in the land. Section three of the Proclamation provides for rural land use restrictions and Art. 13 specifically provides for land use planning and proper use of sloppy gully and wetlands.

Art. 14 provides for the responsibility of the Regional Bureau of Agriculture and Rural Development which among others is to implement the provisions of the Proclamation by providing the necessary support. Art. 15 impose an obligation on

every person to cooperate with the relevant bodies for the implementation of the Proclamation.

- Afar National Regional State Rural Land Administration and Use Proclamation No. 46/2009

Part two of the Proclamation provides for ensuring the rural land use right of pastoralists and specifically Art. 5 deals with access to and use of grazing land whereby it is provided that the right of pastoralists of the region to use their grazing land is unlimited. Women pastoralists have equal rights with men to access and use grazing lands. Art. 6 makes provision for surveying and registering of pastoral communal lands and issuing communal holding certificates. It states that communal lands that are held communally by pastoralists shall be surveyed, registered and certificate of holdings shall be issued in the name of the community.

In respect to disputes, Art. 7 provides that such disputes arising between pastoralists shall be settled under the customary dispute settlement system. The regional government is enjoined to provide assistance to strengthen the customary dispute settlement institutions and to facilitate execution of judgment rendered by the customary institutions. A party aggrieved by the decision of elders may appeal to the woreda court and further appeal lies to the high court and finally the supreme court. Art. 8 provides for conservation and protection of natural resources.

Part three provides for ensuring rural land use right of agro pastoralists where specifically Art. 9 provides for access to rural lands and use rights.

Art. 10 provides for surveying and registering of agro pastoralists farm lands and issuing holding certificates to agro pastoralists. Art. 11 provides for transfer of land holding use rights through rent whereby agro pastoralists issued with landholding certificates have the right to rent out to other agro pastoralists or

investors for as long as the transfer does not displace the agro pastoralist. Art. 12 provides for rural land allocation and distribution.

Under Art. 13 the Proclamation provides for determining minimum size of land holdings and encouragement of consolidation of land holdings. The proclamation under Art. 14 makes provision for transfer of rural land use rights where agro pastoralists have a right to transfer their land holding interests by bequeath, while any rural land holder may transfer the property he produced on the land through sale, pledge, gifting, bequeathal, or exchange to another person.

Rural land dispute resolution is addressed under Art. 15 of the Proclamation where the parties petition the kebele administration which shall cause elders to be elected to resolve the same by arbitration or conciliation. A party aggrieved appeals to the woreda court, a further appeal lies to the high court and finally to the supreme court. The Proclamation gives other persons rights to use rural lands under Art. 16 but giving priority to agro pastoralists. Art. 17 provides for measurement, registration and issuance of holding certificates to land holders other than pastoralists and agro pastoralists.

Part four deals with duties and obligations of rural land holders and land use restrictions and Art. 18 specifically imposes duties on rural land users to pay land use tax according to the type of land use of the land holding among others. Under Art. 19 factors that may cause loss of land holding are provided among which is expropriation by the government for higher public purposes with the consent and participation of the community. Art. 20 provides for preparation of rural land use plans and proper use of sloppy, gully and wetlands among others

Part five provides for the miscellaneous to include responsibilities of the authority that will be established to implement the Proclamation under Art. 21, functions and responsibilities of the rural Kebele Land Administration committees under Art 22, the duty to cooperate with the relevant authorities by every person.

- Proclamation to Amend Proclamation No. 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration.

This proclamation is similar in content to the Amhara proclamation. Some key differences in the Oromia proclamation are that in maintaining existing farm plots, the holding size for the future shall be not less than 0.5 hectares for annual crops and 0.25 hectares for perennial crops (section 7(1)).

Section 7(2) states that the “plot size for new settlers shall take into consideration the average holding size of the community in that specific locality”.

Section 14(1) states that the “Redistribution of peasant or pastoralist or semi pastoralist’s land holding shall not be carried out in the region, except irrigation land”.

1.1.3 Land Tenure System

The Constitution of the Federal Democratic Republic of Ethiopia unequivocally states that land shall not be individual’s property. It asserts state ownership of land and thus no private property rights in land. Article 40(3) of the constitution proclaims that “the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange. Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development. This implies that the right to ownership of rural land and urban land, as well as of all natural resources is exclusively vested in the state and the peoples of Ethiopia. Land is a common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of exchange.”

In Ethiopia, there is rural land tenure and urban land tenure.

Rural Land Tenure

The rural land tenure system is among the most complicated of the world. Rural Land is managed under the Rural land administration Proclamation number 89/1997. The basis of this proclamation is sustainable rural land use planning; identifying the size and use rights of “the different types of landholdings” in the country; directing mechanisms to resolve problems between farmers and agricultural investors, and between pastoralists and agricultural investors who encourage individual farmers; and establishing a conducive system of rural land administration. Other than this, it encourages private investors in pastoralist areas, and seeks to implement Article 52 (2) (d) of the Constitution relating to the powers and functions of regional states.

The Proclamation provides special rights over rural land. Under Section 2(5) of the Rural Land Administration and Use Proclamation 2005, the following land rights are conferred:

- Peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge;
- any citizen of the country who is 18 years of age or above and wants to engage in agriculture for a living shall have the right to use rural land;
- children who lost their mothers and fathers due to death or other situation shall have the right to use rural land through legal guardians until they attain 18 years of age;
- Women who want to engage in agriculture shall have the right to get and use rural land.)

The Proclamation gives any person who is member of a peasant farmer, semi pastoralist and pastoralist family having the right to use rural land may get rural land from his family by donation, inheritance or from the competent authority. Further, Government being the owner of rural land, communal rural land holdings can be changed to private holdings as may be necessary.

Private investors that engage in agricultural development activities are given the right to use rural land in accordance with the investment policies and laws at federal and regional levels and governmental and non-governmental organizations and social and economic institutions shall have the right to use rural land in line with their development objectives.

The Proclamation makes provisions for measuring and registering rural land and providing a holding certificate. Under section 2(6) the sizes of rural lands under the holdings of private persons, communities, governmental and nongovernmental organizations shall be measured as appropriate using cultural and modern measurement equipment. Their land use and level of fertility shall be registered as well in the data base centre by the competent authorities established at all levels.

Any holder of rural land shall be given holding certificate to be prepared by the competent authority and that indicates size of the land, land use type and cover, level of fertility and borders, as well as the obligation and right of the holder.

Where land is jointly held by husband and wife or by other persons, the holding certificate shall be prepared in the name of all the joint holders. The information that describes the holder of rural land, the holders of the bordering lands, the types of use, and the rights and obligation of the holder thereof shall be registered in the database and kept by the competent authority. Any rural land that is held through lease or rental shall be registered by the competent authority.

Section 2(7) (2) of the proclamation provides the duration of rural land use right. Under the section, the rural land use right of peasant farmers, semi pastoralists and pastoralists shall have no time limit and the duration of the rural land use right of other holders shall be determined by the rural land administration laws of regions.

Section 2(7) (3) of the states that a holder of rural land who is evicted for the purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired, or shall be given substitute land and where the rural landholder is evicted by the federal government, the rate of compensation would be determined based on the federal land administration law. Where the rural landholder

is evicted by regional governments, compensation would be determined based on the rural land administration laws of regions.

Section 2(8) permits the transfer of rural land use right. Peasant farmers, semi-pastoralists and pastoralists who are given holding certificates can lease to other farmers or investors land from their holding of a size sufficient for the intended development in a manner that shall not displace them, for a period of time to be determined by rural land administration laws of regions based on particular local conditions. The rural land lease agreement to be concluded and shall secure the consent of all the members who have the right to use the land and be approved and registered by the competent authority. A land holder may, using his land use right, undertake development activity jointly with an investor in accordance with the contract he concludes. Such contract shall be approved and registered by the competent authority. Any holder shall have the right to transfer his rural land use right through inheritance to members of his family.

The Act provides for investors rights. Section 2(8) (4) states that “an investor who has leased rural land may present his use right as collateral”

Section 2(10) provides the obligations of rural land users. These are as follows:

- A holder of rural land shall be obliged to use and protect his land. When the land gets damaged, the user of the land shall lose his use right. Particulars shall be given in the land administration laws of the regions;
- Where irrigation canals are constructed, the holder shall have the obligation to allow the construction of irrigation lines and other infrastructures if they cross his land holding;
- The holder of rural land shall have the obligation to cooperate when requested by the competent authority to measure and survey his land.

Any rural landholder shall have the obligation to notify the competent authority when he abandons at will his land use right.

Urban Land Tenure

The need for issuing this proclamation has three bases. The first is article 40 of the constitution, which reads that “land is the property of the state and the people of Ethiopia and that its use shall be subject to specific regulation by law.” The second basis is that, as the proclamation states, “the sustainable rapid economic growth registered across all economic sectors and regions in the country has necessitated continuously and increasingly the demand for urban land which requires such an appropriate administration that it is efficient and responsive to land resources demand and third basis is that the prevalence of good governance is a foundational institutional requisite for the development of an efficient, effective, equitable and well-functioning land and landed property market, the sustenance of a robust free market economy and for building a transparent and accountable land administration system that ensures the rights and obligations of the lessor and the lessee.

Under the Lease Holding of Urban Lands Proclamation the transfer of land holding into lease system means that all land in urban areas, after being identified and registered by the municipality, shall be registered as lease land and the holder shall enter with the government a lease contract that among others includes lease period and lease price to be paid (art. 15). The lessee will then be issued a “lease certificate” that shows name of lessee, land size, location, land use purpose, lease price, lease period and so on.

As a matter of principle, every land needed for residential, commercial (agriculture, industry, or service), and others will be transferred by tender. Bidders will use the minimum lease price as a base to offer their price. However, as exception, city municipalities may give land by allotment to selected areas of paramount importance to society such as government offices, religious institutions, public residential housing programs, diplomatic mission and so on (art.11). Besides, a person who is displaced from his or her house as a result of urban renewal (like in case of expropriation) shall get a land by allotment. All of them would pay lease price based on the bench mark set by the city

The leasehold right is a right to use the land for fixed period of time against payment of agreed amount of money. The assumption is that any person who fulfills the requirements is entitled to get land by way of lease. Pursuant to article 4 of the urban landholding lease proclamation, an urban land shall be permitted to be held by lease in conformity with plan guidelines where such – a plan exists, or, where it does not exist, in conformity with the law which Region or City government makes as the case maybe or on auction or through negotiation or according to the decision of Region or City government.

Once a person gets land by one of the three mechanisms, he/she is entitled to get leasehold title deed. This is a certificate that proves the lessee's rights to the land. Once a person acquires the lease right s/he has the right to construct a building of different nature (residential, commercial, industrial) as per the agreement and the master plan. Hence the right of use and enjoyment is one right conferred on the lease right holder. Another right is that the lease right can be inherited, donated, or mortgaged provided that the beneficiary's rights are limited by the period of the lease term. Finally, the lease can be sold or exchanged to any person. Under Article 13 (1) of the provides that any lease holder may transfer, or undertake surety on (mortgage), his lease-hold and he or she may also use it as a capital contribution to the amount of the lease payment he has made.

It must be noted that this right shall be enjoyed so long as some form of construction/activity has been taken place; in other words bare land is not subject to all the above rights. Article 12 requires the leasehold possessor to “begin to use the land for the prescribed activity or service within the period of time set...” The time set for commencement of activities may vary from 18-30 months as the case may be as emphasized in different municipal regulations.

The Proclamation provides lease periods unlike rural land, urban land is granted to urban dwellers and investors on the bases of restriction. In the current property right situation, use rights are provided for a specific period (it could be for 15 or 99 years) obtained from the landowner who shall be the state through ground rent payment.

Therefore the landownership and use rights are separated and make the state out of full control over the land.

Article 6 of the proclamation provides different periods of years for different types ground leases. The period of lease shall vary depending on the level of urban development and sector of development activity or the type of service and shall have the ceiling o in any town:

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

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

- Up to 90 years for education, health, culture, sports;
- Up to 60 years for industry;
- Up to 50 years for commerce;
- Up to 50 years for others.

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

- Up to 99 years for education, health, culture, sports;
- Up to 80 years for industry;
- Up to 70yem for commerce;
- Up to70 years for others.

Lease holding right may be terminated for good reasons; the state has no right to revoke this right whenever it wishes. Like any contractual agreement the expiry of the lease contract may be a reason for termination of the lease hold right. However, unlike lease of housing, the lessee has a better position. The municipality may not take back the land whether before or upon the expiry of the lease agreement unless the land is needed for public interest based works.

The lease hold possessor has the right to request for renewal of the period of lease agreement, 10 to 2 years before the final day of the agreement. Under Art.7 period of lease may, upon the termination thereof, be renewed for the lease-hold possessor as per the agreement to be reached, unless the urban land is wanted for public interest. Where the lease period is not renewed upon termination on account of the land being wanted for public interest however, compensation shall not be paid to the lease-hold possessor.

Art. 15 states that the lease-hold of urban land shall be terminated where the lease-hold possessor has failed to use the land or where it is decided to use the land for a public interest; or where the period of lease is not renewed. The lease proclamation provides three basic reasons for the termination of the contract. It seems the first and third reasons are happening on account of the failure of the lease-hold possessor himself or herself. Because, failure to commence the activity on the ground within the agreed time and in accordance with the plan and failure to request renewal of the lease agreement are impugned on the lease-holder himself. The second reason is however, accountable to the state, and as a result the lease-hold possessor shall be “paid commensurate compensation” for his loss of the property. In case of the first and third cases however there is no any compensation to be paid.

Article 40 (7) specifies the rights to the compensation payments for investment on land in case the “right to use expires. It states that “Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital. This shall include the right to alienate, to bequeath, and where the right of use expires, to remove his property, transfer his title, or claim compensation for it”

Land may be, expropriated as one means of land acquisition for the state. This is a procedure whereby the state takes away private owned land property for public interest without the consent of the owner and against payment of fair amount of compensation. The subject of expropriation is not only privately owned land and building but also leased land. The lease proclamation provides instances of expropriation under articles 7(1), 15 (1) (b), and 16. Expropriation of leasehold land may be effected during the expiry of the lease agreement (7(1)), or before the expiry of the agreement as can be inferred from Article 15 (1) (b), and 16 (1). According to article 7, the state may refuse renewal and take back the land when the land is needed for public purpose. The law also emphasizes that in such case compensation is not to be paid.

Art 16 provides clearance of urban land. Under 16(1) the appropriate body may clear and take over an urban land which it decides it is necessary to commit for a public interest by issuing clearance order in writing to the concerned person. It shall also publicize the order through other alternative means. Where a leasehold right has been taken away by the state for good reasons/public interest (such as to build hospital, roads, schools, etc.), the state must compensate the leasehold possessor for the property on the land and the remaining lease rent. Regulation No.135/2007 that provides for “The Payment of Compensation for Property Situated on Landholdings Expropriated for Public Purposes,” under article 13 provides the formula. The compensation for buildings the amount of compensation should be calculated by taking the following into consideration of the cost of construction (current value) cost of permanent improvement on land and the amount refundable money for the remaining term lease contract. The leasehold possessor is refunded if he had made full or prior payments the rent.

Article 16 (2) provides that illegal settlers (squatters) may be evicted from the land they hold without any payment of compensation.

1.1.4 Land Administration and Institutions

There are several institutions that are responsible for land governance. The key ones are as follows:

(a) The Ministry of Agriculture and Natural Resources

In the Ministry Agriculture and Rural Development there are two institutions responsible for rural land administration. The first one the Rural Land Administration & Use Directorate (RLAUD) at the Ministry of Agriculture and Natural Resources is responsible for the administration of smallholders' and government owned lands in the rural areas. For example it has been supporting a broad titling and certification initiative that is being implemented in Amhara, Oromia, SNNP, and Tigray Regions.

The Ethiopian Agricultural Investment Land Administration Agency (EAILA) under the Ministry is mandated to oversee large scale agricultural investment lands in the rural areas.

(b) The Ministry of Urban Development and Housing

This Ministry is responsible for administration of the urban land at federal level.

(c) Addis Ababa City Council

In urban areas such as Addis Ababa, the city council is authorized to approve permits for land and building.

(d) Regional Governments

Regional governments are the principal administrators and regulators of land, including the assignment and granting of use-rights and regional land-use planning and administrative authorities are responsible for recording, documenting, and administering use-rights.

(e) Land Administration Committees

In rural areas the Land Administration Committees at the *woreda* and *kebele* levels are responsible for planning and administering land allocation and use.

1.1.5 Taxation of land in Ethiopia

The law in Ethiopia imposes tax on land through among others rental income tax at a flat rate of 30% on corporations while that of individuals varies progressively from 0% to 35% depending on the amount of income earned.

1.1.6 Summary of the challenges, Gaps, conflicts and duplications in Land Governance

- There are weak government and customary institutions that do not address inter-pastoral conflicts and between pastoralists, the government, and farmers
- There are no single institutions for land management. Land Ethiopia is administered and managed by two different legal frameworks and separate institutions. The rural land administration and management under the Ministry of Agriculture and Rural Development and Urban land is under The Ministry of Urban Development and Housing
- There is inadequate demarcation, registration and record keeping which has led to overlapping land claims stemming from inheritance and there is results into conflicts;
- There is limited dispute resolution mechanisms of land disputes especially those related to customary land rights;

1.1.7 Recommendations

- Develop a national land policy to clarify and establish procedures for the determination of land rights;
- Legalize, strengthen and link non-formal customary institutions and formal ones this will help to resolve disputes related to both formal and customary land;
- Establish a land policy reform task force or land tenure forum within the Prime Minister's office responsible for the continuing development of land policy in Ethiopia;
- Strengthen national research institutes (e.g. Institute for Development Research, civil society, and Ethiopian Development Research Institute) to continue policy oriented research to inform the process;
- Strengthen training institutions develop capacity to train a future cadre of land administrators;
- Strengthened Capacity to at the National and regional levels to administer land;
- Develop strategies and capacity to manage and update land use records at appropriate levels of government, including developing procedures manuals;
- Enhance and apply appropriate land demarcation tools (such as surveys) and procedures;
- Strengthen coordination of institutions for effective Ethiopia Land Policy and Administration Assessment. For example enhancing linkages between the Ethiopian Mapping Authority (EMA) and the National Geodetic Survey (NGS) to modernize the geodetic infrastructure;
- Conduct trainings and staff development in land administration;
- Develop procedures manuals for land office administration, record keeping;

- Create a public information campaign and summary materials, and disseminate information specifically related to regional and national land policy and administration themes;
- Train regional and local government officials with local seminars, workshops, and regional exchanges.



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LAND POLICY INITIATIVE

LAND GOVERNANCE IN IGAD REGION

Assessment of Land
Governance Framework,
Training & Research Land
Governance Institutions

ETHIOPIA

Country Profile



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Confédération suisse
Confederazione Svizzera
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