The Challenges of Land Law Reform, Smallholder Agricultural Productivity and Poverty in Ethiopia

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Glossary of Terms, Acronyms, and Abbreviations

Unless provided, or the context requires otherwise, each of the following terms, acronyms, and abbreviations shall herein stand for the corresponding expression as provided below:

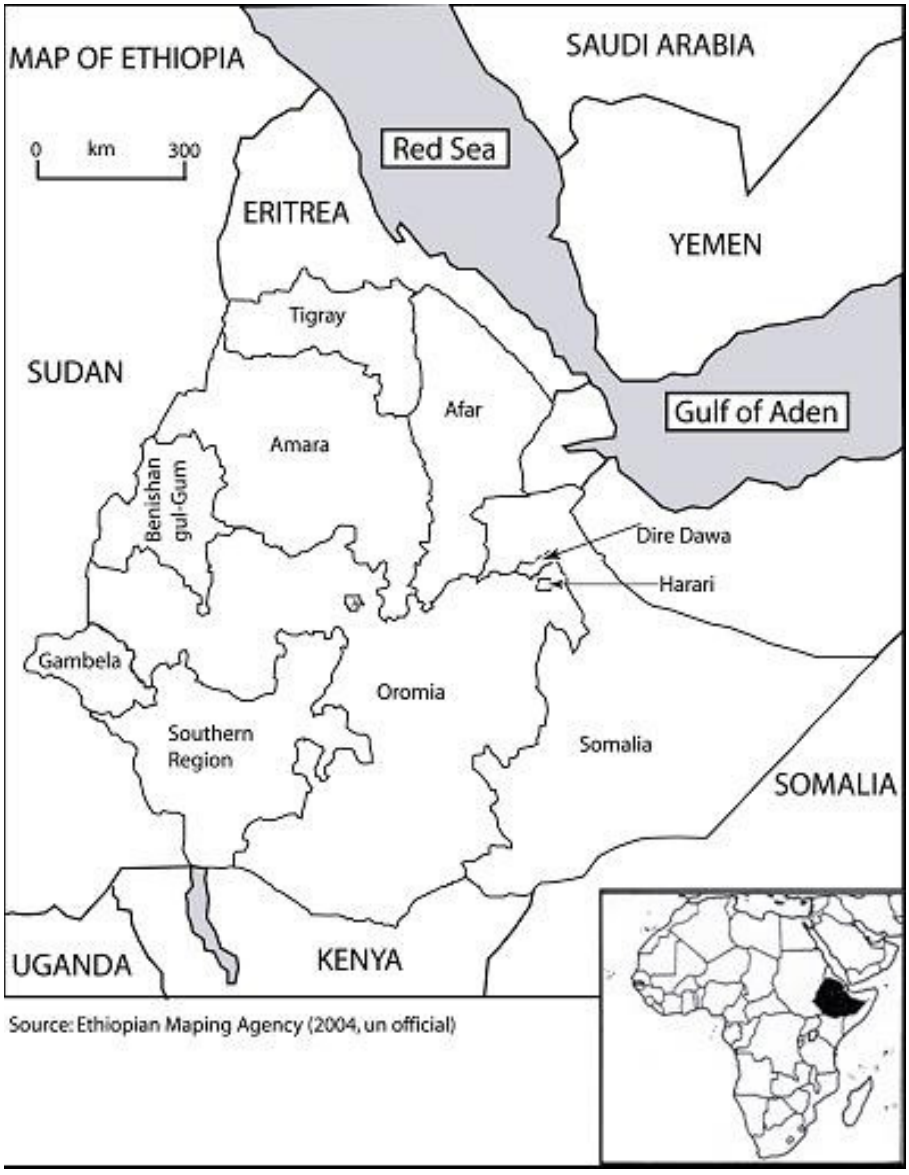
ADLI	-	Agricultural Development-Led Industrialisation, which has been the principal official development strategy of Ethiopia under the EPRDF-led Government;
AusAID	-	Australian Agency for International Development;
Birr/ETB	-	Birr/Ethiopian Birr, which is the currency and basic monetary unit of Ethiopia;
BoA/BoARD	-	Bureau of Agriculture, which was referred to as Bureau of Agriculture and Rural Development before it was re-established and renamed as such in 2010;
BoFED	-	Bureau of Finance and Economic Development;
CIDA	-	Canadian International Development Agency;
CSA	-	Central Statistical Agency of Ethiopia;
Derg	-	Amharic for "committee" or "council", used to refer to the military junta that grabbed power in Ethiopia upon the overthrow of the country's last imperial government led by Emperor Haile Sellassie I (r. 1930-1974) in the 1974 "Revolution", and ruled until it was replaced by the EPRDF in May 1991;
DFID	-	Department for International Development of the UK;
EC	-	Ethiopian Calendar;
EDRI	-	Ethiopian Development Research Institute;
EEA	-	Ethiopian Economic Association;
EEPRI	-	Ethiopian Economic Policy Research Institute;
EPRDF	-	The Ethiopian People's Revolutionary Democratic Front - the political organisation currently in power in Ethiopia, which has been ruling the country since it assumed power after the Derg regime was overthrown in May 1991;
EU	-	European Union;
FAO/UNFAO	-	United Nations Food and Agriculture Organisation;
FDRE	-	Federal Democratic Republic of Ethiopia, the official nomenclature of Ethiopia since it was re-established and renamed as such under the FDRE Constitution, which the EPRDF put into effect as supreme law of the land on 21 August 1995;

FGD	-	Focus Group Discussion;
FSS	-	Forum for Social Studies;
GDP	-	Gross Domestic Product;
HDI	-	Human Development Index;
IDS	-	Institute of Development Studies;
IFAD	-	International Fund for Agricultural Development;
IFPRI	-	International Food Policy Research Institute;
IIED	-	International Institute for Environment and Development;
IMF	-	International Monetary Fund;
Kebele	-	The administrative level below a Special Woreda or a Woreda in most parts of Ethiopia, and the unit below the Kebele level is usually referred to interchangeably as a "village" or a "community";
KII	-	Key Informant Interview;
MEDAC	-	Ministry of Economic Development and Cooperation of Ethiopia;
MoA/MoARD	-	Ministry of Agriculture, which was referred to as Ministry of Agriculture and Rural Development before it was re-established and renamed as such in 2010;
MoFED	-	Ministry of Finance and Economic Development of Ethiopia;
MoI	-	Ministry of Information of Ethiopia, which has been re-established and renamed as "Ministry of Government Communication Affairs;
MoPED	-	Ministry of Planning and Economic Development of Ethiopia, which has been re-established as MEDAC, and then most recently as MoFED;
NEP	-	New Economic Policy;
NGO	-	Nongovernmental Organisation;
OECD	-	Organisation of Economic Development and Cooperation;
PADETES	-	Participatory Demonstration and Training Extension System;
PDRE	-	Peoples Democratic Republic of Ethiopia, the official name the Derg had given Ethiopia after it introduced its Constitution with the same name in 1987, which remained effective until it was replaced in power by the EPRDF in May 1991;
PMAC	-	Provisional Military Administrative Council, which the Derg had established in 1974 immediately after taking political power in Ethiopia, and through which it

		ruled the country by decree until it put into effect the PDRE Constitution in 1987;
PRSP	-	Poverty Reduction Strategy Paper;
Regional State	-	One of the nine members states of the FDRE under the federal state structure that was introduced after the fall of the Derg and currently in force in Ethiopia;
SAERP	-	Sustainable Agriculture and Environmental Rehabilitation Programme;
SDPRP	-	Sustainable Development and Poverty Reduction Programme;
SIDA	-	Swedish International Development Agency;
SNNPRS	-	The Southern Nations, Nationalities and Peoples Regional State, which is one of the nine members states of the FDRE;
Special Woreda	-	An administrative division below a Regional State in Ethiopia's current federal structure, which has status equivalent to a Zone for most administrative purposes;
TGE	-	Transitional Government of Ethiopia;
TNC	-	Transitional National Conference;
TPCE	-	Transitional Period Charter of Ethiopia;
UN	-	United Nations;
UNDP	-	United Nations Development Programme;
UNECA	-	United Nations Economic Commission for Africa;
UNFPA	-	United Nations Population Fund;
UNICEF	-	United Nations Children's Fund;
UNOCHA	-	United Nations Office for the Coordination of Humanitarian Affairs;
UNSO	-	United Nations Soudano-Sahelian Office;
USAID	-	United States Agency for International Development;
WHO	-	World Health Organisation;
WFP	-	World Food Programme;
Woreda	-	The administrative level below a Zone in most parts of Ethiopia, which is equivalent to a district; and
Zone	-	The administrative level below a Regional State within Ethiopia's current federal and administrative arrangements, such as the Sidama Zone of the SNNPRS.

A Map of Ethiopia

(A map released by the Ethiopian Mapping Agency in 2004 showing the [unofficial] international and sub-national boundaries of Ethiopia, which has been restructured as a federal state since the fall of the Derg and the coming to power of the EPRDF in May 1991, after the country was officially re-established and renamed as "the Federal Democratic Republic of Ethiopia [FDRE]" under the FDRE Constitution, which has been in force as "the supreme law of the land" since it was put into effect on 21 August 1995).



Declaration

I hereby declare that this thesis is my own work. I also declare that the thesis is an original work and that all sources used have been duly acknowledged and referenced. I further confirm that the thesis has not been submitted either in part or in full for any degree, diploma, or certificate to this university or any other academic institution.

Solomon Fikre Lemma,

March 2015.

Abstract

Ethiopia has experimented with land law reforms linked to agriculture-led national development strategies that Emperor Haile Sellassie I, Derg, and EPRDF introduced since Emperor Menelik II enacted modern Ethiopia's first reform intended for development in 1908. Nonetheless, the country's smallholder productivity averaged 1.0 ton/hectare and its poverty ranked 174th in the UNDP Human Development Index in 2011. This thesis examines whether and how land law reform can be used to help raise smallholder productivity and tackle poverty in Ethiopia notwithstanding the challenges of legal pluralism. By drawing upon evidence from law and development research and experience and analysing it in the Ethiopian context, the thesis argues that reform can help raise smallholder productivity, but only by recognising legal pluralism and changing the land tenure system's formal state or non-formal customary land policies, laws, and institutions which constrain the provision and implementation of productivity-raising smallholder land rights that enhance tenure security, facilitate the transfer of rights over land, and authorise the collateralisation of land rights; and tackle poverty by thereby increasing food supplies, raising incomes, and improving health, education, and other necessities for the country's predominantly rural population. Specifically, the thesis explores the possibility of using reform to adopt a hybrid state-private-customary land policy that combines the advantages of state land ownership policy that the government enforces, private ownership that critics favour, and non-formal arrangements that society uses. It then highlights how within the framework of this hybrid policy reform may help issue land laws boosting the provision of land rights that enhance tenure security by specifying definition of state, private, and communal landholdings, certification of lifelong usufructuary landholding, stricter eviction and confiscation procedures, and clearer expropriation and compensation mechanisms; that facilitate transfer by easing lease, donation, and succession restrictions; and that authorise collateralisation conditionally. Finally, it demonstrates how reform may help establish land institutions that improve implementation by incorporating non-formal arrangements, establishing a federal executive institution, clarifying the mandates of regional institutions, and assigning the judiciary greater dispute resolution role.

Chapter 1

Introduction

1. 1. Background

Land law reform and its relationship to smallholder agricultural productivity and poverty has been at the top of the national development agenda of Ethiopia particularly since Emperor Menelik II (r. 1889-1913) founded the modern Ethiopian state at the end of the 19th century and introduced the 1908 land law reform.[1] As Dunning noted, previous land law reforms enacted in the country had been primarily political exercises "designed to reward one group or to punish another, and ultimately to consolidate the power of the ruler."[2] However, the 1908 land law reform could be considered as Ethiopia's first designed for national development. That is because it sought to introduce formal land policies, laws, and institutions that were hoped would help bring modernisation to the country's land tenure system.[3] Basically, the land tenure system is part of the legal system that constitutes the land law framework governing the provision and implementation of rights and duties pertaining to such issues as who may control, use, and transfer land and concomitant resources, for how long, and under what conditions.[4]

Ethiopia has subsequently experimented with three major land law reform programmes that claimed to have been designed to serve as a means towards national development under, respectively, the governments of Emperor Haile Sellassie I, who was crowned in 1930 after a period of power struggle that followed the end of Menelik II's reign in 1913[5]; the Derg military junta, which assumed power in the 1974 Revolution that deposed Haile Sellassie I[6]; and the incumbent EPRDF (Ethiopian Peoples' Revolutionary Democratic Front)[7], which is composed of ethnic-based liberation movements that

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1 Aberra, 1998:5 and 98-100. A typical Ethiopian name comprises the given names of the person, father, and paternal grandfather, with no family name passed down from generation to generation. Since conventional references citing only the author's second name make no sense for Ethiopian authors, they are cited here using their first names. The full names of the authors so cited, including their and their fathers' given names, can be found in the bibliography.

2 Dunning, 1970:277. See, also, Pankhurst, 1966.

3 Scholler, 2006:9 and 2008:100; Aberra, 1998:98-100; Selamu and Vanderlinden, 1967:411-415.

4 Lastarria-Cornhiel, 1997:1317.

5 Perham, 1963:262; Gebru Tareke, 1991:80-83.

6 Andargachew, 1993:68-69.

7 The EPRDF was formed in 1989 under the TPLF (Tigrayan People's Liberation Front) after it controlled Tigray, the province it was founded to liberate, and comprised the TPLF, EPDM (Ethiopian People's Democratic Movement), which was later renamed ANDM (Amhara National Democratic Movement), OPDO (Oromo People's Democratic Organisation), and SEPDF (Southern Ethiopia Peoples' Democratic Front), which joined in 1994 and was renamed later SEPDM (Southern Ethiopia Peoples' Democratic Movement), (Assefa Fiseha, 2006:61-62; Scholler, 2006:99).

helped overthrow and succeeded the Derg in May 1991.[8] These land law reforms were linked to the agriculture-led national development strategies the three governments adopted, which sought to use agricultural growth as an engine for tackling poverty and fostering overall economic development. The three governments pursued land law reform to help raise productivity and achieve agricultural growth, although the low productivity of the country's smallholder-based agriculture is widely recognised as being the primary source of poverty in Ethiopia. Devereux and Guenther have succinctly described this ambivalence, noting that "Successive Ethiopian regimes have located the source of Ethiopia's economic stagnation and vulnerability in the agriculture sector, yet they have also looked to smallholder agriculture as potential source of economic growth, food security, and poverty reduction."[9]

There is evidence to be drawn from established law and development research and experience that land law reform could help raise smallholder productivity, thereby tackle poverty, and even foster overall economic development in countries with smallholder-based economies and agriculture-led national development strategies in roughly comparable position with Ethiopia, such as those in sub-Saharan Africa and Asia. Though causality and linkage remain to be issues of debate amongst development analysts, practitioners, and funders, it is generally thought that since land law reform includes formal state actions changing the land policies, laws, and institutions that comprise the land tenure system, and because land is the most important factor of production in smallholder agriculture, the manner of provision and implementation of smallholder land rights it establishes is thought to be a critical determinant of smallholder productivity, and as smallholder agriculture constitutes the primary source of livelihood and the mainstay of the economy, smallholder productivity is thought to be a critical determinant of poverty in those countries.[10] That is specifically because of the following five reasons.

First, land law reform, defined broadly here, includes formal actions that the state carries out using its legislative, executive, and judicial organs to establish, amend, or abolish part or all of the land tenure system's land policies that specify possible forms of property rights in land, land laws that set out provisions of land rights as per the land policies' specifications, and land institutions that undertake implementation by applying the land laws' provisions in the course of administering land, managing land relations, enabling exercise by rights holders, and resolving disputes.[11] Second, land is the most

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8 Vaughan, 2003:13.

9 Devereux and Guenther, 2009:5.

10 See, for example, Hårsmar, 2010:1-4; DFID, 2004a:3.

11 See, for example, IFAD, 2008:27; Bruce, 2006a:2-3; USAID, 2006:11; McAuslan, 2003:9 and 25; World Bank and

important factor of production for most smallholders, who mainly depend on the use of their plots of land, along with family labour, farm animals, often "backward" farming implements, and rainwater, to produce for self-subsistence and where possible the local market, due to technical problems related to the lack of access to modern agricultural inputs, such as improved seeds, fertilisers, insecticides, and pesticides, advanced ploughing, weeding, and harvesting equipment, and credit, research, communication, and marketing services.[12] Third, because smallholder agriculture constitutes the primary source of livelihood and the mainstay of the economy, poverty is widely accepted as being closely linked to low smallholder productivity in those countries, which have proportionally the highest rates of poverty in the world, and where smallholders make up the majority of the population and the poor.[13] Fourth, structural problems of the land tenure system pertaining to land policies, laws, and institutions that constrain the provision and implementation of the land rights of smallholders with a bearing on their productivity is one of the two major factors identified as the cause of low smallholder productivity and thus poverty in those countries, besides technical problems of the smallholder sector's *modus operandi* related to lack of access to modern agricultural inputs, implements, and services.[14] Fifth, land law reform that is designed to change land policies, laws, and institutions in a way which addresses structural problems of the land tenure system and improves the provision and implementation of those land rights of smallholders with a bearing on their productivity, and that is introduced as part of an agriculture-led national development strategy along with agrarian reform aimed at alleviating technical problems of the smallholder sector is therefore generally thought can help raise smallholder productivity and thereby tackle poverty in such countries.[15]

Deininger, 2003: xxii–xxix and 1; Maxwell and Wiebe, 1999:825; Dorner, 1972:17-19.

12 See, for instance, IFAD, 2012:5; Tsegaye Moreda, 2012:6-7; Thapa, 2010:1; Dixon et al., 2004:1; Narayanan and Gulati, 2002:5; Wiggins, 2009:4; Lipton 2005; Huvio et al., 2005; Dixon et al., 2003; Heidhues and Brüntrup, 2003.

13 See, for example, Australian Government and Grewal, Grunfeld, and Sheehan, 2012:14; Quan, 2011:2 and 2000:31-32; Devereux and Guenther, 2009:3; DFID, 2003b:3; Diao, 2010:5; IFPRI and Asenso-Okyere and Samson, 2012:5.

14 World Bank, 2000:170; Jayne, Mather, and Mghenyi, 2010:1386 and 2006:1; Jayne et al., 2003:270; Hoben, 2000:7; EEA, 2011:53; EEA/EEPRI, 2002:vi; Coates et al., 2007:12; International Institute for Labour Studies, 1967:2.

15 Note that although land law reform is aimed at addressing structural problems of the land tenure system, whilst agrarian reform at dealing with technical problems of the smallholder sector, which is how the two terms are understood here, it is not uncommon to see them being employed differently. For example, Kariuki and Thiesenhusen use the term "agrarian reform" to refer to both land law reform and agrarian reform (Kariuki, 2009:1; and Thiesenusen, 1989a:7). Others like Piyakuryal employ the term agrarian reform broadly to include structural reforms (land distribution, landholding ceilings setting, tenure reforms), development reforms (marketing reforms, development of rural infrastructures, micro-finance), and social reforms (farmers mobilization, training, awareness creation) that are intended to promote equity, productivity, and environmental protection (Pyakuryal, 2003:23-25).

The term "land policy", defined broadly here, relates to a general statement the state promulgates using its legislative organ that specifies the possible forms of property rights in land as per the essential national interest concerning land, which thus broadly reflects the purpose, composition, and operation of the overall land tenure system, highlights the administration of land, guides the management of land relations, and directs the manner of provision and implementation of specific land rights.[16] And the term "land law", also defined broadly here, pertains to more specific legislation that the state issues through its legislative organ, or parts of the executive branch to which the legislature delegates lawmaking power, that set out provisions recognising, amending, or repealing land rights, through which the general statement of the land policy is specified, clarified, and translated into action.[17] In contrast, the term "land institution", also defined broadly here, refers to structures that the state establishes and runs to undertake the implementation of the land law's land rights provisions in accordance with the land policy's specifications, including parts of the executive through application in the course of administering land, managing land relations, and enabling exercise by land rights holders, as well as the judiciary through interpretation, explanation, and enforcement in dispute resolution.[18]

On the other hand, "land" is understood here not as a "thing", but as "property". As Lund concisely put it, "property is not a thing but a social relation or contract determining how rights to use and duties not to use a specific resource are distributed."[19] And as Sjaastad and Bromley argued, "a 'social contract' - an agreement, tacit or explicit, on the legitimacy of the specific form of land holding - must precede individual appropriation of resources."[20] Therefore, the term "land rights" is broadly defined here as "property rights" concerning relations amongst people pertaining to rights and duties recognised by society regarding issues such as the manner of control, use, and transfer land and the concomitant resources.[21] As such, the term "land rights" is employed here to refer to a wide range of rights pertaining to access, use, management, alienation, and exclusion rights over land, depending on the possible forms of property rights in land specified in the land policy in force.[22] For example, in cases where a land policy involving private land ownership is in force, land rights may encompass a number of different rights related to ownership, which confers upon the land rights holder the rights of *usus*,

16 See, for example, McAuslan, 2003:3-9 and 251.
17 See, for instance, Bruce, 2006a:2.
18 See, for example, World Bank and Deininger, 2003: xxii–xxix.
19 Lund, 2000:17.
20 Sjaastad and Bromley, 1997:551.
21 See, for instance, Singer, 1996:71; Munzer, 1990:16; Lastarria-Cornhiel, 1997:1317.
22 Ostrom, 2000:339; Ostrom and Schlager, 1996:133; Schlager and Ostrom, 1992:250-251.

which is the right to occupy and use the land, *fructus*, which is the right to collect and use fruits of the land like crops and rents, and *abusus*, which is the right to alienate or dispose of the land and its fruits.[23] In contrast, in cases where a land policy involving state or communal land ownership is in force, land rights may encapsulate rights related to, for instance, usufruct, which bestows on the land rights holder, though not an owner, the rights of *usus* and *fructus*, minus *abusus*, although customary communal land rights, often being hereditary, may differ from the "life interest that typically characterises usufruct under Roman law".[24] Thus, the concept of land rights as understood here may specifically include the rights to access, occupy, and use land to produce crops, rear animals, collect fruits, etc.; make investments and improvements; sell, donate, mortgage, lease, bequeath, or otherwise transfer or dispose of the land, its fruits, or improvements; exclude others from those rights; and seek administrative and judicial enforcement of the land rights provisions so as to protect the rights holder.[25]

It is generally thought that land law reform can help raise smallholder productivity in countries like Ethiopia if designed to change the land policies, laws, and institutions of the land tenure system in a way that brings improvement in the provision and implementation of the land rights of smallholders with a bearing on their productivity. Following Schlager and Ostrom's "property as a bundle of rights" approach, those land rights of smallholders with a bearing on their productivity will here be grouped based on their potential implications and referred to as "the three bundles of productivity-raising smallholder land rights".[26] The first group of these land rights is to do with smallholders' tenure security, which, defined broadly here, pertains to the assurance, confidence, or expectation of smallholders to remain in physical possession of, and enjoy the rights to, and the fruits of their landholdings, as well as the value of investments and improvements they make, continuously without interruption, imposition, or interference from outside sources, including the state, private individuals, and other entities, either in the course of use or upon transfer.[27] Therefore, one way in which land law reform is believed can help raise smallholder productivity is by putting into effect land policies and laws improving the provision of smallholder land rights contributing towards the enhancement of tenure security, such as those that clearly define land access, occupation, and use rights, guarantee the

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23 Mattei, 2000:78; Munzer, 1990:23; Honoré, 1961:108.

24 See, for example, Gluckman, 1965:85-86.

25 Adams, Cousins, and Manona, 1999:9. See, also, Sterner, 2003: Chapter 5.

26 Schlager and Ostrom, 1992:250-251; Ostrom and Schlager, 1996:133; Ostrom, 2000:339. Note that the term "bundles of rights" has long been a traditional part of legal anthropology, and Schlager and Ostrom's approach is one of several conceptualisations of "property as a bundle of rights" (Crewett, Ayalneh, and Korf, 2008:2).

27 Bledsoe, 2006:152; Place and Swallow, 2000:11; Roth and Haase, 1998:1; Place, Roth, and Hazel, 1994:19.

exclusion of others from such rights, outline management obligations, stipulate stricter eviction and confiscation requirements, specify expropriation and compensation mechanisms, as well as land institutions, administrative and judicial, entrusted with substantive and procedural powers that ensure implementation and the protection of the rights holder. It is thought that the enhancement of tenure security would provide smallholders with incentive to properly manage, undertake long-term investments on, and make improvements to their landholdings, which is believed would help raise smallholder productivity and lead to sustainable land use.[28] The second group pertains to the transfer of rights over land, which, also defined broadly here, relates to the process in which smallholders pass their land rights and the concomitant benefits over to other persons[29], either with consideration through sale, lease, exchange, barter, or in the form of security or payment of debt as in the case of mortgage[30], or without consideration through donation or succession.[31] Accordingly, the other way in which land law reform is believed can help raise smallholder productivity is by putting into effect land laws improving the provision of smallholder land rights entailing facilitation of the transfer of rights over land temporarily or permanently via different means, including sale, lease, exchange, barter, donation, or succession, depending on the land ownership policy and the corresponding property rights in land, such as ownership, usufruct, or other possible forms of property rights in land, as well as land institutions, administrative and judicial, with substantive and procedural powers tasked with implementation. It is thought that the facilitation of the transfer rights over land would give rise to a dynamic land market that could enable more successful and entrepreneurial smallholders to access more land and allow those who are not to transfer their landholdings and seek salaried employment, join other economic sectors, or migrate to urban areas, thereby leading to a more effective and efficient land use involving the reduction of soil erosion and land scarcity, the diversification of rural livelihoods, the consolidation of fragmented landholdings into larger, economically viable units, and ultimately growth in smallholder productivity. The third group concerns the authorisation of the collateralisation of land rights, which, also defined broadly here, refers to the use by smallholders of their land rights as surety to obtain credit.[32] Thus, the third way in which land law reform is believed can help raise smallholder productivity is improving the authorisation of the collateralisation of land rights for smallholders by putting into effect land laws that recognise the use of smallholder land rights

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28 World Bank, 2007b:139; Wily, 2003: 8, 23, and 52; Place and Swallow, 2000:11; Roth and Haase, 1998:1.

29 Rolfes, 2006:119.

30 Giovarelli, 2006:89.

31 Rolfes, 2006:159; Giovarelli, 2006:95.

32 Deininger and Jin, 2006:1248; Bledsoe, 2006:152; Chalamwong and Feder, 1988:188.

as collateral for credit, as well as land institutions, administrative and judicial, and micro-credit agencies with clear substantive, procedural, and financial powers to ensure implementation. It is thought that the authorisation of the collateralisation of land rights would enable more successful and entrepreneurial smallholders to obtain the means they need to access more land and modern agricultural inputs, implements, and services, and those who are not to switch or diversify their livelihoods, thereby leading to sustainable land use and growth in smallholder productivity.[33]

Moreover, it is generally thought that growth in smallholder productivity can help tackle poverty directly and significantly in countries like Ethiopia, where smallholder agriculture provides livelihood for the majority of the population and the poor and is the mainstay of the economy.[34] This is because growth in smallholder productivity is believed can enable smallholders to not only attain household food sufficiency, but also contribute towards greater and cheaper supply of food, as smallholders mostly produce staple crops that are mainly consumed and traded locally and have lower elasticity of demand.[35] It is thought that this can enable the rural and urban poor, who spend most of their incomes on food, to access more food and have larger disposable incomes for expenditure on other basic necessities, and help the countries save the foreign exchange they spend on importing food for investment on health, education, and other economic, social, and political provisions.[36] Growth in smallholder productivity is also believed can help increase the incomes of smallholders, as they can be able to sell more products in the market and save assets they would have spent to buy food, which would help them have larger disposable incomes that can enable them to increase their consumption.[37] And smallholders' attainment of food security and higher incomes for expenditure on such services as health and education is thought can improve their nutrition, health, and literacy, which would in turn promote their productivity.[38] Furthermore, it is generally thought that, as agriculture continues to modernise and supply cheap food, release labour, provide raw materials, expand market, and boost demand for nascent manufacturing and service industries, growth in smallholder productivity can, through the indirect effect it may have on growth in other sectors, help foster overall "economic

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33 Deininger and Jin, 2006:1248; Chalamwong and Feder, 1988:188; von Braun, Msuya, and Wolf, 1999:9.

34 See, for instance, Christiaensen, Demery, and Kuhl, 2010:15; Tsegaye Moreda, 2012:15-17.

35 DFID, 2004a:11; de Schutter, 2011:260 and 272.

36 IFPRI and Asenso-Okyere and Samson, 2012:1.

37 For evidence on the effect growth in smallholder productivity had in helping increase smallholder incomes in Asia, see, for example, Acharya and Sophal, 2002:1-3. For evidence in Latin America, see de Janvry and Sadoulet, 1996.

38 Barrett, 2011:43.

development", which can be defined as involving the transformation of an economy from one that is largely agricultural to one that is more extensively based on manufacturing and service industries.[39]

However, although the land law reforms that the governments of Haile Sellassie I, the Derg, and the EPRDF introduced claimed to have been intended to help raise agricultural productivity, thereby tackle poverty, and foster overall economic development, the land tenure systems and smallholder land rights they established were different from each other. As Devereux, Amdissa, and Sabates-Wheeler noted, "Any Ethiopian over 40 years old has lived through three remarkably different political regimes: the feudal imperial era under Emperor Haile Sellassie; the socialist military dictatorship of Colonel Mengistu's Derg; and the market-oriented, Western-aligned democracy of Prime Minister Meles Zenawi. Each regime has imposed an entirely different set of policies on smallholder agriculture, where over 80 per cent of the population makes its living, yet all three have presided over an agricultural sector that is stagnant and acutely vulnerable to recurrent drought and other livelihood shocks."[40] Indeed, none of the land law reforms appears to have helped achieve the smallholder productivity and poverty outcomes each government had hoped. According to data released in 2011, Ethiopia continued to have amongst the world's lowest smallholder productivity, averaging just around 1.0 ton/hectare.[41] Moreover, despite the remarkable overall economic growth rates registered recently, the country remained one of the poorest by many standards, ranking 174th out of 187 countries in the 2011 UNDP Human Development Index.[42] Even the slight growth of agriculture by 2.0% during the imperial era, 0.6% under the Derg rule, and 2.3% during the incumbency of the EPRDF was achieved largely due to the expansion of cultivated land, not growth in productivity. Besides, although the share of agriculture in Ethiopia's GDP has slightly declined from 68.0%, to 55.6%, and then to 47.3%, respectively, during the three periods, the fact that agriculture still accounts for close to one-half of GDP and thus structural transformation of the economy has not been achieved shows none of the land law reforms has helped foster overall economic development. Notably, most of the overall economic growth rates registered during these three periods was achieved thanks to the manufacturing and service sectors, which have grown relatively more rapidly, respectively in order of their appearance

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39 Mellor and Dorosh, 2010:3.

40 Devereux, Amdissa, and Sabates-Wheeler, 2005:121.

41 Alemayehu, Dorosh, and Sinafikeh, 2011:1; Spielman, Dawit, and Dawit, 2011:4. See, also, World Bank, 1999: viii; Devereux, 2000:6.

42 UNDP, 2011.

during the three periods, by 7.0%, 3.6%, and 5.3% and by 7.3%, 3.8%, and 6.9% (Appendix 4, Table 4[43]; Appendix 5, Table 5[44]; Appendix 7, Table 7[45]; Appendix 8, Table 8[46]; Appendix 9, Table 9[47]).

The ideological and policy orientations of the three governments may help explain the fact that due to the vital economic, social, and political significances of land, the forms and contents of the land law reforms, land tenure systems, and smallholder land rights each introduced might have been, despite the purposes they proclaimed to serve, decided not just based on the economic considerations of raising agricultural productivity and tackling poverty, but taking into account the social interests and political calculations associated with land. In Ethiopia, land is vital not only economically, as the primary factor of production in agriculture and the principal form of wealth; but also, as a country where cultural identity is tied to specific places, socially, as the principal determinant of cultural identity and class[48]; and politically, as the most formidable power source and governance instrument for the ruling elite.[49]

Specifically, the government of Emperor Haile Sellassie I introduced Ethiopia's first comprehensive and systematised land law reform embodied mainly in the 1960 Civil Code[50] and other codes issued during the "The Era of Codification"[51] and related to the country's first agriculture-led national development strategy adopted in the 1950s and 1960s.[52] Yet, due to the government's feudalistic nature, this land law reform did not help address the problem of concentration of land in the hands of absentee landlords, including members of the upper echelons of the royal family, the nobility, the army, the police, the civil service, the business community, and the Ethiopian Orthodox Church.[53] As Markakis, Nega, and Bahru observed, it was the rampant landlessness, arbitrary eviction, and tenancy of peasants that fuelled the 1974 Revolution, which rallied around the slogan "Land to the Tiller".[54]

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43 Alemayehu, Dorosh, and Sinafikeh, 2011:11.

44 Rashid, Meron, and Gezahegn, 2007:37.

45 Rashid, Meron, and Gezahegn, 2007:28.

46 Mulat, Fantu, and Tadele, 2006:4.

47 Kassahun, 2012:7.

48 Dunning, 1970:271.

49 Crewett, Ayalneh, and Korf, 2008:21; Crewett and Korf, 2008:215.

50 See, for example, Civil Code of Ethiopia, 1960: Articles 1126-1646 and Articles 2875-3130.

51 Besides the Civil Code promulgated in 1960, the other codes issued during the "The Era of Codification", many of which are still fully or partially in force, include a Penal Code (1957), Commercial Code (1960), Maritime Code (1960), Criminal Procedure Code (1961) and Civil Procedure Code (1965). See, for example, Aberra, 1998:197-209.

52 Kassahun, 2012:5; Rashid, Meron, and Gezahegn, 2007:3-4; Berhanu, Hoekstra, and Azage, 2006:9.

53 Gebru Mersha and Githinji, 2005:2-3.

54 Markakis and Nega, 1978:56-59; Markakis, 1974:125-127.

Nor did the land law reform help avert the 1973 famine that ravaged northern Ethiopia, which, as Andargachew noted, was kept secret to the rest of the country and the world, but exposed in a documentary film produced by Jonathan Dimbleby, and used as immediate cause for the culmination of the Revolution in the deposition of Haile Sellassie I and Ethiopia's last imperial government.[55]

Subsequently, junior military officers who assumed power in the 1974 Revolution, proclaimed to have espoused "Marxism", and officially referred to themselves as the PMAC (Provisional Military Administrative Council), or simply "the Derg" in Amharic, enacted the 1975 land law reform programme embodied mostly in "The PMAC Proclamation to Provide for the Public Ownership of Rural Lands, Proclamation No. 31/1975"[56], which is considered as the most "radical" in the country's history.[57] The Derg's land law reform abolished all imperial-era land tenure systems that it believed buttressed the feudalistic order, nationalised all land without compensation, and introduced the policy of state ownership of land, which declared that "All rural lands shall be the collective property of the Ethiopian people", that "No person or business organisation or any other organisation shall hold rural land in private ownership", and that "No compensation shall be paid in respect to rural lands."[58] The Derg's land law reform, which was linked to its agriculture-led national development strategy known as "agrarian socialism" that sought to achieve Soviet-style "socialist transformation of agriculture"[59], guaranteed every adult citizen equal rights of access to a maximum of 10 hectares of agricultural land free of charge with usufruct rights, excluding rights to transfer through sale, lease, collateralisation, and succession, except to primary family members.[60] Yet, despite its land law reform, the Derg, which grabbed power by publicising and capitalising on the 1973 famine, ended up presiding over an even worse famine in 1984, which Assefa Fiseha described as "the worst famine in the country".[61]

Most recently, the EPRDF, which has been in power since it helped overthrow and succeeded the Derg in May 1991[62] and proclaims to be an adherent of a mixed Marxism-liberalism ideology that it calls

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55 Andargachew, 1993:68-69.
56 PMAC Proclamation, 1975: Article 1.
57 See, for instance, Crewett, Ayalneh, and Korf, 2008:1.
58 PMAC Proclamation, 1975: Article 3(1), (2), and (3).
59 Devereux, 2000:12 ; Griffin, 1992: 24 and 57.
60 PMAC Proclamation, 1975: Articles 3, 4 (5), 5, and 6 (3).
61 Assefa Fiseha, 2006:54.
62 Vaughan, 2003:13.

"Revolutionary Democracy"[63], has enacted its own land law reform. As Crewett and Korf, Merera, and Abbink observed, the EPRDF is a successor of the TPLF (Tigray People's Liberation Front), a Marxist ethnic-based liberation movement that still constitutes the backbone of the current political organisation and government of the EPRDF, which had fought an armed struggle against the Derg claiming ethnic-based oppression and seeking ethnic-based solution for Ethiopia's problems, including those pertaining to land law reform, smallholder agriculture, and poverty, and has since framed virtually all aspects of life in the country along ethnic lines as per its commitment to what it called "the national question".[64] Accordingly, the FDRE (Federal Democratic Republic of Ethiopia) Constitution the EPRDF put into effect on 21 August 1995[65], which proclaims to have been adopted by "the Nations, Nationalities and Peoples of Ethiopia"[66] and to be "the supreme law of the land"[67], restructured Ethiopia into a federal polity. This federal arrangement is composed of a federal government, nine regional states, including Tigray, Afar, Amhara, Oromia, Somali, Benishangul-Gumuz, SNNPRS (Southern Nations, Nationalities, and Peoples Regional State), Gambella, and Harari, and two city administrations, namely Addis Ababa and Dire Dawa[68], which are formed mainly along ethnic lines and designed to have their own largely independent legal systems made up of legislative, executive, and judicial organs with corresponding powers that they exercise on matters placed in their jurisdictions under the Constitution.[69] As Atakilte and Hussein suggested, because of its Marxist background, the EPRDF has under its land law reform maintained significant continuities from the Derg's, including continuing the Derg's policy of state ownership of land.[70] However, it has also recognised the right to compensation for investment made on land upon expropriation, lifted the 10-hectare restriction on maximum plot size, abolished the prohibition of tenancy and hired labour, allowed the leasing of land, expanded the succession of land rights from spouses and children to all family dependents, and decentralised land governance by dividing power between the federal and

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63 The EPRDF has published several party documents outlining the political organisation's understanding of the nature of, and justifications for its adherence to the ideology that it considers a mixture of Marxism-liberalism and calls "Revolutionary Democracy". For a detailed elaboration and explanation provided by the EPRDF about this ideology that it professes to follow, see, generally, EPRDF, 2000, 2005a, and 2005b.

64 Crewett and Korf, 2008:205; Merera, 2003; Abbink, 1997.

65 FDRE Proclamation, 1995: Article 3; FDRE Constitution: Article 9(1).

66 FDRE Constitution, Preamble.

67 FDRE Constitution: Article 1. Note that the TPCE had served as the supreme law of the land beginning from its adoption at the Transitional National Conference (TNC) in July 1991 until it was replaced by the FDRE Constitution on 21 August 1995, which has since been the supreme law of Ethiopia (FDRE Proclamation 1995, Article 9[1]).

68 FDRE Constitution: Articles 46-52.

69 FDRE Constitution: Articles 50(2), 52(2), and 78.

70 Atakilte, 2004:60; Hussein, 2004:12.

regional governments.[71] The FDRE Constitution, which embodies the current land policy of the country, recognises that "Every Ethiopian citizen has the right to the ownership of private property"[72], though it qualifies this right when it comes to land and validates the EPRDF's policy of state ownership of land, declaring 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."[73] Moreover, though the Constitution clarifies that "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"[74], it also recognises that "Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession", and pledges that "The implementation of this provision shall be specified by law."[75] The Constitution further 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 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", and promises that "Particulars shall be determined by law."[76] But it then qualifies 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."[77] The EPRDF's land law reform is linked to its agriculture-led national development strategy called ADLI (Agriculture Development-led Industrialisation), which had the objective of helping achieve food security, attain agricultural growth, and foster "pro-poor" economic development mainly by raising smallholder productivity in staple crops.[78] Yet, despite the EPRDF's land law reform, as Dessalegn noted, "As recently as 2002/03, there was starvation in many parts of the country affecting more than 13 million rural people. In 2009, over 22% of the rural population was dependent on a combination of emergency food aid and safety net programs. While the number of people seeking emergency food assistance has decreased since then, nearly eight million rural people continue to be supported by safety net programs."[79]

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71 See, for example, FDRE Constitution: Articles 40, 51(5) and 52(2) [d].

72 FDRE Constitution: Article 40(1).

73 FDRE Constitution: Article 40(3).

74 FDRE Constitution: Article 40(3).

75 FDRE Constitution: Article 40(4).

76 FDRE Constitution: Article 40(7).

77 FDRE Constitution: Article 40(8).

78 EPRDF, 2005b:8-17; MoFED, 2002:13. See, also, Amdissa, 2006:23.

79 Dessalegn, 2011:2-3. See, also, USAID, 2010:1. See, also, USUN Rome, 2004:2.

However, the ideological and policy orientations of the three governments cannot help fully explain the failure of the land law reform they enacted to help raise smallholder productivity and tackle poverty. To begin with, though the extent might vary, land has similar economic, social, and political significances in countries around the world. As such, there can be value-neutral or value-free land law reform only in theory, but not in practice. In other words, though the degree might vary, the forms and contents of land law reforms enacted particularly in developing countries like Ethiopia will be decided not only based on the economic considerations of raising agricultural productivity and tackling poverty, but also taking into account the social and political interests associated with land. As Brietzke put it, "While law-in-the-abstract is value-neutral, particular laws necessarily embody value choices, be they socialist, capitalist, or those of the status quo. The use of law is not restricted to certain types of economic or political systems".[80] And as Gebru Mersha and Githinji observed, land issues "have always and everywhere been" economic, social, and political matters. Thus, the allocation of land rights, the distribution of agricultural products, and the fate of poverty have "never been decided solely in agriculture or by farmers", or based on economic considerations, but by the interplay of internal and external forces representing diverse economic, social, and political interests, including the state, landlords, corporations, and bilateral and multilateral funders, such as the World Bank and the IMF.[81]

More importantly, despite the possible social interests and political calculations associated with land, land law reform has been successfully used to help raise smallholder productivity, thereby tackle poverty, and even foster overall economic development in countries that have smallholder-based economies and agriculture-led national development strategies like Ethiopia, where land has vital economic, social, and political significances as in Ethiopia, and that were or are in roughly comparable position with Ethiopia. Arguably the most successful recent experience is that of the East Asian green revolution countries, notably China, which like Ethiopia had a background of being ruled under a feudalistic monarchy, a smallholder-based agricultural economy, a large, predominantly rural population, an experience of a Marxist-oriented political economy controlled by a one-party state, and a land tenure system involving the policy of state land ownership.[82] However, with the contribution of land law reform and growth in smallholder productivity, China has since managed to lift millions of its citizens out of poverty, achieve agricultural growth, structurally transform its economy, and become a

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80 Brietzke, 1975:52.

81 Gebru Mersha and Githinji, 2005:1.

82 Park, 2008:1-5.

global economic powerhouse.[83] Though not as remarkably as that of China or other East Asian green revolution countries, sub-Saharan African countries such as Ghana[84], Burkina Faso[85], and Niger[86], which have smallholder-based economies like Ethiopia, have doubled or more their agricultural production since they started to introduce land law reforms from the 1980s onwards.[87] Particularly in Ghana, according to the 2008 World Development Report, the rate of poverty had fallen from 51.7% in 1991 to 28.5% in 2005 largely due to agricultural growth driven by smallholder-based agriculture.[88]

Therefore, to find possible explanation for land law reform's smallholder productivity and poverty outcomes in Ethiopia, it is imperative to examine if the change that land law reform had brought to the pre-existing land tenure system has led to the restriction of the provision and implementation of productivity-raising smallholder land rights. The change land law reform brought to the land tenure system of Ethiopia that has the most significant impact on the manner of provision and implementation of smallholder land rights in the country is legal pluralism, which, defined broadly, relates to the existence of two or more legal systems governing the same type of relation within the same country.[89] Menelik II began in 1908 the enactment by successive governments of land law reforms involving the importation, transplantation, and introduction of foreign-modelled formal state land policies, laws, and institutions to the land tenure system governing the provision and implementation of smallholder land rights, which the governments have been establishing and operating using their legislative, executive, and judicial organs based on written laws often claiming the reforms have been intended to help raise smallholder productivity and thereby tackle poverty.[90] Before that, mostly indigenous traditional land tenure arrangements that are characterised by their largely unwritten, flexible, negotiable, and location-specific nature, and are usually managed by a village chief, traditional ruler, or council of elders based on local practices were in exclusive existence and operation in the country, although they themselves were the product of a long process of "legal stratification" involving the experiences, norms, and practices of various cultural groups and the principles of Christianity, Islam, Judaism, and other local

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83 Wiggins, 2009:3; Deininger and Binswanger, 1999:259; FAO and OECD, 2012:7-9; Ziegler, 2002:9.

84 Besley, 1995: 903 and 906-907.

85 Kevane and Gray, 1999:1-2 and 14.

86 Gavian and Fafchamps, 1996:460 and 467.

87 Wiggins, 2009:3.

88 World Bank, 2007b:47.

89 See, for example, Benda-Beckmann, 2002:37 and 52.

90 Scholler, 2006:9 and 2008:100; Aberra, 1998:98-100; Selamu and Vanderlinden, 1967:411-415.

religions.[91] Yet, even after the state started to enact land law reform and introduce new land policies, laws, and institutions, which have since come to be known as "formal state land tenure arrangements", the pre-existing indigenous ones, which have since come to be known as "non-formal customary land tenure arrangements", have continued to exist, operate, and be used by society, despite often being not consistent with, and recognised under the formal state ones, thereby leading to legal pluralism.[92] In view of that, the term "legal pluralism" will be broadly used here to refer to the largely independent existence and operation of the formal land policies, laws, and institutions the state has been establishing and operating through land law reform using its legislative, executive, and judicial organs alongside the pre-existing non-formal customary land policies, laws, and institutions, whether or not consistent with, or recognised under the formal state ones, within the land tenure system governing the provision and implementation of productivity-raising smallholder land rights in countries like Ethiopia.

Moreover, the term "formal" will be broadly used here to refer to the land tenure system established and operated by the state through land law reform, the land policies, laws, and institutions that constitute it, and the land rights that pertain to it. Whereas, the term "non-formal" will be broadly employed here to refer to the pre-existing customary land tenure systems established and used by society, the land policies, laws, and institutions that constitute it, and the land rights that pertain to it. This contrasts with the term "informal", a commonly employed, but a misleading characterisation that tends to associate customary land tenure systems with squatting. Nonetheless, as Bruce accurately put it, in countries like Ethiopia, "Custom in fact represents an alternative formality, reflecting culturally embedded values and clear claims of right, managed by sub-national social institutions with important interests and often political influence. The situation is quite different from that of squatters."[93] That is in view of the fact that since "land rights" are "property rights" contingent on recognition by society, non-formal customary land rights and land tenure systems recognised as "legal" by society in countries like Ethiopia should be accepted as "legal", at least as much as the formal state ones that are recognised as "legal" by the state in those countries, or by society in the "developed world" are accepted as such. After all, as Platteau cogently argued, "if property has no social legitimacy, it is no property because it lacks the basic ingredient of property, recognition by others".[94] Similarly, as Rolfes

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91 Connolly, 2005:7; Brietzke, 1975:46.

92 See, for instance, Crewett, Ayalneh, and Korf, 2008:5.

93 Bruce, 2006b:13.

94 Platteau, 1995:46.

argued, "For a land right to be valid, other people must recognize it as legitimate. This might be as simple as neighbouring users acknowledging each other's land rights in a manner they all agree on."[95]

In short, to find possible explanation for land law reform's smallholder productivity and poverty outcomes in Ethiopia, it is imperative to examine the challenges legal pluralism might pose. After all, due to legal pluralism, land law reform enacted to help raise smallholder productivity and tackle poverty in the country operates to bring the change in the provision and implementation of productivity-raising smallholder land rights that it needs to bring in order to deliver the smallholder productivity and poverty outcomes it is hoped would help achieve not just through the formal state land policies, laws, and institutions that it puts into effect, but in the context of a land tenure system that also comprises the pre-existing non-formal customary ones. As Brietzke, who expressed surprise at the "dramatic dualism of urban areas on the one hand, and the huge rural subsistence sector on the other", and emphasised that "Ethiopia has two legal systems: one has evolved more or less spontaneously from the experiences of various cultural groups, while the other has been imported by a tiny elite and is sanctioned by the state", succinctly put it, the legal pluralism would provide "a particularly fruitful starting point for the discussion of Ethiopian legal problems."[96] Within the above broad perspective, this thesis seeks to explore whether, how, and to what extent the legal pluralism it gave rise to in the land tenure system might influence the effect land law reform has on the provision and implementation of smallholder land rights and shape the smallholder productivity and poverty outcomes it delivers in Ethiopia. It also seeks to explore the scope and mechanisms available for intervention through land law reform to make this legal pluralism work to help promote the provision and implementation of smallholder land rights and improve smallholder productivity and poverty conditions in the country. Thus, the major objective of the thesis is to examine whether and how land law reform can be used to help raise smallholder productivity and thereby tackle poverty in Ethiopia notwithstanding the challenges that the legal pluralism in the land tenure system might pose.

However, legal pluralism would provide "a particularly fruitful starting point" for the discussion of the challenges of land law reform, smallholder productivity, and poverty in Ethiopia not because it is peculiar to Ethiopia, or to the land tenure system governing the provision and implementation of smallholder land rights in the country. Legal pluralism in the land tenure system governing the

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95 Rolfes, 2006:117.

96 Brietzke, 1975:46.

provision and implementation of smallholder land rights is a common feature that Ethiopia shares with many other developing countries around the world, including the abovementioned sub-Saharan African and Asian countries that had successful land law reform experience. As Cotula, Toulmin, and Hesse noted particularly in relation to sub-Sahara African countries like Ethiopia, due to the legal pluralism that land law reform has given rise to in the land tenure system, "African farmers gain access to land through a blend of 'customary' and 'statutory', 'formal' and 'informal', institutions [as] a range of customary, statutory and hybrid institutions and regulations having de jure or de facto authority over land rights co-exist in the same territory".[97] Instead, it is because despite having been theoretically delegitimised, abolished, and replaced by the state with the formal land policies, laws, and institutions introduced to the land tenure system through land law reform, as numerous studies suggest, the non-formal customary land tenure arrangements have continued to be considered so important and legitimate by society as to govern more than 85% of land relations in Ethiopia, although they are often not consistent with, and recognised under the formal state ones.[98] Moreover, the lack of clear hierarchy or other form of coordination between the formal state and non-formal customary land policies, laws, and institutions of the land tenure system can create confusion and adversely affect the provision and implementation of smallholder land rights, as, for example, parties to disputes over smallholder land rights may invoke different land laws to support competing claims, or may choose different land institutions that they feel would likely be favourable to their cause.[99] As Tamanaha observed, "What makes this pluralism noteworthy is not merely the fact that there are multiple uncoordinated, coexisting or overlapping bodies of law, but that there is diversity amongst them. They may make competing claims of authority; they may impose conflicting demands or norms; they may have different styles and orientations. This potential conflict can generate uncertainty or jeopardy for individuals and groups in society who cannot be sure in advance which legal regime will be applied to their situation."[100] Certainly, the successful land law reform experience of the abovementioned countries illustrates that land law reform can indeed be used to help raise smallholder productivity, thereby tackle poverty, and even foster overall economic development in countries in roughly comparable position with Ethiopia, and can provide potentially useful insight into what they did or did not do that Ethiopia did not do or did in order to deal with the challenges that the legal pluralism in the

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97 Cotula, Toulmin, and Hesse, 2004:2.

98 Beckstrom, 1973:571-573; Brietzke, 1976:645 and 1975:46; Gopal, 1999:7; Hailegabriel, 2004; Berhanu, Berhanu, and Seyoum, 2003; EEA/EEPRI, 2002; Aberra, 1998; Shiferaw, 1995; Pausewang, 1983; Krzeczunowicz, 1963.

99 See, for example, Cotula, Toulmin, and Hesse, 2004:2.

100 Tamanaha, 2008:375.

land tenure system might pose. However, since the context in which those countries attained their achievement is different from each other and from that of Ethiopia, it is essential for the challenges that the legal pluralism in the land tenure system might pose to land law reform, smallholder productivity, and poverty in Ethiopia to be assessed in the light of the specific context of the country. Finally, a question may be raised as to what the justification of the thesis is for focusing specifically on the challenges of legal pluralism whilst there can be several other possible factors that might have limited land law reform's effectiveness in helping to raise smallholder productivity and thereby tackle poverty in Ethiopia. It is thus essential to examine if it is possible to fully explain the challenges of land law reform, smallholder productivity, and poverty in Ethiopia in terms of approaches commonly used in the diagnosis of reasons responsible and the prescription of solutions possible for land law reform-related smallholder productivity and poverty problems in developing countries like Ethiopia.

1. 2. Context

This Section briefly examines in the context of Ethiopia the three approaches commonly used by law and development analysts, practitioners, and funders in the diagnosis of reasons responsible and the prescription of solutions possible for land law reform-related smallholder productivity and poverty problems in developing countries to find out if the challenges of land law reform, smallholder productivity, and poverty in Ethiopia can be fully explained in terms of those approaches and to highlight the justification of the thesis for focusing on the challenges of legal pluralism. The first is the "physical ecology" approach, which blames adverse natural resource endowment, including shortage of fertile land, recurrent drought and lack of water for irrigation, and unfavourable climatic conditions. Whereas, the second is the "political economy" approach, which invokes the unwillingness or inability of the state to make policy focus on agriculture and introduce agrarian reform measures to provide access to modern agricultural inputs, implements, and services. For example, according to Holt and Dessalegn, low smallholder productivity and pervasive poverty in Ethiopia is "a result not simply of drought but of an increasing shortage of the barest assets needed for agricultural survival".[101] In contrast, the World Bank points out that "Centuries of poor policies and institutional failures are the primary cause of Africa's under-capitalised and uncompetitive agriculture. Adverse resource endowments have also had some direct effects."[102] As per analysts such as Byerlee, de Janvry, and Sadoulet and Tsegaye Moreda, since most of the newly-independent sub-Saharan African countries

[101] Holt and Dessalegn, 1999:i.
[102] World Bank, 2000:170.

adopted an "urban biased", manufacturing-led national development strategy under the auspices of the UN or their former colonial masters[103], agriculture was neglected and any growth achieved through the strategy benefitted the urban and politically-connected elite, whilst the majority of smallholders and the poor were left out, which left a legacy of huge urban-rural wealth disparities, as well as social and political cleavages, conflicts, and smallholder productivity and poverty problems that persist to date.[104]

However, there is a wealth of evidence suggesting that adverse natural resource endowment and the absence of state support in terms of making policy focus on agriculture and introducing agrarian reform measures intended to improve access to modern agricultural inputs, implements, and services cannot be the primary contributory factors to smallholder productivity and poverty problems in Ethiopia. For instance, as Mulat, Fantu, and Tadele observed, the country does have enormous fertile land, fairly sufficient rainfall and abundant water for irrigation, and climatic conditions generally suitable for agriculture.[105] As regards policy focus on agriculture and rural areas, if anything, what successive governments are often criticised for is making excessive focus, particularly in their quest to control land and the smallholder community, which constitute the most formidable political power resources in the country. Crewett and Korf, have succinctly captured this obsessive focus, noting that as the state has historically done, "it is very unlikely that the Ethiopian government departs from the dependence path in rural *politics* and the practices to govern the rural populace and gives up its most precious power resource in the rural realm - the power to distribute land."[106] Moreover, agrarian reform measures intended to alleviate technical problems of the smallholder sector have been introduced by the governments of Haile Sellassie I[107], the Derg[108], and the EPRDF[109], which are widely accepted as being effective, though considered insufficient in terms of intensiveness and extensiveness.

The third is the "asset poverty" approach, which blames landlessness and skewed distribution of land rights, and recommends "pro-poor" redistributive land law reform as a solution. For example, a World

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103 Byerlee, de Janvry, and Sadoulet, 2008:2.

104 Tsegaye Moreda, 2012:15-17. See, also, Staatz and Eicher, 1998.

105 Mulat, Fantu, and Tadele, 2004:1.

106 Crewett and Korf, 2008:215. See, also, Devereux and Guenther, 2009:5.

107 Berhanu, Hoekstra, and Azage, 2006:9; Mohammed, 2004; Rashid, Meron, and Gezahegn, 2007:3; Dejene, 1990:50; Spielman, Dawit, and Dawit, 2011:6; Kassahun, 2012:5.

108 Berhanu, Hoekstra, and Azage, 2006:11; Devereux, 2000:12; Griffin, 1992: 24 and 57; Brune, 1990: 25-27; Kassahun, 2012:6; Yigremew, 2001a:58.

109 Mulat, 1999:4; Mekonnen, 1999:10; Tekabe, 1998:22; MoFED, 2005:27 and 2002:56; Lavers, 2011:3; Hussein, 2004:1 and 2001:48; Crewett and Korf, 2008:204-206; Yigremew, 2001a:57; Gebru Mersha and Githinji, 2005:7-8.

Bank study in India has identified landlessness as the greatest predictor of poverty, even more than scheduled castes.[110] According to DFID, which stresses that in many developing countries agricultural productivity is low because "land ownership remains highly skewed"[111] and that "the most deprived people are often the rural landless"[112], proposes a land law reform that ensures access to land for the landless and equitable distribution of land rights for the poor to promote agricultural productivity and alleviate poverty.[113] But landlessness and skewed distribution of land rights do not appear to be a major contributory factor to smallholder productivity and poverty problems in Ethiopia, particularly after the Derg promulgated the 1975 redistributive land law reform that introduced the policy of state land ownership and guaranteed every adult citizen in need of land equal rights of access to a maximum of 10 hectares per household free of charge with usufruct rights.[114] The EPRDF has since continued the Derg's policy of state land ownership and free usufructuary land access under its land law reform.[115]

To conclude, it is difficult to fully explain the land law reform-related smallholder productivity and poverty problems in Ethiopia in terms of the abovementioned three approaches. Therefore, what is left is to examine whether, how, and to what extent legal pluralism, the defining change that land law reform brought to the country's land tenure system, might have led to the restriction of the provision and implementation of productivity-raising smallholder land rights. That would thus arguably provide the justification for the focus of the thesis on the challenges of legal pluralism in the case of Ethiopia.

1. 3. The Same Challenges, Different Diagnoses and Prescriptions

As mentioned earlier, law and development analysts, practitioners, and funders now unanimously acknowledge land law reform has failed to deliver the smallholder productivity and poverty outcomes successive governments had anticipated in Ethiopia, as does also the government.[116] Yet, despite unanimously recognising the unsustainability of the past approach involving the ADLI strategy and land law reform measures to help raise smallholder productivity and tackle poverty in the country, and agreeing that change is necessary, they are divided within themselves and with the government in their

110 World Bank, 1997: xiv and 12.
111 DFID, 2003a:2.
112 DFID, 2004b:3.
113 DFID, 2003a:1-2.
114 PMAC Proclamation, 1975: Articles 3, 4 (5), 5, and 6 (3).
115 FDRE Constitution: Article 40(3), (4), and (5). See, also, Devereux and Guenther, 2009:5-6.
116 Lavers, 2011:5; Diao et al., 2007:2.

diagnoses of the reasons responsible and prescriptions of the solutions possible for the problem along perspectives that can be broadly subsumed into three. This Section highlights those three perspectives.

The first perspective is that of analysts such as Devereux, Amdissa, Sabates-Wheeler, Guenther, Collier, Dercon, Hill, Zeitlin, Gebru Mersha, and Githinji, who are pessimistic about the utility of land law reform and the viability of smallholder agriculture to serve as an engine for tackling poverty in Africa, particularly in Ethiopia. As Wiggins noted, "Notwithstanding that the successes of the green revolution in Asia, and above all in China, were achieved largely by smallholders, scepticism about Africa's small farmers is widespread. Amongst the reasons mentioned are that Africa's physical geography - soils, climate, hydrology - means that the technical challenge of breeding higher-yielding crop varieties is more daunting and the possibilities for irrigation are less; and that governments were unprepared or unable to contemplate providing state support in the way Asian governments had".[117] These analysts, who are thus critical of the policy focus on land law reform and smallholder agriculture for tackling poverty in Ethiopia citing such reasons as the country's ever smaller and fragmented landholdings, lack of modern agricultural inputs, implements, and services, uncompetitive products, dysfunctional markets, and poor infrastructure, recommend a shift in policy focus towards the development of large commercial farms and the creation of livelihoods outside agriculture.[118]

The second perspective is that of analysts such as Berhanu Nega, Berhanu Adenew, Seyoum, Dessalegn, Mulat, Samuel, the EEA, and the EEPRI, who support the continuation of the existing ADLI strategy centred on raising smallholder productivity in staple crops to tackle poverty in Ethiopia. These analysts blame the strategy's disappointing performance on the land tenure system's structural problems and the smallholder sector's technical problems. Thus, they generally recommend the enactment of land law reform introducing the policy of private ownership of land, or a combination of private and state, or, to use the words of Dessalegn, "associative"[119] land ownership, instead of the current state ownership policy, along with the intensification of the hitherto effective but insufficient agrarian reform measures, which they consider the major factors behind the strategy's failure so far.[120]

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117 Wiggins, 2009:3.

118 Devereux, Amdissa, and Sabates-Wheeler, 2005:121-126; Devereux and Guenther, 2009:6; Devereux, 2000:4-7; Collier and Dercon, 2009:8-10; Collier, 2008; Dercon, Hill, and Zeitlin, 2009:9-12; Dercon and Zeitlin, 2009:25-28; Dercon and Hill, 2009:56-58; Gebru Mersha and Githinji, 2005:23-26.

119 Dessalegn, 1994:13-15.

120 Berhanu Nega, Berhanu Adenew, and Seyoum, 2003:121-123; Dessalegn, 1994:13-15; Mulat, 1999:46-47; Samuel,

The third perspective is that of the government, which appears to have made a practical, if not official, paradigm shift away from the existing ADLI strategy and land law reform aimed at raising smallholder productivity in staple crops for tackling poverty in Ethiopia. To begin with, the government has long ruled out enacting land law reform that introduces the policy of private ownership of land or accommodates other possible land ownership policies, insisting that there is no better alternative to the policy of state ownership of land it currently enforces.[121] Moreover, the Sustainable Development and Poverty Reduction Programme (SDPRP), the first generation of the EPRDF's Poverty Reduction Strategy Papers (PRSPs) introduced in 2002 under the aegis of the World Bank and the IMF to serve as the country's main PRSP until 2004/05, was built on four pillars, including ADLI, justice systems and civil service reform, decentralisation and empowerment, and capacity building, with the latter three having been designed to enhance the effectiveness of ADLI and the achievement of food security.[122] Although the SDPRP had also envisaged land law reform measures within the framework of the current policy of state ownership of land, that was what Crewett and Korf called a "dialectical" solution designed to please funders, get the SDPRP approved, and qualify for aid, as those measures have yet to be fully implemented.[123] That contrasts with the position the government later took in the Plan for Accelerated and Sustained Development to End Poverty (PASDEP), the SDPRP's successor that served as Ethiopia's main PRSP from 2005/06-2009/10, which had excluded ADLI from amongst its eight pillars, made no mention of land law reform, and did not envisage policy focus on raising smallholder productivity in staple crops for achieving food security and tackling poverty in the country.[124] On its part, the Growth and Transformation Plan (GTP), the PASDEP's successor for the current five-year period from 2010/11 to 2014/15, which makes no mention of even the name "ADLI", the possibility of land law reform, and the pursuit of raising smallholder productivity in staple crops for tackling poverty, appears to suggest that the government has further made a shift away from agriculture towards manufacturing.[125] In fact, the GTP seems to envisage an agriculture sector with a role focused on supporting the manufacturing sector, as it states that agriculture "serves as springboard to bring structural transformation in the long-run through contribution to industrial growth"; and anticipates that "In the plan period, the industry sector will receive utmost emphasis. The Government

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2006c:5; EEA, 2011:53; EEA/EEPRI, 2002:vi. See, also, Crewett and Korf, 2008:206.

121 EPRDF, 2005b:26-31; Kassahun, 2012:8.

122 MoFED, 2002.

123 Crewett and Korf, 2008: 214-215.

124 MoFED, 2007:27.

125 MoFED, 2010.

program will focus on strengthening small-scale manufacturing enterprises, as they are the foundation for medium and large scale industries [and] encourages medium and large scale industry expansion."[126]

1. 4. Major Themes

This thesis shares some of the views of each of the three perspectives discussed in the preceding section. It shares the view that Ethiopia needs creating livelihoods outside agriculture, redoubling agrarian reform measures to raise smallholder productivity, expanding large-scale commercial agriculture, commercialising smallholder agriculture, and intensifying small, medium, and large-scale manufacturing in order to effectively tackle the pervasive and deep-rooted poverty situation in the country. It is also of the view that Ethiopia needs to exploit the growth of the service sector, which has long been an important source of overall economic growth, including particularly the development of tourism, of which the country is considered to have an enormous potential and that is believed can be an important source of foreign exchange, although thus far the gains from this sector has been meagre (Appendix 5, Table 5[127]; Appendix 7, Table 7[128]; Appendix 8, Table 8[129]; Appendix 9, Table 9[130]).

However, the major theme of the thesis is that since land law reform can help raise smallholder productivity and thereby tackle poverty in countries in roughly comparable position with Ethiopia, land law reform enacted as part of the existing ADLI national development strategy centred on raising smallholder productivity in staple crops should remain the primary area of policy focus for tackling poverty in the country. There are several reasons that justify this theme, most of which have been more or less discussed in the preceding sections. The theme is underpinned by the fundamental premise that policy focus on achievement of significant growth in smallholder productivity is necessary to tackle poverty in Ethiopia effectively for the following five reasons. First, raising smallholder productivity in staple crops is necessary, as the current national development need and priority of the country is achieving food security. Second, Ethiopia has few resources under commercial exploitation to use as a means towards tackling poverty other than a fairly large amount of fertile land, cheap labour force, abundant water resources, and climatic conditions generally suitable for agriculture.[131] Third, Ethiopia

126 MoFED, 2010:9.
127 Rashid, Meron, and Gezahegn, 2007:37.
128 Rashid, Meron, and Gezahegn, 2007:28.
129 Mulat, Fantu, and Tadele, 2006:4.
130 Kassahun, 2012:7.
131 Mulat, Fantu, and Tadele, 2004:1.

does not have the capital, technological, or hydrocarbon resources that it needs to fund, kick-start, and use the growth of large-scale "commercial" agriculture or the manufacturing and service sectors as an engine for tackling poverty. And the notion that the country's smallholder-based agriculture can produce the surpluses and growth linkages necessary to kick-start and fuel the growth of large-scale "commercial" agriculture or the manufacturing and service sectors with a view to thereby tackling poverty and fostering overall economic development has long been tried and failed since the imperial times. Fourth, as long as the predominant, but stagnant smallholder agriculture sector continues to be able to barely feed the smallholders themselves, who account for the bulk of Ethiopia's population, any possible rate of growth that might be achieved in large-scale commercial agriculture, or in the manufacturing and service sectors of the economy can have only marginal effect in tackling poverty in the country given their tiny share in providing livelihood and contributing to GDP (Appendix 1, Table 1[132]; and Appendix 3, Table 3[133]; Appendix 5, Table 5[134]; Appendix 7, Table 7[135]; Appendix 8, Table 8[136]; Appendix 9, Table 9[137]). Fifth, the achievement of a significant, sustainable growth in smallholder productivity and production is thus necessary to effectively tackle poverty in Ethiopia. After all, it is a country where smallholder agriculture has historically provided livelihood for close to 85% of the total population[138], generated food and employment for urban residents accounting for around 14% of the rest of the population[139], contributed around 95% of the aggregate agricultural output, which generates about 90% of the export earnings, supplies around 70% of the raw materials for the predominantly agro-based domestic manufacturing and service industries, and accounts for about 50% of GDP.[140]

1. 5. Research Problems and Objectives

As mentioned earlier, the major research problem this thesis seeks to explore is whether, how, and to what extent the legal pluralism land law reform gave rise to in the land tenure system might influence the effect it has on the provision and implementation of smallholder land rights and shape the smallholder productivity and poverty outcomes it delivers in Ethiopia. Therefore, the major objective

132 Alemayehu, Dorosh, and Sinafikeh, 2011:4.
133 Alemayehu, Dorosh, and Sinafikeh, 2011:2.
134 Rashid, Meron, and Gezahegn, 2007:37.
135 Rashid, Meron, and Gezahegn, 2007:28.
136 Mulat, Fantu, and Tadele, 2006:4.
137 Kassahun, 2012:7.
138 MoARD, 2010:3.
139 MoFED, 2007:25.
140 Dessalegn, Akalewold, and Yoseph, 2010:29; MoFED, 2007:25.

of the thesis is to examine whether and how land law reform can be used to help raise smallholder productivity and tackle poverty in Ethiopia by making the legal pluralism in the land tenure system work to help promote the provision and implementation of the three bundles of productivity-raising smallholder land rights and thereby improve the conditions of smallholder productivity and poverty in the country. Whereas, the other more specific, but interrelated, research problems and objectives of the thesis relate to the forms, contents, and implications of the formal state and non-formal customary land policies, laws, and institutions that reflect the legal pluralism and constitute the land tenure system, in the context of which land law reform operates to bring the change in the provision and implementation of smallholder land rights that it needs to bring to deliver the smallholder productivity and poverty outcomes it is hoped would help achieve. The first specific research problem concerns the issue of land policy, which the thesis intends to address with the objective of exploring the advantages that the state land ownership policy the government currently enforces, the private ownership policy the critics mostly favour, and the non-formal customary land tenure systems society frequently uses have and the possibility of adopting a hybrid state-private-customary land policy that enables to establish a land tenure system promoting the provision and implementation of smallholder land rights. The second is about land laws, which the thesis aims to take up with the objective of highlighting the composition and implication of formal and non-formal land laws that set out provisions of productivity-raising smallholder land rights in the past and present, and identifying the possible forms and contents of land laws that would contain optimal provisions of such smallholder land rights in the future. The third relates to land institutions, which the thesis seeks to tackle with the objective of outlining formal state institutions tasked with the implementation of provisions of smallholder land rights, as well as capturing the strengths and shortcomings that the formal state institutions have, the legitimate power, practical role, and potential contribution that the judiciary has, and the role, treatment, and potential that non-formal customary institutions have in this regard. The remaining parts of this Section will further explain those research problems and objectives below.

1 - Land Law Reform's Role and Potential concerning Smallholder Productivity and Poverty

Research that, like this thesis, examines the topic concerning the challenges of land law reform, smallholder productivity, and poverty in Ethiopia from the perspective of law is limited in number, scope, and quality.[141] In view of this, the thesis will primarily employ a legal study approach to explore the role and potential land law reform has concerning smallholder productivity and poverty in the

[141] See, for example, Dessalegn, 2006:vi.

country using as reference the provision and implementation of productivity-raising smallholder land rights it brings about through the land policies, laws, and institutions it introduces to the land tenure system. Yet, as the subject matter of the topic is multidisciplinary that involves economic, social, and political issues and warrants an interdisciplinary approach informed by other perspectives, although it is primarily a legal study, the thesis will also combine economic, social, and political approaches.

Furthermore, the existing literature lacks a comprehensive analysis based on substantive empirical data about the role and potential of land law reform concerning smallholder productivity and poverty in Ethiopia. This thesis will thus explore the relationship land law reform has to smallholder productivity and poverty in the country using as a reference data made available since the collection of national statistics on agriculture started in the 1960s.[142] This period provides a suitable starting point to assess land law reform's effect as it also marks the enactment of Ethiopia's first comprehensive land law reform linked to its first agriculture-led national development strategy adopted by Haile Sellassie I.[143]

2 - Land Policies and Choice of Land Ownership Policy Promoting Smallholder Land Rights

As mentioned earlier, on the one hand, land policy plays a critical role in making land law reform effective in helping raise smallholder productivity and tackle poverty, and, on the other, land and land-based smallholder agriculture has historically been a resource of vital economic, social, and political importance in Ethiopia.[144] Consequently, the choice of a land ownership policy that land law reform should introduce to be effective in helping raise smallholder productivity and tackle poverty in the country has been a subject of debate between the government and its supporters defending the policy of state ownership it has been enforcing[145], and critics arguing against this policy and in favour of the introduction of private land ownership policy.[146] This debate arose during the heady days of the 1974 Revolution that deposed Haile Sellassie I, as the issue of whether the policy of state or private ownership is preferable for Ethiopia became contentious amongst the discrete groups that were behind the Revolution.[147] However, the Derg assumed power, enacted the 1975 land law reform that

142 Alemayehu, Dorosh, and Sinafikeh, 2011:12.

143 Kassahun, 2012:5; Rashid, Meron, and Gezahegn, 2007:3-4; Berhanu, Hoekstra, and Azage, 2006:9.

144 See, for example, Dunning, 1970:271; Mesfin, 1986:76; Crewett, Ayalneh, and Korf, 2008:2.

145 Lavers, 2011:3; MoFED, 2002:56 and 2006; EPRDF, 2005b; FDRE, 2002; MEDAC, 2001; MoI, 2001; MoPED, 1993; TGE/NEP, 199; Hussein, 2004:1-2 and 2001:48-49; Gebru Mersha and Githinji, 2005:7-8.

146 Kassahun, 2012:8; Dessalegn 2009: 285, 2004:13; 1999, 1997, 1994, and 1992; Samuel, 2006c:5, 2006b, and 2006d; Yigremew, 2001a:57-58, 2001b, and 2002; EEA/EEPRI, 2002:vi; EEA, 2004, 2006, 2011.

147 Bahru, 2002:239-243.

introduced the policy of state land ownership, and claimed it has realised the Revolution's "land to the tiller" rallying cry and put the debate to rest.[148] Yet, the debate was rekindled earnestly in the period of uncertainty following the fall of the Derg and the coming to power of the EPRDF in May 1991. Many development analysts, practitioners, and funders expected a move towards privatisation, considering that the country was undergoing a "post-socialist transition"[149], and that in discussions held during this period of uncertainty it was generally agreed that the policy of state land ownership had detrimental effect on smallholder productivity and poverty during the Derg era.[150] But the EPRDF persisted with its decision to continue the Derg's policy of state ownership it declared in the New Economic Policy (NEP) the TGE issued in November 1991[151], which it later validated under the FDRE Constitution.[152]

The existing literature is preoccupied with the discussion of this debate, though it has not yet been able to help resolve it. For example, Dessalegn, who, though a critic of the current policy of state land ownership, does not employ the state vs. private land ownership policy dichotomy, but suggests a third way of "associative" land ownership [153], has addressed the possible implications of the preoccupation of the literature with the discussion of the debate. According to Dessalegn, the debate has been revolving around a narrowly-framed issue, restricting the scope and the quality of research, making the positions of the supporters and the critics of the government appear polarised and irreconcilable, and preventing a civilised, data-based discussion that can have enabled the country to make an informed choice to effectively use land law reform to help raise smallholder productivity and tackle poverty.[154]

Therefore, this thesis will analyse the antagonistic arguments of the two poles to the debate and examine if the debate is driven more by ideological considerations and economic, social, and political interests rather than empirical data as Tekie, Hussein, and Crewett and Korf claimed.[155] It will also question if the debate is narrowly-framed, which does not provide a sufficient framework to approach the challenges of land law reform in Ethiopia, a country that accommodates numerous, diverse non-formal customary land tenure systems, and is based on a questionable assumption involving a false,

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148 Crewett, Ayalneh, and Korf, 2008:12.
149 See, for instance, Crewett and Korf, 2008:203.
150 See, for example, Inter-Africa Group, 1992:6-7; Hussein, 2004:1-2 and 2001:35-37; Hoben, 2000:7.
151 TGE/NEP, 1991.
152 FDRE Constitution: Article 40(3).
153 Dessalegn, 1994:13-15.
154 See, for example, Dessalegn, 2006:vi.
155 Tekie, 2000a:89; Hussein, 2004:12-13 and 2001:48-49; Crewett and Korf, 2008:203-204.

binary land ownership policy choice.[156] Moreover, the thesis will explore if it is possible for Ethiopia to adopt a hybrid policy combining the advantages both the formal state and private ownership policies and the non-formal customary land tenure systems offer in promoting smallholder land rights, and seek to demonstrate what form and content this hybrid state-private-customary land policy should have.

3 - Land Laws and the Provision of Productivity-raising Smallholder Land Rights

Land laws play a critical role in making land law reform effective in helping raise smallholder productivity and tackle poverty in countries like Ethiopia. Land laws set out provisions of smallholder land rights that are directly binding, relied upon, and applied during implementation by executive land institutions, exercise by smallholders, and enforcement by dispute resolution mechanisms. It is also through land laws that land law reform is enacted, the composition of the land tenure system shaped, the land policy specified, and the substantive and procedural powers of land institutions determined.[157]

However, because the existing literature lacks a comprehensive analysis that systematically outlines the provisions of productivity-raising smallholder land rights set out in Ethiopia's land laws, it has not, for example, helped to settle the controversy that has been going on between the government's supporters and critics since the EPRDF officially continued the Derg's policy of state land ownership on whether the land laws the EPRDF issued as part of its post-Derg land law reform have brought about change in the provision of smallholder land rights from those set out in the land laws enacted by the Derg.[158] Consequently, the controversy has contributed to the widespread confusion regarding the forms and contents, and jeopardised the implementation of smallholder land rights provisions that have actually been set out in the post-Derg land laws. Therefore, this thesis will elaborate the competing perspectives and seek to put the controversy to rest by systematising based on their potential implications into those that enhance tenure security, facilitate the transfer of rights over land, and authorise the collateralisation of land rights, and comparing and contrasting the smallholder land rights provisions that are set out in the land laws issued under the post-Derg and the Derg land law reforms.

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156 See, for instance, Connolly, 2005:7; Brietzke, 1976:645; Crewett, Ayalneh, and Korf, 2008:2; Gopal, 1999:7.

157 See, for example, Allott, 1970:164; Harvey, 1970:152; Brietzke, 1975:53.

158 For the position that the supporters of the government have in this controversy, see, for example, MEDAC, 2001:9; MoI, 2001:4; MoFED, 2006; EPRDF, 2005b; FDRE, 2002; MoPED, 1993; TGE/NEP, 1991;Crewett and Korf, 2008:204-205. And for the position of the critics, see, for instance, Kassahun, 2012:8; Dessalegn, 2009:285; Crewett and Korf, 2008:205-206; Merera, 2006:230; Hussein, 2006:147-149; Atakilte, 2004:60.

Moreover, the existing literature does not adequately analyse the implications that the federalism the EPRDF introduced in post-Derg Ethiopia has to land laws and smallholder land rights provisions they set out. The FDRE Constitution has specified the federal government "shall enact laws for the utilisation and conservation of land"[159], and authorised regional states "To administer land in accordance with Federal laws".[160] However, since the federal government has in the land laws it issued given regional states power to "enact rural land administration law, which consists of detailed provisions necessary to implement this [federal] Proclamation"[161], Tigray, Amhara, Oromia, and SNNPRS have enacted their own land laws setting out smallholder land rights provisions. As this implies that due to the federalism the EPRDF introduced smallholder land rights in post-Derg Ethiopia have been subject to five different formal land laws, the thesis will explore in detail the salient features and possible implications of the post-Derg federalism pertaining to the division of federal and regional powers on land matters to the forms and contents land laws setting out the provisions of productivity-raising smallholder land rights in Ethiopia. It will also examine the nature, relationship, and interplay of the federal and regional land laws, as well as the constitutionality and legality particularly of the regional land laws and the harmonisation of the smallholder land rights provisions that the regional land laws set out with each other and with those embodied in the land laws of the federal government.

Furthermore, the existing literature does not adequately analyse the role and potential non-formal customary land laws might have with respect to setting out smallholder land rights provisions, though they govern more than 85% of land relations. Therefore, this thesis will analyse the practical role and potential contribution non-formal customary land laws might have in that regard by systematising the smallholder land rights provisions they set out. It will also explore the formal treatment given to non-formal customary land laws, and highlight the relationship and interplay of formal federal and regional state and non-formal customary land laws as regards setting out provisions of smallholder land rights.

4 - Land Institutions and the Implementation of the Provisions of Smallholder Land Rights

Land law reform cannot be effective in helping raise smallholder productivity and tackle poverty in countries like Ethiopia without land institutions ensuring implementation of the smallholder land rights provision of the land laws. As Bruce noted, "Stipulating the desired situation in law is not enough. All

159 FDRE Constitution: Article 51(5).
160 FDRE Constitution: Article 52(2) [d].
161 FDRE Proclamation 2005b: Article 17(1).

of us who work in this area know of elegant laws that had little impact for want of implementation."[162] However, the existing literature tends to focus on assessment of smallholder land rights provisions as they appear on paper (law-in-the-books), and does not adequately examine the implementation of those land rights in practice, as well as the role land institutions play in this regard (law-in-action). Yet, in Ethiopia, implementation is an equally significant problem as the provision of smallholder land rights. For instance, Crewett, Ayalneh, and Korf have explained why implementation is an equally important problem, noting that "we do not investigate differentiations of rights of actors who on paper are entitled to same bundle of rights, though we are very aware there are marked de facto imbalances with regard to land rights in Ethiopia."[163] Thus, this thesis will make a detailed analysis involving not only the assessment of smallholder land rights provisions on paper, but also examination of implementation of those land rights in practice, as well as exploration of the land institutions involved in the process.

The existing literature does not also adequately analyse the implications the federalism the EPRDF introduced in post-Derg Ethiopia has to formal state executive institutions, and thus to implementation of smallholder land rights provisions. The FDRE Constitution conferred upon the federal government not only legislative, but also executive power over land matters. According to the Constitution, the Council of Ministers, which is the highest executive organ of the federal government along with the Prime Minister, shall ensure "implementation of laws and decisions adopted by the House of Peoples' Representatives." In contrast, though the Constitution has authorised regions "To administer land in accordance with Federal laws", it did not provide definition of what this power "to administer land" constitutes.[164] Despite that, since the federal government has in the land law it issued conferred upon the regions power to "establish institutions at all levels that shall implement rural land administration and land use systems"[165], Tigray, Amhara, Oromia, and SNNPRS have put into effect their own formal land institutions dealing with smallholder land rights. Thus, this thesis will explore the formal federal and regional state executive land institutions carrying out implementation of smallholder land rights provisions, as well as the constitutionality, legality, and consistency of regional state land institutions.

Moreover, the existing literature does not adequately analyse the role that the judiciary composed of formal regular courts has in ensuring the implementation of smallholder land rights provisions, and

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162 Bruce, 2006a:4.

163 Crewett, Ayalneh, and Korf, 2008:7.

164 FDRE Constitution: Articles 50(3), 55(1), 77(1), and 52(2) [d].

165 FDRE Proclamation, 2005b: Article 17(2).

thereby making land law reform effective. However, it is well-documented that the judiciary plays a critical role in this regard through the interpretation, explanation, and application of land rights provisions that it conducts whilst performing its traditional function of dispute resolution, as well as by way of the public confidence and reliable legal environment the mere fact of its existence creates.[166] The FDRE Constitution has declared that "Judicial Powers, both at Federal and State levels, are vested in courts"[167], and that federal courts have "judicial power over federal matters."[168] Despite that, the judiciary appears to have been excluded from the function of dispute resolution pertaining to smallholder land rights provisions, as this function is now performed mostly by non-formal customary institutions, and, where formal state institutions are involved, by the Kebele office or the so-called "social courts", which are part of the executive at the grassroots-level. As Baker accurately put it, "Land disputes first go to customary mediation chaired by the Kebele chairperson who is a member of the Land Administration Commission. They may also go to Social courts."[169] The thesis will thus in detail explore the judiciary's legal power, practical role, and potential contribution in ensuring implementation of smallholder land rights provisions and broadly in making land law reform effective.

Furthermore, the existing literature does not adequately analyse implications of legal pluralism to the implementation of smallholder land rights provisions. However, in Ethiopia, besides formal federal and regional state land institutions, implementation of smallholder land rights provisions is conducted by non-formal customary land institutions, to which smallholders resort more frequently.[170] This thesis will thus examine what role and treatment those non-formal institutions have; if there are legal and practical impediments or other reasons that make smallholders shun formal institutions and more frequently use non-formal ones; and what advantages and disadvantages non-formal institutions have.

1. 6. Hypothesis

This thesis examines the proposition that land law reform can be used to help raise smallholder productivity and tackle poverty in Ethiopia, but only by recognising legal pluralism and concentrating

166 Rolfes, 2006:142; Bruce, 2006a:4; World Bank and Deininger, 2003:7, 151-152, and 155-156; FAO, 2002a:4; USAID, 2004: ix; DFID, 2004b:9; AusAID, 2000:44; IFAD, 2008:18-19, and 2012:8.

167 FDRE Constitution: Article 79(1).

168 FDRE Constitution: Article 80(1).

169 Baker, 2013:213.

170 Connolly, 2005:7; Aberra, 1998; Beckstrom, 1973:571; Hailegabriel, 2004; Berhanu, Berhanu, and Seyoum, 2003; EEA/EEPRI, 2002; Yigremew, 2002; Aberra, 1998; Shiferaw, 1995; Pausewang, 1983; Krzeczunowicz, 1963.

limited legal resources, implementation capacity, and popular receptivity upon changing just those formal or non-formal land policies, laws, and institutions of the land tenure system that most constrain the provision and implementation of bundles of productivity-raising smallholder land rights enhancing tenure security, facilitating transfer of rights over land, and authorising collateralisation of land rights.

1. 7. Research Questions

1 - Land Law Reform's Role and Potential concerning Smallholder Productivity and Poverty

a) Whether and how can land law reform be used to help raise smallholder productivity and tackle poverty in general, and in Ethiopia in particular?

b) Whether, how, and to what extent does legal pluralism in the land tenure system influence land law reform's effect on smallholder land rights, smallholder productivity, and poverty in Ethiopia; and how may land law reform be used to make legal pluralism contribute positively?

2 - Land Policies and Choice of Land Ownership Policy Promoting Smallholder Land Rights

a) What advantages do the state land ownership policy the government currently enforces, the private ownership policy the critics mostly favour, and the non-formal customary land tenure systems society frequently uses offer in promoting productivity-raising smallholder land rights?

b) Is it possible for Ethiopia to adopt a hybrid state-private-customary policy combining advantages state and private land ownership policies and non-formal customary arrangements offer in promoting smallholder land rights; if so, what form and content should the policy have?

3 - Land Laws and the Provision of Productivity-raising Smallholder Land Rights

a) To what extent do Ethiopia's formal state land laws set out smallholder land rights provisions?

b) What role do non-formal customary land laws have in providing for smallholder land rights?

4 - Land Institutions and the Implementation of the Provisions of Smallholder Land Rights

a) Which formal state land institutions undertake implementation of the provisions of smallholder land rights in Ethiopia; and what legal powers and practical roles do those institutions have?

b) What role, treatment, and potential do non-formal customary institutions have in this regard?

1. 8. Methodology

As the study is interdisciplinary in nature, library-based and field researches were conducted, and a combination of research methods and techniques for data collection, analysis, and interpretation was

employed.[171] The bulk of quantitative data used to assess the role of land law reform regarding smallholder productivity and poverty was generated from secondary sources. But primary sources have also been employed to supplement and augment the secondary sources and to obtain contextually specific qualitative information about the interplay of formal state and non-formal customary land tenure systems governing smallholder land rights at the local level, and to capture the experiences, judgements, and perceptions of smallholders and development analysts, practitioners, and funders.

The library-based research included review of the literature on the formulation and implementation of land law reforms intended to help raise smallholder productivity and tackle poverty in general, and in Ethiopia in particular. Specifically, it included: (i) analysis of land policies, laws, and institutions the country's governments established through land law reform; (ii) examination of monographs, reports, and other materials issued by local and international law and development analysts, governmental and nongovernmental organisations, bilateral and multilateral funders, and other institutions; and (iii) assessment of pertinent best practices and experiences. Whereas, the field research included: (i) assessment of non-formal customary land tenure systems; (ii) formal and informal interviews with law and development analysts, practitioners, and funders involved in, or having knowledge of Ethiopia's land law reform experience; (iii) focus group discussions with smallholders; and (iii) pilot community-level observation visits. Finally, the data so collected was organised and cross-referenced. Then, the data was entered, analysed, and interpreted, which provided the bases for study results set forth here.

1. 9. Scope

Chronologically, the study focuses primarily on land law reform, smallholder agricultural productivity, poverty, and the challenges of legal pluralism in Ethiopia since the fall of the Derg and the coming to power of the EPRDF in May 1991. However, neither law nor development is static. As such, relevant pre-May 1991 issues will also be discussed in as much as they are useful to provide a historical background and comparative reference for the main themes of the study within the defined timeframe.

Demographically, the scope of the study is limited to exploring land law reform's relationship to smallholder productivity, poverty, and legal pluralism in rural Ethiopia for three reasons. First, the

[171] The research methods and data collection, analysis, and interpretation techniques adopted here were based on Kanbur, 2003:1; Garbarino and Holland, 2009:7-10; and Mack et al., 2005:1-2; and the works of Place and Swallow (Place and Swallow, 2000) and Place, Roth, and Hazel (Place, Roth, and Hazel, 1994) reviewing research methods and techniques employed in the assessment of the relationship of land rights to agricultural performance in Africa.

land tenure system in force in rural areas has a direct bearing on smallholder productivity and poverty in the country and is thus more relevant to the subject matter of the thesis. Second, since the vast majority of Ethiopians, close to 85% of them, are smallholders living in rural areas, they can arguably represent the country's overall population sufficiently. Third, the land tenure system operating in rural areas affects all Ethiopians, as it pertains to smallholder agriculture, which provides livelihood for the vast majority of the population, is the mainstay of the economy, and determines economic, social, and political power relations in the country. The study does not, therefore, cover the effect of land law reform in urban areas, which, though similar in such aspects as the policy of state ownership of land enforced throughout Ethiopia, is markedly different and warrants a separate study by its own merit.

Geographically, since components of the federal polity the EPRDF introduced were forged to have their own legislative, executive, and judicial powers under the FDRE Constitution[172], the federal government and the regional states of Tigray, Amhara, Oromia, and SNNPRS, which thus constitute largely independent legal systems, have put into effect their own land laws and institutions governing smallholder land rights. The land tenure systems of the federal government and the regional states of Tigray, Oromia, and SNNPRS have thus been selected to be areas of primary focus for the study. That is because they are arguably capable of sufficiently representing post-Derg Ethiopia as regards the subject matter of land law reform, smallholder productivity, and poverty, as well as in terms of their economic, social, and political importance. Apart from the Amhara region and the Addis Ababa and Dire Dawa City Administrations, where the federal government's land tenure system is in force, those three regions together account for around 85% of the population, about 90% of the cultivated land, and close to 50% of the area of Ethiopia.[173] They are also arguably sufficient representatives of Ethiopia's diverse demographic, geopolitical, and socio-economic setup - Tigray the northern part, the federal government the central and the more urbanised, and Oromia and SNNPRS the rest of the country.

Thematically, the principal focus of the study is the role of land law reform in improving the provision and implementation of smallholder land rights, thereby helping raise smallholder productivity, and tackle poverty in Ethiopia through the formal state and non-formal customary land policies, laws, and institutions of the land tenure systems established by the federal government and the regional states of Tigray, Oromia, and SNNPRS. The study will thus analyse formal and non-formal land policies, laws,

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172 FDRE Constitution: Articles 1, 9, 47, and 50.

173 See, for example, Genanew and Alemu, 2010:1.

and institutions constituting the land tenure systems of the federal government and those regional states in terms of provision and implementation of smallholder land rights for three reasons. First, there is no such thing as "the land tenure system of Ethiopia" during the abovementioned principal timeframe of the study, but the land tenure systems of the federal government and of the regional states that they established through the post-Derg land law reform. Second, the land tenure systems of the federal government and the three regional states selected to be the areas of primary focus for the study comprise a large variety of land laws consisting in a wide range of texts and provisions, which requires an extensive separate study and is beyond the scope of this thesis. Third, the principal focus of the study is land law reform, the process, but not land law, which is only one effect of that process.

1. 10. Chapter Outline

Chapter 2 briefly reviews the relevant law and development literature to examine whether and how land law reform can help raise smallholder productivity and thereby tackle poverty, and to explore why, how, and to what extent legal pluralism shapes the smallholder productivity and poverty outcomes of land law reform in general both from theoretical and practical perspectives by way of analysis of the pertinent research and experience from countries in roughly comparable position with Ethiopia. The first section outlines the fundamental theoretical considerations that generally appear to underpin the land law reforms undertaken in Ethiopia and other sub-Saharan African and Asian countries, though not specifically stated as such in case. The second section elaborates the definitions and implications of the bundles of productivity-raising smallholder land rights to do with enhancement of tenure security, facilitation of the transfer of rights over land, and authorisation of collateralisation of land rights, explains why land law reform can help raise smallholder productivity if the change it brings to the land tenure system's land policies, laws, and institutions improves the provision and implementation of those land rights, and outlines other factors critical for success. The third section then highlights how land law reform can by helping raise smallholder productivity contribute towards tackling poverty. The fourth section deals with the definition and origin of legal pluralism in the land tenure system that involves formal state and non-formal customary land policies, laws, and institutions governing the provision and implementation of smallholder land rights. Finally, the fifth section examines the implication of legal pluralism, including whether, how, and to what extent it shapes land law reform's smallholder productivity and poverty outcomes in countries like Ethiopia.

Chapter 3 discusses the political economy of land law reform, smallholder productivity, poverty, and legal pluralism in Ethiopia. The first section briefly outlines the salient features of the country that can

help explain the national importance of land-based smallholder agriculture both as a source of poverty and development potential, influence the formulation, implementation, and evaluation of land law reform, dictate the origin, condition, and implication of legal pluralism, and determine the concomitant fate of smallholder productivity and poverty in the past, present, and future in Ethiopia. The second and the third sections highlight the land law reform experience of the modern state of Ethiopia during the reigns of Emperors Menelik II and Haile Sellassie I, the rule of the Derg military junta, and the incumbency of the EPRDF. The two sections narrate the pertinent chronologies, ideological, policy, and constitutional frameworks, national development needs and priorities, influential internal and external settings, and continuities and discontinuities that possibly shaped the formulation, implementation, and evaluation of the land law reforms enacted, impacted the condition and implication of legal pluralism, and affected the smallholder productivity and poverty outcomes achieved in the country. Next, the fourth section specifically addresses the issue of legal pluralism in the context of the land law reform experience of Ethiopia, with particular emphasis on the formal treatment and the practical role of the non-formal customary land policies, laws, and institutions in the land tenure system governing the provision and implementation of smallholder land rights, and explores why, how, and to what extent the manner of their treatment might have influenced the smallholder productivity and poverty outcomes that land law reform delivered. The fifth section concludes the Chapter by summarising the contributions that land law reforms introduced throughout the modern history of Ethiopia have made in helping raise smallholder productivity and tackle poverty.

Chapter 4 specifically addresses the issue of land policies and the choice of a land ownership policy that a land law reform should introduce in order to bring about a land tenure system improving the provision and implementation of productivity-raising smallholder land rights in Ethiopia. The first section briefly introduces the definition and implication of land policy to the effectiveness of land law reform intended to help raise smallholder productivity and tackle poverty, as well as the longstanding debate concerning the choice of a land ownership policy preferable for Ethiopia. The second section examines the justifications of the EPRDF government for upholding the Derg's policy of state ownership of land. The third section investigates the arguments of the critics against the current policy and in favour of the introduction of a private land ownership policy. The fourth section then revisits the debate concerning the choice of a land ownership policy for Ethiopia, and outlines the advantages the state and private land ownership policies might have in promoting smallholder land rights. The fifth section considers if it is possible and preferable for Ethiopia to use land law reform to adopt a hybrid state-private-customary land policy that combines the advantages both the formal state and private land

ownership policies and the non-formal customary land tenure systems might offer in promoting smallholder land rights, and demonstrates the form and content that this hybrid policy should have.

Chapter 5 analyses land laws, both formal federal and regional state and non-formal customary, that embody provisions of productivity-raising smallholder land rights in Ethiopia. The first section examines the forms and contents of the provisions of smallholder land rights set out in the formal land laws currently in force in the country, as compared to those that were in effect during the Derg era. The second section outlines formal land laws setting out smallholder land rights provisions pertaining to the enhancement of tenure security. The third section highlights formal land laws embodying smallholder land rights provisions related to the facilitation of transfer of rights over land. The fourth section explores formal land laws containing smallholder land rights provisions to do with the authorisation of collateralisation of land rights. The fifth section then addresses the implications of federalism and legal pluralism to land laws and their provisions setting out smallholder land rights in post-Derg Ethiopia.

Chapter 6 deals with land institutions, both formal federal and regional state and non-formal customary, that currently carry out the implementation of smallholder land rights provisions set out in the land laws now in force in Ethiopia. The first section briefly introduces the definition and implication of land institutions to the effectiveness of land law reform intended to help raise smallholder productivity and tackle poverty, as well as the impact of federalism and legal pluralism on the composition and operation of land institutions, particularly in post-Derg Ethiopia. The second and the third sections explore, respectively, the formal federal and regional state executive institutions entrusted with the implementation of smallholder land rights provisions, highlight the composition and operation of, and identify the strengths and shortcomings that those institutions might have. The fourth section then addresses the interpretation, explanation, and application of smallholder land rights provisions in dispute resolution, and outlines the identity, structure, and procedure of the formal federal and regional institutions involved in this process. This section also discusses the legal power, practical role, and potential contribution the judiciary has in ensuring implementation by formal federal and regional executive institutions, exercise by smallholders, and enforcement by itself as dispute resolution mechanism of smallholder land rights provisions and thereby making land law reform effective in helping raise smallholder productivity and tackle poverty in Ethiopia. The fifth section considers the exercise and enforcement of smallholder land rights provisions by the smallholders themselves. It particularly explores if there are legal, practical, or any other possible reasons that might motivate the country's smallholders to resort to the non-formal customary land tenure systems for the

exercise and enforcement of their land rights more frequently than they do to the formal state system.

Chapter 7 exclusively explores the scope and mechanisms available for intervention through land law reform to make legal pluralism in the land tenure system work to help promote the provision and implementation of smallholder land rights, and thereby improve smallholder productivity and poverty conditions in Ethiopia. The first section briefly highlights the relationship of the formal state and non-formal customary land tenure systems, emphasises the impracticality of efforts made to repeal and replace one system by another, demonstrates the inherent inability of both systems to provide an adequate framework for raising smallholder productivity and tackling poverty by themselves as things stand now, outlines advantages both systems offer in the provision and implementation of smallholder land rights, and considers they complement rather than substitute one another. The second section specifically examines advantages of non-formal customary systems over formal state ones, particularly as regards the provision and implementation of smallholder land rights. The third section outlines the disadvantages of the non-formal systems, and sets the scene for the discussion of possible models for the formal treatment of the non-formal systems using land law reform. Specifically, the fourth section outlines the advantages, disadvantages, and practical examples of the models of total abolition, full non-interference, and complete incorporation. The fifth section then addresses the model of selective incorporation that the thesis considers as the most appropriate model for the treatment of non-formal systems in Ethiopia, and highlights the justifications, drawbacks, and practical cases of this model.

Chapter 8 outlines the overall conclusions and recommendations of the thesis. It summarises the conclusions the study arrived at, and evaluates the thesis in light of what it set out to accomplish. The Chapter highlights major lessons learned about whether, how, and to what extent the legal pluralism in the land tenure system governing the provision and implementation of smallholder land rights in Ethiopia that land law reform gave rise to, and in the context of which it operates might have contributed to the failure of past land law reforms to help raise smallholder productivity and tackle poverty as successive governments anticipated. It also offers suggested ways forward on how the country may use land law reform to make this legal pluralism work to help promote the provision and implementation of smallholder land rights, thereby raise smallholder productivity, and tackle poverty.

Chapter 2

Literature Review: Land Law Reform's Relationship to Smallholder Productivity, Poverty, and Legal Pluralism

As Schultz noted in his 1979 Nobel Prize Lecture, "Most of the people in the world are poor, so if we knew the economics of being poor, we would know much of the economics that really matters. Most of the world's poor people earn their living from agriculture, so if we knew the economics of agriculture, we would know much of the economics of being poor."[174] As mentioned in Chapter 1, it is generally known that most people considered poor in the world earn their living from smallholder agriculture, and live in developing countries with smallholder-based economies, such as those in sub-Saharan Africa, including Ethiopia. It is also generally thought that land law reform designed to change the constraining land policies, laws, and institutions, address structural problems of the land tenure system, and improve the provision and implementation of the land rights of smallholders with a bearing on their productivity, and is introduced as part of an agriculture-led national development strategy along with agrarian reform aimed at alleviating technical problems of the smallholder sector can help raise smallholder productivity, tackle poverty, and even foster overall economic development in those countries. However, a land law reform introduced in such countries operates to bring the change in the provision and implementation of smallholder land rights necessary to deliver the smallholder productivity and poverty outcomes it is thought would help achieve through a land tenure system characterised by legal pluralism, which comprises not only the formal state land policies, laws, and institutions established under the current and previous land law reforms, but also the pre-existing non-formal customary ones.[175] This Chapter briefly reviews the relevant law and development literature to examine whether and how land law reform helps raise smallholder productivity and tackle poverty in countries like Ethiopia notwithstanding challenges legal pluralism in the land tenure system might pose from theoretical and practical perspectives by way of analysis of the pertinent research and experience.

2. 1. Theoretical Considerations

Despite being undertaken in different contexts, the land law reforms that the governments of Haile Sellassie I, the Derg, and the EPRDF introduced in Ethiopia tended to be generally underpinned by

174 Schultz, 1980:639.

175 Cotula, Toulmin, and Hesse, 2004:2; McAuslan, 2009:9; de Soto, 2000:6, 156--167, 171-173 and 2002:6, 39-46.

similar fundamental theoretical considerations, though not specifically stated as such in each case. Moreover, the land law reforms that were carried out in other sub-Saharan African and Asian countries that were or are in roughly comparable position with Ethiopia, including those that had successful land law reform experience, appear to have been underpinned by similar theoretical considerations. Generally, the land law reforms undertaken in Ethiopia and in those other sub-Saharan African and Asian countries tended to be underpinned by the following five fundamental theoretical considerations.

First, land is an indispensable factor of production in any form of agriculture.[176] However, land is even more important for smallholders in developing countries like Ethiopia than for, for example, farmers practising large-scale commercial agriculture, or those in developed countries.[177] That is because smallholders often depend mainly on the use of their plots of land, along with family labour, farm animals, often "backward" farming implements, and rainwater, to produce for self-subsistence and where possible the local market.[178] In contrast, the work of farmers practising large-scale commercial agriculture, or those in developed countries, is characterised by the use of modern external inputs, such as improved seeds, fertilisers, insecticides, and pesticides; more advanced farming implements; and access to credit, research, and the panoply of modern management practices and marketing services.[179]

Smallholders are often referred to interchangeably as "peasant", "small", "family", "subsistence", "non-commercial", "small-scale" "undercapitalised", "low-technology", "resource-poor", "low-input", or "low-output" farmers; and described in a manner that emphasises the constraints they broadly share as compared to other farmers, including the small size of their landholdings, shortage of capital and technology, lack of access to modern agricultural inputs, implements, and services, vulnerability to risk, and being subsistence-oriented.[180] Yet, though most smallholders may indeed be land, capital, and technology constrained, more vulnerable to risk, and poorly linked to markets as compared to most large-scale commercial farmers, or those in developed countries, not all smallholders are equally constrained, vulnerable, and subsistence-oriented. In short, due to differences across and within countries and smallholder themselves, the term "smallholder" does not have a universal working definition. As Nagayets noted, "The sole consensus on small farms may be the lack of a sole

176 Pingali and Evenson, 2010:3163; Place and Swallow, 2000:4; Schlager and Ostrom, 1992:249-252.

177 Tsegaye Moreda, 2012:21; FAO, 2011a and 2011b: Chapter 1.

178 IFAD, 2012:5.

179 Wiggins, 2009:4.

180 Cousins, 2010:3; Chamberlin, 2008:1; Tsegaye Moreda, 2012:6-7; Thapa, 2010:1; Dixon et al., 2004:1; Narayanan and Gulati, 2002:5; Nagayets, 2005:1; Huvio, Kola, and Lundström, 2005; Heidhues and Brüntrup, 2003.

definition."[181] For instance, the 2008 World Development Report describes those working land of 2 hectares or less as smallholders.[182] Whereas, the Ethiopian government's Central Statistical Agency of Ethiopia (CSA) defines smallholders as "peasants" cultivating less than 25.2 hectares of land, and classifies all others as large-scale commercial farmers.[183] Nonetheless, close to 85% of Ethiopian smallholders cultivate land of 2 hectares or less (Appendix 1, Table 1[184]; and Appendix 2, Table 2[185]).[186] However, since definition is necessary, the most common way of defining a "smallholder" that this thesis follows emphasises the relative smallness of smallholders' landholdings, which is around 2 hectares, followed by other constraints and features they broadly share as compared to other farmers.[187]

Second, because land is the most important factor of production in agriculture that smallholders in developing countries like Ethiopia use, the manner of provision and implementation of the land rights of smallholders is considered as a critical determinant of smallholder agricultural productivity in those countries. "Productivity" is a measure reflecting efficiency in turning inputs into outputs, with inputs valued at their social opportunity costs.[188] It is measured in one of the following two ways. The first is partial or single-factor productivity, which is a measure of output per unit of one or some of the inputs used.[189] In this way, smallholder productivity might be measured, for example, by calculating output per unit of land, which is called "yield"[190], or labour, or both without regard to any other inputs. The other way is total factor productivity, which is a measure of output per unit of total inputs utilised.[191] In this way, smallholder productivity might be measured, for instance, by calculating output per unit of all of the land, labour, and other external agricultural inputs, implements, and services used.[192] Whichever measure is employed, however, smallholder productivity tends to be generally low in countries like

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181 Nagayets, 2005:1.

182 World Bank, 2007b:269.

183 CSA, January 2009, CSA Statistical Bulletin 443; Alemayehu, Dorosh, and Sinafikeh, 2011:3.

184 Alemayehu, Dorosh, and Sinafikeh, 2011:4.

185 CSA, June 2008:13.

186 See, for example, USAID, 2011b:1.

187 Tsegaye Moreda, 2012:6-7; Thapa, 2010:1-3; Dixon et al., 2004:1; Narayanan and Gulati, 2002:5.

188 Dorner, 1972:119-120.

189 FAO and OECD, 2012:7.

190 Zepeda, 2001:4.

191 Fantu, 2012:1-3.

192 Total factor productivity is more comprehensive and appropriate than the other measure of productivity. However, it is highly controversial. That is because of errors in measurement of inputs, errors in weights associated with factors of production, gains from changes in returns to scale, and factors that contribute to increases in production but unaccounted for by those included in the basic model, such as infrastructure (Fantu, 2012:3; Dorner, 1972:119-120).

Ethiopia.[193] For example, the average cereal yield of smallholders in sub-Saharan Africa was only around 1.0 ton/hectare during the period between 1960 and 2005, which is less than a fifth of the average yield of farmers in developed countries such as the USA.[194] Moreover, the productivity gap between levels of smallholders' actual yield and technical potential yield[195] in sub-Saharan Africa was 76% in 2005, which contrasts with the 11% average yield gap in East Asian countries such as China.[196] But since neither smallholders nor countries in sub-Saharan Africa are a homogenous bunch, there is a significant difference in smallholder productivity across the region. For instance, the average cereal yield of smallholders in Uganda during the period between 1991 and 2000 was almost 1.7 ton/hectare, more than double the close to 0.8 ton/hectare average yield of smallholders in Senegal.[197]

Third, because smallholder agriculture constitutes the primary source of livelihood and the mainstay of the economy, poverty is widely considered to be closely linked to low smallholder productivity in countries like Ethiopia.[198] This is evidenced by the fact that smallholders make up the majority of the population and the poor in most of those countries[199], which have the highest and most pervasive poverty rates in the world.[200] Though estimates vary, it is generally thought smallholder agriculture provides livelihood for close to 70% of the population in sub-Saharan Africa.[201] For example, in Ethiopia, around 13 million households accounting for around 75 million or 85% of the country's total population of about 90 million earned their livelihood from smallholder agriculture in 2008 (Appendix 1, Table 1[202]; and Appendix 2, Table 2[203]). Smallholder agriculture has also historically contributed close to 95% of Ethiopia's aggregate output in agriculture (Appendix 3, Table 3[204]), which generates around 88% of export earnings, supplies about 73% of raw materials for the predominantly agro-based

193 See, for instance, IFPRI and Asenso-Okyere and Samson, 2012:1.

194 World Bank, 2007b:15, Figure 7.

195 Technical potential yield is the maximum possible yield achievable under optimal conditions without all constraints. Its measures range from closest to furthest to farmer yield: Economic maximum farmer yield, technical maximum farmer yield, experimental maximum research station yield and modelled potential yield (FAO and OECD, 2012:8).

196 FAO, 2011b.

197 Byerlee, Diao, and Jackson, 2005:26, Figure 9.

198 Quan, 2011:2 and 2000:31-32; Devereux and Guenther, 2009:3; DFID, 2003b:3.

199 Diao, 2010:5; IFPRI and Asenso-Okyere and Samson, 2012:5.

200 See, for example, Australian Government and Grewal, Grunfeld, and Sheehan, 2012:14.

201 See, for instance, World Bank, 2001; Quan, 2011:2.

202 Alemayehu, Dorosh, and Sinafikeh, 2011:4; CSA, June 2008.

203 CSA, June 2008:13.

204 Alemayehu, Dorosh, and Sinafikeh, 2011:2.

manufacturing and service industries, and accounts for more than 50% of GDP.[205]

Since "poverty" is a concept that has been evolving continuously, different approaches have been developed to define and measure it.[206] The standard approach in the economics literature is one that takes "money metric" indicator of welfare expressed in monetary terms.[207] This approach identifies a shortage of income or consumption in monetary terms or in calorie intake as compared to a predetermined "minimum" level called "poverty line", below which people are deemed poor.[208] The poverty line used as a reference for comparison can be either international or national. For instance, for the purpose of a comparative measurement of income poverty between countries, international poverty lines are used, including the two dollar a day poverty line, and the one dollar a day extreme poverty line.[209] In contrast, for consumption poverty, the intake of less than 1,960 calories a day is defined as hunger.[210] However, this traditional approach has been increasingly sidelined since the 1980s[211], as poverty evolved into a "multidimensional" concept that is understood to have "important non-economic dimensions".[212] In contrast, the participatory and human development approaches that have since been gaining wider acceptance take a multidimensional view of poverty as the deprivation of basic necessities, including inadequate food and shelter, little or no access to health and education services, and sometimes add to this catalogue such features as powerlessness, insecurity, social exclusion, lack of access to basic infrastructure, and even exposure to violence.[213] Specifically, the UNDP employs the Human Development Index that looks into life expectancy, literacy, and standard of living as indicators of poverty.[214] Another approach that has taken shape with the advent of Sen's "capability" theory in the early 1990s is one that defines and measures poverty in terms of the lack of ability or opportunity necessary for betterment.[215] Yet another approach that has been gaining increasing acceptance recently is the "asset poverty" approach, which considers the extent of control

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205 See, for example, CSA, June 2008; USAID, 2011b:2.
206 Kahn, 2000:3-9.
207 Kanbur and Squire, 1999:3.
208 Lipton and Ravallion, 1995:2573-2574.
209 World Bank, 1980:32.
210 UNDP, 2003:1.
211 Kanbur and Squire, 1999:2.
212 Narayan, 2000:43; Khan, 2000:26.
213 IFAD, 2001b:1-3; Narayan, 2000:43; Khan, 2000:26; Narayan et al., 2000:4-5.
214 Kanbur and Squire, 1999:13.
215 Sen, 1992 and 1999; Anand and Sen, 1993a, 1993b, and 1996.

and enjoyment of assets such as land to define and measure poverty.[216] A further approach defines and measures poverty by applying absolute or relative standards. Poverty is defined in relative terms as deprivation or lack of means to fulfil one's needs, roles, and goals as compared to, for instance, the median or mean standard of the rest of society.[217] On the other hand, proponents of an absolute definition in the sense of poverty having an absolute or fixed core warn against a relative definition, lest it stands in the way of disciplined debate and effective research and intervention efforts.[218] Therefore, a third group sees poverty as having both "universal" (non-contextual) and "particularistic" (contextual) aspects, and thus adopts a combination of the relative and absolute definitions.[219]

None of the abovementioned approaches can alone usefully define and measure poverty. However, as Dercon noted, each approach provides some insights and helps get a complete picture of the cause and extent of poverty, and offers possible benchmarks against which development interventions can be formulated and evaluated.[220] Since this thesis focuses on the role of challenges pertaining to provision and implementation of land rights as determinants of smallholder productivity and thus poverty, and the potential of land law reform as development intervention in helping raise smallholder productivity and thus tackle poverty, it adopts an approach that combines elements drawn from different approaches and takes into account not only the "statics", but also the "dynamics" of poverty. Basically, the static aspect is about the description of poverty in terms of deprivation of basic necessities and other features that the approaches discussed above before Sen's capability approach use to define and measure poverty.[221] Whereas, the dynamic aspect draws from Sen's capability and asset poverty approaches and looks into the ways in which, and the extent to which people move into and out of poverty.[222]

Fourth, though described in different ways, two major factors are generally identified as contributing towards low smallholder productivity and therefore poverty in developing countries like Ethiopia. One is structural problems pertaining to the land policies, laws, and institutions of the land tenure system that constrain the provision and implementation of productivity-raising smallholder land rights.[223] To

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216 IFAD, 2001a:1-3; CGAP and Henry et al., 2000: Table 1.1.
217 Townsend, 1993:36.
218 See, for example, Fisher, 1996:10-12; Sen, 1984.
219 Bevan, 2000:6.
220 Dercon, 1999:8 and 15.
221 Bevan, 2000:5.
222 Bevan, 2000:6.
223 See, for instance, IFAD 2008:27; World Bank, 2000:170; Moyo, 2008:35; Lastarria-Cornhiel 1997:1317.

specifically illustrate, drawing from representative household surveys conducted in Ethiopia, Kenya, Rwanda, Mozambique, and Zambia between 1990 and 2000, Jayne et al. have demonstrated the relationship that problems associated with the provision and implementation of land rights imputable to the land policies, laws, and institutions of the land tenure system have with smallholder productivity and poverty.[224] The other factor is technical problems in the smallholder sector's *modus operandi* related to lack of access to modern agricultural inputs, implements, and services.[225] For instance, IFPRI and Asenso-Okyere and Samson have noted that "Africa's low agricultural productivity has many causes, including scarce and scant knowledge of improved practices, low use of improved seed, low fertiliser use, inadequate irrigation, conflict, absence of strong institutions, ineffective policies, lack of incentives, and prevalence of diseases."[226] In relation to Ethiopia, Coates et al. have observed that "As the agricultural techniques practiced in the rural areas are largely non-modernised and dependent on rainfall, it is not surprising that many households are highly vulnerable to regular shocks, including fluctuations in annual rainfall, crop blights, pest infestation, and livestock epidemics."[227] Moreover, a study the International Institute for Labour Studies published has captured the nature and contribution of those two major factors to low smallholder productivity and poverty in the country, noting that "Ethiopian agriculture is overwhelmingly small-scale peasant agriculture, characterised by backward land tenure systems, inefficient methods of cultivation and poor distribution facilities. The logical corollary of this state of affairs is low per capita productivity, income, consumption and savings."[228]

Fifth, it is therefore generally thought that land law reform designed to change the constraining land policies, laws, and institutions, address structural problems of the land tenure system, and improve the provision and implementation of productivity-raising smallholder land rights, and is introduced as part of an agriculture-led national development strategy along with agrarian reform that alleviates technical problems of the smallholder sector can help raise smallholder productivity, thereby tackle poverty, and even foster overall economic development in countries like Ethiopia. Yet, as mentioned earlier, issues of causality and linkage remain to be the subject of debate and there is no "right" template for an effective land law reform project. This almost inevitably leads to the questions whether, why, and how land law reform might help raise smallholder productivity, which is the main focus of the next section.

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224 Jayne et al., 2003:270-271. See, also, Jayne, Mather, and Mghenyi, 2010:1386 and 2006:1.

225 See, for example, IFAD, 2012:5; Bevan, 2006:9; Pender et al., 2001:1-2.

226 IFPRI and Asenso-Okyere and Samson, 2012:1.

227 Coates et al., 2007:12.

228 International Institute for Labour Studies, 1967:2.

2. 2. Land Law Reform's Role in Raising Smallholder Productivity

As mentioned earlier in Chapter 1, land law reform is thought can help raise smallholder productivity by improving the provision and implementation of smallholder land rights with a bearing on their productivity through the change it brings to the land policies, laws, and institutions of the land tenure system. This Section will elaborate the meanings and significances of these smallholder land rights, which are here systematically grouped based on their potential implications into those that enhance tenure security, facilitate the transfer of rights over land, and authorise the collateralisation of land rights, and referred to as "the three bundles of productivity-raising smallholder land rights". It will also explain why and how land law reform can help raise smallholder productivity if the change it brings to the land tenure system's land policies, laws, and institutions leads to improvement in the provision and implementation of land rights that bring about the enhancement tenure security, facilitation of the transfer of rights over land, and authorisation of the collateralisation of land rights for smallholders.

2. 2. 1. The Enhancement of Tenure Security

One way in which land law reform is believed can help raise smallholder productivity is by putting into effect land policies and laws improving the provision of smallholder land rights contributing towards the enhancement of tenure security, such as those that clearly define land access, occupation, and use rights, guarantee the exclusion of others from such rights, outline management obligations, stipulate stricter eviction and confiscation requirements, specify expropriation and compensation mechanisms, as well as land institutions, administrative and judicial, entrusted with substantive and procedural powers that ensure implementation and the protection of the rights holder. The term "tenure security", defined broadly here, pertains to the assurance, confidence, or expectation of smallholders to remain in physical possession of, and enjoy the rights to, and the fruits of their landholdings, as well as the value of investments and improvements they make with their labour or asset, continuously without interruption, imposition, or interference from outside sources, including the state, private individuals, and other entities, either in the course of use or upon transfer.[229] A land law reform that brings about the enhancement of tenure security is thought can provide smallholders with incentive to properly manage, undertake long-term investments on, and make improvements to their landholdings, which is

[229] Bledsoe, 2006:152; Place and Swallow, 2000:11; Roth and Haase, 1998:1; Place, Roth, and Hazel, 1994:19.

believed would not only lead to sustainable land use, but also help raise smallholder productivity.[230]

Though framed in different ways, definitions of tenure security emphasise the three core components that the concept comprises: breadth, duration, and assurance. For example, Place, Roth, and Hazel have elaborated these three components in their seminal work on land tenure security and agricultural performance in Africa.[231] According to Place, Roth, and Hazel, "breadth" refers to the quantity and quality of the bundles of land rights held, with quantity pertaining to the number and quality to the importance of the land rights held. For instance, in terms of quantity, the bundle of land rights held by a smallholder with lifelong usufructuary access to land who has the right to bequeath the land is considered broader than that of another smallholder with lifelong usufructuary access to land but does not have the right to bequeath it. In contrast, in terms of quality, the bundle of land rights held by a smallholder with the right to sell the land, who is entitled to not only use, but also rent out the land, is considered broader than that of the bundle of land rights held by another smallholder who only has the right to use the land. Whereas, both in terms of quantity and quality, the bundle of land rights held by a smallholder with private ownership of land, who has the right to occupy, use, and alienate the land and its fruits, is considered broader than that of the bundle of land rights held by another smallholder with lifelong usufructuary access to land, who has the right to occupy and use, but not alienate the land and its fruits. It is generally thought that the broader the quantity and quality of the bundle of land rights held, the more the land tenure security will be. "Duration" relates to the length of time over which a smallholder occupies, uses, and alienates the land and its fruits, depending on the breadth of the bundles of land rights held. Duration is important because in order to be considered to have tenure security, one must possess a sufficient time horizon that enables to remain in physical possession of, make improvements to, and enjoy the benefits of one's rights over land. For example, the duration of the land rights of a smallholder with lifelong usufructuary access who has the right to bequeath the land is considered longer than that of another smallholder with lifelong usufructuary access but does not have the right to bequeath it. It is generally thought that the longer the duration of the land rights held, the more the land tenure security will be. "Assurance" pertains to the ability of a smallholder to exercise one's land rights exclusively and to seek the protection and enforcement those land rights in the event of interference from others. Therefore, the degree of assurance depends on not only the breadth and duration of the land rights held, but also the possibility and viability of competing claims

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230 World Bank, 2007b:139; Wily, 2003: 8, 23, and 52; Place and Swallow, 2000:11; Roth and Haase, 1998:1.

231 Place, Roth, and Hazel, 1994.

over, and the existence and strength of executive and judicial institutions for the implementation, protection, and enforcement of those land rights. For instance, despite the adequacy of the breadth and duration of the land rights held, assurance may be lacking where the land is subject to competing claims, or there is a weak institutional framework for implementation, protection, and enforcement. It is generally thought that the greater the degree of assurance, the more the tenure security will be.[232]

Though from different perspectives, numerous other analysts have also dealt with the concept of tenure security, the three components it comprises, and the relationship it has to smallholder productivity, particularly in the context of sub-Saharan African countries like Ethiopia.[233] For example, Roth and Haase have discussed tenure security by analysing the concept from the point of view of the distinction between the legal and economic dimensions embedded in the three components that make up the concept. As per Roth and Haase, the legal dimension refers to the breadth, duration, and assurance pertaining to the bundles of land rights held de jure, whilst the economic dimension relates to the value of the benefits derived de facto from the tenure security enjoyed over the land. Thus, the economic benefits derived de facto may diverge from the tenure security provided de jure due to such factors as weak implementation, costly enforcement, high transaction costs, and corrupt or illicit behaviour.[234]

Conversely, tenure insecurity is said to exist in the event of lack of one or more of the breadth, duration, and assurance components constituting tenure security. As Place, Roth, and Hazel succinctly put it, tenure insecurity arises from a sense of, or a function of elements, including "inadequate number of absolute rights, inadequate duration in one or more rights, lack of assurance in exerting rights, or high costs of enforcing rights".[235] Tenure insecurity has been identified as a major problem that has significant implications to smallholder productivity, particularly in sub-Saharan African countries such as Ethiopia. For instance, Fantu Cheru has asserted that tenure insecurity is one of the major "non-technical" problems constraining agricultural productivity in most of sub-Saharan Africa.[236] Similarly, a recent empirical work conducted by Salami, Kamara, and Brixiova has identified tenure insecurity as

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232 Place, Roth, and Hazel, 1994:19-30.

233 See, for instance, Manona, et al., 2010:5-6; van Asperen, 2007:3; Bledsoe, 2006:152; Brasselle, Gaspart, and Platteau, 2002:379-381; Place and Swallow, 2000:11; McCulloch, Meinzen-Dick, and Hazell, 1998:10; Deininger, Daniel, and Tekie, 2009; Deininger et al., 2008; Deininger and Jin, 2006; Holden, Deininger, and Hosaena, 2009.

234 Roth and Haase, 1998:1-2.

235 Place, Roth, and Hazel, 1994:21.

236 Fantu Cheru, 2002:98.

one of the major challenges to smallholder productivity in East Africa, including Ethiopia.[237]

A number of other studies have also analysed the economic implications that the legal dimension of tenure insecurity pertaining to the lack of one or more of the breadth, duration, and assurance components might have to land use sustainability, smallholder productivity, and poverty in sub-Saharan Africa. For example, according to UNECA, due partly to the lack of proper land management, investment, and improvement that is imputable to tenure insecurity, Africa has 500 million hectares of moderately or severely degraded land, which accounts for more than a quarter of the overall land degradation in the world.[238] On their part, in their economy-wide, multimarket assessment of the poverty implications of agricultural land degradation in Ghana, Diao and Sarpong, who found extensive land degradation linked to tenure insecurity and identified it as a major challenge that would constrain agricultural productivity, have predicted that unless the current trend of land degradation is somehow reversed, Ghana's agricultural income can decline by a total of US$ 4.2 billion over the period from 2006 to 2015, and the country's national poverty rate can increase by 5.4% in 2015.[239]

In view of the magnitude of the problem, the enactment of land law reform intended to bring about the enhancement of tenure security has therefore been at the top of the national development agenda of the state in many sub-Saharan African countries such as Ethiopia. A land law reform is considered to have resulted in the enhancement of tenure security when it changes the land tenure system's land policies, laws, and institutions in a way that improves the provision and implementation of smallholder land rights that increase the breadth, duration, and assurance components constituting tenure security and thereby decrease smallholders' likelihood or reasonable fear of losing the physical possession and the enjoyment of the rights to, and the fruits of their landholdings, as well as the value of investments and improvements they make without interference from others in the course of use or upon transfer. The enhancement of tenure security is thought would offer numerous advantages, including the following.

First, the enhancement of tenure security is thought can increase the incentive or decrease the disincentive of smallholders to properly manage, undertake long-term investments on, and make improvements to their landholdings, which is believed would not only help achieve reduction in land

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237 See, generally, Salami, Kamara, and Brixiova, 2010.

238 UNECA, 2009:129.

239 Diao and Sarpong, 2011:263.

degradation and lead to sustainable land use, but also enable to raise smallholder productivity.[240] In other words, the lesser the smallholder's likelihood or fear of losing the physical possession and the enjoyment of the rights to, and the fruits and the value of improvements of their landholdings, the greater the incentive it is thought they would have to properly manage, undertake long-term investments on, and make improvements to their landholdings with their labour or asset. For instance, the land management, investment, and improvement activities that smallholders may carry out with their labour using materials freely or cheaply available include the addition of such physical features as irrigation, terracing, and drainage, planting of trees, construction of boundary demarcation structures, and establishment of product storage facilities; and the activities that they may conduct with their asset include acquisition and application of more modern agricultural inputs, implements, and services.[241]

Moreover, the enhancement of tenure security is thought would offer numerous other benefits, including the promotion of gender equality, the reduction of land conflicts, and the improvement of governance. For example, in their assessment of the early impacts of land registration and certification on women in southern Ethiopia, Holden and Tewodros have found that the land registration and certification process, in which women were given equal treatment in terms of the documentation and enjoyment of land rights, has significantly strengthened the property rights and bargaining power of women and promoted gender equality.[242] On their part, in their analysis of the incidence and impact of land conflicts in Uganda, Deininger and Castagnini, who identified tenure insecurity as one of the main reasons for the increasing incidence of land-related conflicts, which they concluded undermines land-based investment and agricultural productivity, have emphasised that clearer and stricter definition, protection, and enforcement of land rights would contribute towards the prevention and resolution of land disputes.[243] On the other hand, Lobo and Balakrishnan and Cotula, Toulmin, and Hesse have noted that enhancement of tenure security can lead to improvement of governance, as it would help equip the state with information about landholders and landholdings, provide the basis for a system of property taxes, reduce the incidence of corruption, and streamline the operation of local institutions.[244]

Furthermore, the enhancement of tenure security is thought would offer advantages with respect to the

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240 Crewett and Korf, 2008:206; World Bank, 2007b:139; Wily, 2003: 8, 23, and 52; Place and Swallow, 2000:11.

241 Bledsoe, 2006:152.

242 Holden and Tewodros, 2008:5-7.

243 Deininger and Castagnini, 2006. See, also, Roth and Haase, 1998:1.

244 Lobo and Balakrishnan, 2002; Cotula, Toulmin, and Hesse, 2004:3. See, also, Deininger, Daniel, and Tekie, 2008:3.

promotion of the other two bundles of productivity-raising smallholder land rights, namely the facilitation of the transfer of rights over land and the authorisation of the collateralisation of land rights. For instance, according to Feder and Nishio, the enhancement of tenure security can contribute towards the facilitation of the transfer of rights over land by helping reduce information asymmetry, decrease transaction costs, and increase the certainty of the performance and enforcement of contracts.[245] As for the promotion of the collateralisation of land rights, besides helping boost credit use by providing greater incentive for investment, as Lemel and de Soto observed, the enhancement of tenure security can increase the collateral value of land and the creditworthiness of smallholders.[246]

However, it should be emphasised that the causal relationship between the degree of tenure security and the tendency to engage in land management, investment, and improvement practices can be bidirectional, as the lack of tenure security may stimulate engagement in land management, investment, and improvement practices. For example, as Bledsoe noted, particularly in sub-Saharan Africa, squatters or landholders who feel tenure insecurity often engage in such practices as the addition of physical features like terracing and drainage, the planting of trees, and the construction of boundary demarcation structures to assert claims, denote permanent occupation, project the image of a rightful landholder, make eviction more costly, and thereby enhance their tenure security.[247] Similarly, Brasselle, Gaspart, and Platteau have observed that "In sub-Saharan Africa as well as in other countries with a recent history of land abundance, some land improvements, particularly the planting of trees, is a well-recognised method of enhancing tenure security for holders of temporary or fragile claims."[248] Thus, since in such contexts causality may run the other way, as land management, investment, and improvement practices are viewed as a means towards the enhancement of tenure security, as Sjaastad and Bromley succinctly put it, "tenure security is a result, as well as a cause of land use decisions".[249]

So far, the three components of breadth, duration, and assurance that constitute the concept of tenure security and the benefits that the enhancement of tenure security is believed can provide have been discussed. The role that land law reform is generally thought would play in this regard has also been mentioned. At this juncture, it is thus necessary to examine closely how a land law reform is thought

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245 Feder and Nishio, 1999:25-28. See, also, AusAID, 2000:7-8.
246 Lemel, 1988:283-285; de Soto, 2002:6 and 39-46.
247 Bledsoe, 2006:154.
248 Brasselle, Gaspart, and Platteau, 2002:374.
249 Sjaastad and Bromley, 1997:559.

should operate to change the land policies, laws, and institutions of the land tenure system in order to lead to improvement in the provision and implementation of smallholder land rights that increase the breadth, duration, and assurance components, thereby bring about the enhancement of tenure security, and help reap the benefits that are believed can flow from the enhancement of tenure security.

The issue concerning the choice of land policy that land law reform should introduce to the land tenure system in order to bring about the enhancement of tenure security and thereby help raise smallholder productivity in developing sub-Saharan African countries like Ethiopia has long been a subject of debate amongst law and development analysts, practitioners, and funders. Based on neo-classical economic theories pertaining to property rights[250], and the abovementioned advantages that the policy of private ownership of land is believed would offer over the policy of state ownership in terms of the breadth, duration, and assurance components of tenure security, the view widely held had been that land law reform should introduce private land ownership policy to bring about the enhancement of tenure security, and promote the facilitation of the transfer of rights over land and the authorisation of collateralisation of land rights. Brasselle, Gaspart, and Platteau have succinctly captured the arguments for the policy of private land ownership. They stated that "There are several forces making for positive impact of individualistic property rights. First, when farmers feel more secure in their right to maintain long-term use over their land, they have greater incentive to undertake investments. Second, when land can be easily converted to liquid assets, improvements made through investment can be better realised, thereby increasing its expected return. On the other hand, farmers are more able to invest because, when freehold titles are established, land acquires collateral value and access to credit is easier. This is especially important regarding formal lending sources which often have imperfect information on the borrower."[251] Giovarelli has also stressed that "Privatization of land is generally undertaken to increase investment in and productivity of land, to encourage efficient use and allocation of land, and to empower recipients by providing them with a valuable asset."[252] Therefore, as Cotula, Toulmin, and Hesse noted, "These arguments prompted many post-independence governments in sub-Saharan Africa to adopt programmes to register land rights and to convert customary rights into private ownership".[253]

On the other hand, several recent studies have shown that private ownership of land appears to have

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250 See, for example, Barzel, 1997, Posner, 1973, Demsetz, 1967.

251 Brasselle, Gaspart, and Platteau, 2002:374.

252 Giovarelli, 2006:70.

253 Cotula, Toulmin, and Hesse, 2004:3.

had little or no immediate effect in increasing tenure security, land management, investment, and improvement practices, and smallholder productivity in sub-Saharan Africa. Examples include those carried out by Jacoby and Minten in Madagascar[254]; Brasselle, Gaspart, and Platteau in Burkina Faso[255]; Place and Migot-Adholla[256], and Carter, Weibe, and Blarel in Kenya[257]; Moor in Zimbabwe[258]; and Besley in Ghana.[259] In contrast, other studies suggest that even in countries where the policy of state ownership of land is enforced, land law reform can help increase tenure security, land management, investment, and improvement practices, and smallholder productivity in sub-Saharan Africa. For instance, in Ethiopia, where the policy of state land ownership is enforced, several studies conducted by Deininger et al have demonstrated that the land law reform programme involving the registration and certification of landholdings that the government introduced within the framework of the policy of state ownership of land it enforces had a significant positive effect in increasing tenure security, land management, investment, and improvement practices, and smallholder productivity.[260]

Therefore, the findings of those studies suggest that a land law reform may not necessarily bring about the enhancement of tenure security and the land management, investment, and improvement and smallholder productivity benefits that are believed can flow from it by introducing the policy of private or state ownership of land. In other words, the policy of private or state ownership of land by itself is not necessarily a stimulant or a constraint towards the enhancement of tenure security and the benefits that are associated with it. Instead, what is critical for a land law reform to be effective in helping increase tenure security, land management, investment, and improvement practices, and smallholder productivity is the adequacy of the breadth, duration, and assurance components of tenure security that it would bring about. For example, although the breadth of the land rights brought about by a land law reform programme that introduces the policy of private ownership of land, which would confer the rights to occupy, use, and alienate the land, might be better than, for instance, another land law reform programme that introduces the policy of state ownership of land, which would entitle the rights to occupy and use, but not alienate the land, this may not eventually matter if the assurance component is

254 Jacoby and Minten, 2007.
255 Brasselle, Gaspart, and Platteau, 2002.
256 Place and Migot-Adholla, 1998.
257 Carter, Weibe, and Blarel, 1994.
258 Moor, 1998.
259 Besley, 1995.
260 Deininger, Daniel, and Tekie, 2008 and 2009; Holden, Deininger, and Hosaena, 2008 and 2009; Deininger et al., 2007 and 2008; Deininger and Jin, 2006; Deininger et al., 2003.

weak. Conversely, although the breadth of the land rights that it brings about might be narrower, a land law reform programme that introduces the policy of state ownership of land can be effective in helping increase tenure security, land management, investment, and improvement practices, and smallholder productivity if the duration and assurance components are stronger.

However, the findings of those studies should be viewed cautiously for several reasons. First, as Bledsoe suggested, land law reforms that introduced the policy of private ownership of land in other developing countries in Asia, Latin America, and Eastern Europe have delivered positive outcomes.[261] Second, since the land law reforms that were undertaken in sub-Saharan African countries are relatively recent - most having been introduced only in the 1990s, it would be premature to conclude about their eventual outcomes, as the benefits they might deliver can take decades to materialise and become clear. Third, most of the land law reforms that were carried out in sub-Saharan African countries are incomplete. As Cotula, Toulmin, and Hesse noted, "in most of sub-Saharan Africa very little land has actually been registered as private property."[262] Similarly, Deininger et al. have observed that "hardly any of the countries that introduced legal reforms with much fanfare have succeeded in developing, let alone rolling out, a low-cost system for land administration at a scale that is sufficiently large. This made it difficult for many of the expected benefits from such legislation to materialize. More generally, failure to implement land legislation has raised doubts regarding the technical, institutional, and political feasibility of such reform."[263] Fourth, it is difficult and costly to benchmark baseline situations, as well as to monitor, gauge, and demonstrate land law reform's effect on tenure security, land management, investment, and improvement practices, and smallholder productivity, not least in sub-Saharan African countries, where the necessary capacity in terms of human, financial, and infrastructural resources is mostly lacking. Fifth, the effectiveness of land law reform in bringing about the enhancement of tenure security and the benefits associated with it can be limited by other factors such as legal pluralism in the land tenure system governing the provision and implementation of smallholder land rights. In other words, as will be discussed in the coming parts of this Chapter, since legal pluralism is a prominent feature of the land tenure system in most sub-Saharan African countries, which comprises the pre-existing non-formal customary arrangements that continue to exist, operate, and be widely used by society to govern the provision and implementation of smallholder land rights,

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261 Bledsoe, 2006:152-154.

262 Cotula, Toulmin, and Hesse, 2004:3.

263 Deininger et al., 2007:1.

the effect land law reform might have on tenure security through the formal state land policies, laws, and institutions it puts into force can be significantly reduced or rendered irrelevant. As McAuslan precisely described it, "Customary tenure is - and always has been - one of the foundational elements of the land laws of all states in Africa."[264] Fifth, the effect that land law reform might have on tenure security may not be accurately evaluated not only because of the absence of a working method for measuring tenure security, but also because, due to the nature of tenure security, as Brasselle, Gaspart, and Platteau emphasised, assessments of tenure security do not always distinguish between levels of security as they actually exist.[265] As will be elaborated in the coming parts of this Chapter, tenure security has an objective element, which pertains to the tenure security that land law reform might bring about through the formal state land policies, laws, and institutions it puts into force[266], and a subjective element, which relates to the confidence or expectation of smallholders to do with their own perception of their tenure security.[267] Sixth, as mentioned earlier, the tendency of engagement in land management, investment, and improvement practices depends not only on the degree of tenure security that land law reform might bring about, but also the availability of the necessary labour, financial means, and other resources. Seventh, the effectiveness of land law reform in helping raise smallholder productivity in sub-Saharan African countries hinges not only on the enhancement of tenure security it might bring about, but also other factors that are not to do with the land tenure system, including the technical problems of the smallholder sector. As Bugri and Pretty, Morison, and Hine suggested, a land law reform that brings about the enhancement of tenure security in such countries may not be effective in helping raise smallholder productivity, unless it is accompanied by measures aimed at addressing other factors that constrain productivity, particularly technical problems of the smallholder sector.[268]

2. 2. 2. The Facilitation of the Transfer of Rights over Land

The second way in which land law reform is thought can help raise smallholder productivity is by putting into effect land laws that improve the provision of smallholder land rights entailing facilitation of the transfer of rights over land temporarily or permanently through different means, including sale, lease, exchange, barter, donation, and succession, within the framework of the possible forms of

264 McAuslan, 2009:9.
265 Brasselle, Gaspart, and Platteau, 2002:379-381.
266 van Asperen, 2007:3.
267 Crewett and Korf, 2008:211.
268 Bugri, 2008:271-275; Pretty, Morison, and Hine, 2003:218-219.

property rights in land specified in the land policy in force, such as ownership or usufruct, as well as land institutions, administrative and judicial, with substantive and procedural powers that undertake the provision's implementation. The term "transfer of rights over land", defined broadly here, relates to the process in which smallholders pass their land rights and the concomitant benefits over to other persons, either with consideration through sale, lease, exchange, barter, or in the form of security or payment of debt as in the case of mortgage, or without consideration through donation or succession.[269] For example, a land law reform may be considered to have led to the facilitation of the transfer of rights over land if it puts into effect land laws and institutions that would improve the provision and implementation of the rights of smallholders to transfer their land rights and the concomitant benefits for consideration in a market setting permanently through sale, where the policy of private ownership of land is in force, or temporarily through lease, where the policy of state ownership of land is in force.

A land law reform that brings about the facilitation of the transfer of rights over land is thought can help raise smallholder productivity mainly because it is believed would give rise to a dynamic rural land market, which is in turn believed would lead to increase in the value of smallholder land rights, more efficient and sustainable land use, and ultimately growth in smallholder productivity. It is thought that the existence of such a land market would enable those smallholders that are more successful and entrepreneurial to acquire more land, and those that are not, or that have marginal or economically unviable landholdings to transfer part or all of their landholdings temporarily or permanently, which would allow them to gain access to the means they need to diversify or switch their livelihoods, seek salaried employment, join other economic sectors, or migrate to urban areas. This is expected would lead to more efficient and sustainable land use and growth in smallholder productivity, as it would entail the reduction of land degradation and the consolidation of fragmented landholdings into larger, economically profitable units in the hands of more successful and entrepreneurial smallholders.[270]

Moreover, the facilitation of the transfer of rights over land is thought can offer other benefits. For example, it is believed can lead to increase in state revenue through the generation of more land rights transfer taxes and administrative fees.[271] Particularly in the context of Ethiopia, analysts such as Yigremew and Dessalegn have also argued that the facilitation of the transfer of rights over land would

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269 See, for instance, Rolfes, 2006:119 and159; Giovarelli, 2006:89 and 95.

270 See, for example, Zachary, 2008:57; Lund, Odgaard, and Sjaastad, 2006:13; World Bank and Deininger, 2003:57. See, also, Deininger, Daniel, and Tekie, 2008 and 2009; Deininger et al., 2003; Adams and Palmer, 2007.

271 Rolfes, 2006:130-132.

realise the human right of Ethiopian smallholders to enjoy, like any farmer should, "unrestricted" land rights and economic benefits over their landholdings, which is their fair share of the country's natural resources, and would bestow upon smallholders freedom and empowerment, as it provides them with the right and responsibility to decide on the fate of their landholdings and choose their livelihoods.[272]

Furthermore, the facilitation of the transfer of rights over land is believed can help with respect to the promotion of the other two bundles of productivity-raising smallholder land rights, namely the enhancement of tenure security and the authorisation of the collateralisation of land rights. Specifically, the more the facilitation of the transfer of rights over land, it is thought the more the enhancement of tenure security would be, as smallholders would feel more confident and can choose to keep or transfer their land rights. Similarly, the more the facilitation of the transfer of rights over land, it is believed the more likely the authorisation of the collateralisation of land rights would be.[273]

However, just like in the case of the enhancement of tenure security discussed above, the issue concerning whether it is the policy of private or state ownership of land that land law reform should introduce in order to bring about the facilitation of the transfer of rights over land and thereby help raise smallholder productivity in developing countries such as those in sub-Saharan Africa has long been a subject of debate amongst law and development analysts, practitioners, and funders. Although the long-held view had been that the policy of private ownership of land is more advantageous in facilitating the transfer of rights over land, the available empirical evidence is not conclusive.[274] For example, several empirical studies conducted in Kenya and Uganda have found that the introduction of the policy of private ownership of land did not lead to the facilitation of the transfer of rights over land.[275] In contrast, other empirical studies suggest that land law reform can be used to bring about the facilitation of the transfer of rights over land even in countries where the policy of state ownership of land is enforced. For instance, studies carried out by Deininger et al in Ethiopia have demonstrated that despite the enforcement of the policy of state ownership of land, the land law reform that allowed the transfer of land rights through lease had significantly facilitated the transfer of rights over land.[276]

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272 Yigremew, 2001a:58; Dessalegn, 1992:43-57.

273 See, for instance, World Bank and Deininger, 2003:xxv.

274 Crewett and Korf, 2008:214.

275 See, for example, Quan, 2000:35-36; Mackinnon and Reinikka, 2000:38; Baland et al., 1999: 27-28 and 30.

276 Deininger, Daniel, and Tekie, 2008 and 2009; Holden, Deininger, and Hosaena, 2008 and 2009; Deininger et al., 2007 and 2008; Deininger and Jin, 2006; Deininger et al., 2003.

It is, though, necessary to enter the caveat that the findings of those studies should be viewed cautiously. And the reasons discussed above that provided the grounds for caution as regards studies concerning the enhancement of tenure security would also apply here mutatis mutandis. To illustrate, for example, in Uganda, despite the enactment of a land law reform introducing the policy of private land ownership that allowed the sale of land, smallholders were found to be reluctant to transfer their land through sale for fear of jeopardising their livelihood.[277] An equally important reason may be the lack of means to engage in land transactions, which Carter argued has "a major depressing effect on the ability of poor households to use even liberalized land markets to improve their access to land."[278]

It is, however, safe to conclude based on the findings of those studies that the policy of private or state ownership of land by itself is not necessarily a stimulant or a constraint towards the facilitation of the transfer of rights over land. In other words, a land law reform may bring about the facilitation of the transfer of rights over land despite the enforcement of the policy of private or state ownership of land. This issue can be best explained using as an example the right to transfer land rights through lease, which is often allowed both in countries where the policies of private and state ownership of land are enforced, as compared to sale, which is allowed only in countries where the policy of private ownership of land is enforced. The authorisation of the right to transfer land rights through lease is more important for most smallholders than sale for several reasons. Specifically, from the perspective of smallholders who would like to acquire land, entering into transaction of lease does not require possessing or making significant advance payment in the form of cash, asset, or other means of payment, whilst sale often does. And from the point of view of smallholders who would like to transfer their land, entering into transaction of lease does not entail the possibility of losing one's land and thus livelihood altogether, whilst sale often does. Above all, research and experience generally suggest that the authorisation of the right to transfer land rights through lease would more significantly facilitate the transfer of rights over land, thereby enable poor smallholders to gain access to land, and help raise smallholder productivity in developing countries, such as those in sub-Saharan Africa like Ethiopia.[279] In their analysis of "The Evolution of the World Bank's Land Policy", Deininger and Binswanger have succinctly captured how, for instance, the World Bank, which in its 1975 "Land Reform Policy Paper" discussing the role of land law reform in helping raise smallholder productivity, tackle poverty, and

277 Mwebaza and Gaynor, 2002:19.

278 Carter, 2003:53.

279 Olinto, Davis, and Deininger, 1999:29; Rolfes, 2006:108; World Bank and Deininger, 2003:84; Baland et al., 2000.

foster overall economic growth in developing countries had emphasised the transfer of land through sale to be more important than lease in this regard[280], has since changed its prescription from the sale to the lease of land in the face of increasing evidence from research and experience. They noted that "the earlier sceptical view of land rental markets has given way to recognition of their critical role as a means for providing the poor with access to land. The removal of remaining restrictions on land rental is therefore a top policy priority. In contrast, however, removing the restrictions on markets for land sales may not be the most urgent requirement for increasing efficiency and may have a negative impact on equity. Measures thus should be sequenced properly, emphasising rentals rather than sales".[281]

2. 2. 3. The Authorisation of the Collateralisation of Land Rights

The third way in which land law reform is thought can help raise smallholder productivity is by putting into effect land laws that improve the provision of smallholder land rights entailing the authorisation of the collateralisation of land rights, including those that recognise the smallholders' right to use their landholdings as collateral for credit, and land institutions, administrative and judicial, with substantive and procedural powers that undertake the provision's implementation. The term "collateralisation of land rights", defined broadly here, refers to the use by smallholders of their land rights as surety to obtain credit.[282] A land law reform that brings about the authorisation of the collateralisation of land rights is thought can help raise smallholder productivity, achieve more efficient and sustainable land use, and even tackle land scarcity and poverty, because it is believed would enable smallholders to obtain the means they need to acquire more land, undertake better land management and improvement practices, invest in modern agricultural inputs, implements, and services, diversify or switch their livelihoods, and get insurance for the loss of land or sustenance.[283]

A land law reform that brings about the authorisation of the use of land rights as collateral is particularly important for smallholders in developing countries, such as those in sub-Saharan Africa, including Ethiopia. That is because the only valuable asset worthy of furnishing as surety that these smallholders usually have is their landholding.[284] In addition, since land is immobile and virtually indestructible, land rights, especially those that are clearly defined, secure, and easily transferable,

280 World Bank, 1975.
281 Deininger and Binswanger, 1999:249.
282 Deininger and Jin, 2006:1248; Chalamwong and Feder, 1988:188.
283 Bledsoe, 2006:152-155; von Braun, Msuya, and Wolf, 1999:9.
284 See, for instance, USAID, 2004: A-45.

often constitute a widely acceptable collateral to guarantee the repayment of credit.[285]

In short, the authorisation of the collateralisation of land rights is believed would offer a number of direct and indirect benefits. Directly, as mentioned above, it is thought can help improve the availability and terms of credit for smallholders and thereby reap the benefits expected to flow from it. Indirectly, it is believed would help give rise to a dynamic land credit market, reduce transaction costs in land markets, prevent costly development of collateral substitutes, spur growth of the private sector, create employment opportunities, free smallholders from discretionary interference by state officials, landlords, or other entities, and provide foundation for economic growth and good governance.[286]

The view that emphasises the importance of the use of land rights as collateral particularly for smallholders in developing countries like Ethiopia started to gain currency after the World Bank published its "Land Reform Policy Paper" in 1975. This Policy Paper, which assessed that smallholder agriculture in the developing world, particularly in Africa, is "undercapitalised", technologically lacking, underproductive, and "insufficiently competitive" largely because land rights are based on non-formal customary "communal" land tenure systems and considered these perceived shortcomings as a cause of low smallholder productivity and pervasive poverty, recommended that land law reform introducing the policy of private land ownership be enacted to replace communal land tenure systems by "freehold" through titling and registration. As per the Policy Paper, formally privatised, registered, and certified land ownership would not only lead to the authorisation of the collateralisation of land rights and the benefits claimed would flow from that, but also bring about the enhancement tenure security and the facilitation of the transfer of rights over land.[287] The view acquired momentum after the publication of de Soto's "dead capital" thesis in 2000.[288] de Soto posits that most of the poor in developing countries continue to practise subsistence smallholder agriculture and be poor because they have "informal" land rights based on custom or occupation and are isolated from the "formal" land law framework backed by the state, which does not recognise and enforce their land rights, and vice versa, as the poor do not follow the formal land law of the state that does not effectively address their economic and social needs.[289] Therefore, for de Soto, land is a "dead capital" that cannot readily be

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285 See, for example, World Bank and Deininger, 2003:48.

286 Rolfes, 2006:122-123; World Bank and Deininger, 2003:xvii-xlvi.

287 World Bank, 1975. See, also, Bruce, 2006b:47-48; Abdulai, 2009:3.

288 de Soto, 2000.

289 de Soto, 2000:161-162.

turned into capital, traded outside of narrow local circles, serve as collateral for loan, and be used as a share against investment.[290] de Soto thus recommends the enactment of land law reform involving the "discovery" and analysis of informal "social contracts" regulating most man-land relations in poor regions, followed by the designing of ways to connect, harmonise, and integrate those rules with the formal legal system; and argues that the benefit of such formal recognition and enforcement of informal land rights goes beyond the micro impacts on poor smallholders to the creation of capital for national development.[291] According to de Soto, a land law reform that so grants to poor smallholders formally recognised, registered, and enforced land rights would enhance their tenure security, increase the value of land, and create new opportunities for them by making land, once a "dead capital", alive, which would give them greater access to credit and legal protection for large-scale investment.[292]

Nonetheless, the postulates set forth in the World Bank's Land Reform Policy Paper and de Soto's "dead capital" thesis on how a land law reform may be used to bring about the authorisation of the collateralisation of land rights and the benefits that are thought would flow from it have been later refuted on at least the following three grounds.[293] First, they took for granted the adversity of the role of non-formal customary land tenure systems, and the possibility of their replacement by formally privatised, registered, and certified "freehold" through land law reform. However, law and development research and experience suggest that particularly in sub-Saharan Africa, the non-formal customary land tenure systems provide a platform for the collateralisation of land rights where the formal state ones are not available or amenable to such transaction, and offer a more accessible and affordable alternative even where they have been theoretically repealed, delegitimised, and replaced by the formal state ones. Numerous studies have found that credit transactions involving the use of land as collateral are carried out extensively through non-formal customary land tenure systems across sub-Saharan Africa both in countries such as Kenya and Uganda, where the policy of private ownership of land is enforced, and in countries like Ethiopia, where the policy of state ownership of land is enforced and the collateralisation of land rights is prohibited for smallholders, notwithstanding that neither the land rights provided by, nor the credit transactions conducted through the non-formal

290 de Soto, 2002:6.
291 de Soto, 2000:156-157, 166-167, and 171-173.
292 de Soto, 2002:6 and 39-46.
293 See, for instance, Deininger and Binswanger, 1999:248-249.

systems are recognised, exercised, and enforced under the formal systems backed by the state.[294]

Second, despite the lack of direct evidence to support it, the World Bank's Policy Paper and de Soto's "dead capital" thesis assumed that the authorisation of the collateralisation of land rights will make credit available for smallholders, motivate smallholders to take the credit using their landholdings as collateral, and guarantee smallholders will use the credit they take to advance, diversify, or switch their agricultural livelihoods. However, research and experience show that particularly in sub-Saharan Africa, the authorisation of the collateralisation of land rights through land law reform may not necessarily translate into the availability of credit and increased borrowing by smallholders. Even where the use of land rights as collateral for credit has been authorised, existing financial institutions, such as banks, are often reluctant to accept smallholder landholdings as collateral and provide smallholders with credit in sub-Saharan African countries, where land is owned by the state or subject to competing claims, banking tradition is yet to develop, the size and value of the landholding of smallholder is limited, smallholders can be unwilling or unable to repay the credit they might take, and the collateralised landholding may not be repossessed or taken over to satisfy the debt in the event of non-payment for cultural, political, or legal reasons. As Deininger and Binswanger noted, the authorisation of the collateralisation land rights alone "is unlikely to increase the banks' willingness to lend to the rural sector where, for cultural or economic reasons, land cannot be repossessed or where land sales and mortgages are restricted."[295] Moreover, even where the credit is available, smallholders may be reluctant to collateralise their landholdings to obtain and use the credit due the risk of foreclosure, as failure to repay the debt as per the terms of the contract can mean losing the collateralised landholding, which is the only source of livelihood for most smallholders.[296] In short, studies suggest that particularly in sub-Saharan Africa, the introduction of land law reform with land policies and laws that authorise the collateralisation of land rights may not necessarily translate into the collateralisation of land rights and the benefits that are thought would flow from it, unless it is accompanied by measures that make credit available, encourage smallholders to take the credit, and ensure that smallholders use the credit they take to advance, diversify, or switch their agricultural livelihoods. Those measures may include encouraging the involvement of individuals and private, cooperative, and state-owned rural land credit institutions that will take smallholder landholdings as

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294 See, for example, Peters, 2007:7; Crewett and Korf, 2008:216; Bledsoe, 2006:159; Migot-Adholla et al., 1991.

295 Deininger and Binswanger, 1999:260.

296 Bledsoe, 2006:155; Lemel, 1988.

collateral to provide credit in cash or in kind in the form of modern agricultural inputs, implements, and services; and accept repayment in cash or in kind in the form of agricultural products, labour, or taking over and using or leasing the collateralised landholding to satisfy the debt in the event of non-payment before restoring it to the defaulting smallholder. On the other hand, the conditions that smallholders are required to fulfil should only include proof that the credit to be obtained using one's landholding as collateral will be utilised to advance, diversify, or switch one's agricultural livelihood, commitment to repay the debt as per the terms of the contract, and demonstration of having a possible means of living comparable with the current for oneself and family dependants for the period during which the collateralised landholding may be taken over to satisfy the debt in the event of default.[297]

Third, although the World Bank's Policy Paper and de Soto's "dead capital" thesis recommend the policy of private ownership of land, the evidence to be drawn from the available research and experience on the issue concerning whether it is the policy of private or state land ownership that land law reform should introduce to bring about the authorisation of the collateralisation of land rights and the benefits that are thought would flow from it is not conclusive. Though it was conducted in a context that is quite different from Ethiopia, the evidence on which the argument for the policy of private land ownership is based is the oft-cited study that Feder et al carried out in Thailand.[298] The result of this study, which involved a series of surveys taken over several years, was published in a comprehensive manner in 1988.[299] The study analysed patterns of borrowing and non-borrowing from institutional sources (formal credit-providing financial institutions) and non-institutional (non-formal) sources by farmers with formally registered and titled privately-owned landholdings on the one hand, and, on the other, farmers with landholdings that had not been formally privatised, registered, and titled. The descriptive study found that credit benefits accrue to titled farmers, who obtained more medium and long-term loans from institutional lenders, got lower interest rates from non-institutional lenders, and were provided with higher amount of loan per unit of land. In view of the fact that credit and borrowing are affected by many factors related to title, the authors of the study also applied econometric multivariate or switching regression analysis to the descriptive data. Their overall conclusion was that credit benefits accrued to titled farmers more than untitled farmers not necessarily because they had privately-owned land, but because titled land was more advantageous when used as

297 See, for instance, Bruce, 2006b:56; World Bank and Deininger, 2003: xxvi; Bruce and Migot-Adholla, 1994.

298 Feder, Onchan, and Raparla, 1986; Feder, 1987; Chalamwong and Feder, 1988; Feder, Chalamwong, Onchan, and Hongladarom, 1988.

299 Feder, Chalamwong, Onchan, and Hongladarom, 1988.

collateral, as the rights over such land were recognised and registered by the state and hence considered more secure, clearly defined, and easily transferable, exercisable, and enforceable.[300]

In contrast, similar studies conducted in sub-Saharan African countries where the policy of private land ownership had been introduced found little evidence demonstrating that the privatisation, registration, and titling of land rights has made a significant difference as regards making credit available for smallholders, increasing the incidence of borrowing by smallholders collateralising their landholdings, and leading to the benefits thought would flow from the authorisation of collateralisation of land rights.[301] For example, in Kenya, it has been noted that many smallholders avoided applying for loans using their land as collateral because they were afraid of foreclosure.[302] By the same token, in Uganda, the majority of smallholders who participated in a 2001 national survey responded that they would not use their land as collateral to obtain credit because they are fearful of foreclosure.[303]

On the other hand, research and experience suggest that it is possible to use land law reform to bring about the authorisation of the collateralisation of land rights and the benefits thought would flow from it even in countries where the policy of state land ownership is enforced like Ethiopia. The upshot of this is that what matters most is not the enforcement of the policy of private or state land ownership, but the existence of land rights that are clearly defined, easily transferable, and formally enforceable, as well as the availability of credit for smallholders, the motivation of smallholders to take the credit by collateralising their landholdings, and the tendency of smallholders to use the credit they might take to advance, diversify, or switch their agricultural livelihoods.[304] For example, thanks largely to the measures taken to make credit available, encourage smallholders to take the credit, and ensure that smallholders use the credit they take to advance, diversify, or switch their agricultural livelihoods, both the authorisation of the collateralisation of land rights and the benefits thought would flow from it have been achieved in Israel, where most land is state-owned and leased to farmers for terms of 49 or 99 years.[305] Moreover, studies suggest that similar results have been achieved in China and Vietnam, where the policy of state land ownership is enforced. The effects of the adoption of individual land use rights under the household responsibility system in the early 1980s in China, and the enactment of the

300 Feder, Chalamwong, Onchan, and Hongladarom, 1988:49-67.
301 See, for example, Platteau, 2000:59-61.
302 Bledsoe, 2006:157.
303 Mackinnon and Reinikka, 2000:38.
304 See, for instance, World Bank and Deininger, 2003:53-54.
305 Lerman, 2001:95-100.

1998 Law on Land in Vietnam, which provided automatically renewable leases of 20 years for annual crops and 50 years for perennials and authorised the collateralisation of land rights is considered to have been similar with the introduction of the policy of private ownership of land in this regard.[306] However, in Ethiopia, the authorisation of the collateralisation of land rights has never been provided for smallholders under the land law reform programmes enacted by successive governments, particularly since the policy of state ownership of land was introduced by the Derg, which was later continued by the incumbent EPRDF. Nevertheless, the concept is not unknown as it has been provided for "investors" engaged in commercial agriculture under the post-Derg land law reform programme.[307]

Notwithstanding the lack of evidence and consensus associated with the issue under discussion, however, it is possible to infer the following three conclusions based on the evidence to be drawn from the available law and development research and experience. First, land law reform can be used to bring about the authorisation of the collateralisation of land rights despite the enforcement of the policy of private or state ownership of land. Second, a land law reform that brings about the authorisation of the collateralisation of land rights can help raise smallholder productivity and tackle poverty by enabling smallholders to obtain the means they need to acquire more land, undertake better land management and improvement practices, invest in modern agricultural inputs, implements, and services, diversify or switch their livelihoods, and get insurance for the loss of land or sustenance. Third, in order to improve its success, a land law reform intended to bring about the authorisation of the collateralisation of land rights and the benefits that flow from it should be accompanied by measures aimed at making credit available, encouraging smallholders to take the credit, and ensuring that smallholders use the credit they take to advance, diversify, or switch their agricultural livelihoods. Those measures may, for example, include encouraging the involvement of individuals and private, cooperative, and state-owned rural land credit institutions that will take smallholder landholdings as collateral to provide credit in cash or in kind in the form of modern agricultural inputs, implements, and services; and accept repayment in cash or in kind in the form of agricultural products, labour, or taking over and using or leasing the collateralised landholding to satisfy the debt in the event of non-payment before restoring it to the defaulting smallholder. On the other hand, the conditions that smallholders are required to fulfil should only include proof that the credit to be obtained using one's landholding as collateral will be utilised to advance, diversify, or switch one's agricultural livelihood,

306 Lin, 1992: 34-35; World Bank and Deininger, 2003:54-54.

307 FDRE Proclamation 2005b, Articles 8(4).

commitment to repay the debt as per the terms of the contract, and demonstration of having a possible means of living comparable with the current for oneself and family dependants for the period during which the collateralised landholding may be taken over to satisfy the debt in the event of default.

2. 2. 4. Other Factors Critical for Success

As mentioned earlier, though a necessary first step, the issuance of land policy and laws that improve provisions of productivity-raising smallholder land rights is not a sufficient condition to make land law reform effective. As FAO noted, "Good law is only one among a number of elements that need to be in place for meaningful change to occur".[308] Specifically, law and development analysts, practitioners, and funders unanimously acknowledge that land law reform must also establish land institutions that ensure implementation of provisions of the land policy and laws.[309] USAID has, for example, stressed the importance of implementation of provisions of land policies and laws to make a land law reform effective in helping raise smallholder productivity.[310] Similarly, IFAD has stated that key issues in the analysis of the effectiveness of land law reforms should include: "Are land policies and laws being implemented and enforced? What are the major challenges for implementation of land policies and laws?"[311] Yet, as the World Bank and Deininger cautioned, "policymakers need to be aware that land reform is not a magic solution, a number of factors may affect successful implementation."[312] Bruce has also observed that "Stipulating the desired situation in law is not enough. All of us who work in this area know of elegant laws that have had little impact, some for want of implementation and others in spite of serious implementation efforts".[313] In short, though considered an important second step, it is thought that implementation may not by itself guarantee success. This Section briefly outlines other factors law and development analysts, practitioners, and funders have identified as critical for success.

For instance, according to the World Bank, other preconditions for success include the presence of capital and credit mechanisms, possibility and efficacy of investments, potential for income increase, land valuation capacities, reasonable transaction costs, effective communication channels to reduce information asymmetry, a bar to rent seeking, adequate institutional framework, favourable public

308 FAO, 2002a:4.
309 See, for example, Rolfes, 2006:142.
310 USAID, 2004: ix.
311 IFAD, 2008:18-19.
312 World Bank and Deininger, 2003:151.
313 Bruce, 2006a:4.

perceptions, perpetuation of systems, fee, and revenue streams, and the inclusion of the poor.[314] On its part, AusAID has underscored the necessity of augmenting land law reforms with "irrigation systems, electrification of rural areas, roads and telecommunication systems, pricing policies and fiscal support for agricultural inputs, R&D and support for new technologies, access to credit and markets for agricultural produce."[315] Similarly, Hazell et al have emphasised that "Agricultural development requires a process of sustainable intensification in which farmers combine land, labour, technical skills and information, purchased inputs, and fixed and working capital to produce outputs for sale. If one element of the set is missing, then investments in all the others will be lost or significantly reduced."[316]

DFID goes even further and argues that "For land reform to have significant impact on poverty it must be part of a broader process of political, social and economic change, rather than a narrow intervention to redistribute land." DFID then explains that "The pace of land reform cannot reasonably run ahead of advances in other related functions, especially the provision of infrastructure (water, power and communications) and technical support services to small-scale farmers (credit, input supply, marketing, extension and adaptive research), [as well as] the capacity of governments to coordinate these functions in even-handed, transparent, and efficient manner. Greater democratisation is often closely linked to the reform of land rights."[317] Rolfes has also posited that improvements in the rule of law can bolster land law reform's effectiveness in bringing about the provision and implementation of productivity-raising smallholder land rights, and ultimately in helping raise smallholder productivity by enabling "recognition of property rights; effective conflict resolution systems; careful definition and limits on the state's power to take private land; and effective documentation of land rights." He has further argued that "Legal rules will not be effective if the legal system as a whole is not a reliable and effective instrument for acquiring and protecting rights. The rule of law can be defined as an approach to governance and the ordering of relationships between parties in which formal law (1) supplies the guiding rules for allocating resources, resolving conflicts, and rendering justice; and (2) is generally adhered to and can be relied upon by the population to produce predictable outcomes."[318]

Moreover, as discussed earlier, the factor widely considered the major cause of low smallholder

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314 World Bank and Deininger, 2003:151-152 and 155-156.
315 AusAID, 2000:44.
316 Hazell et al., 2007:23.
317 DFID, 2004:9.
318 Rolfes, 2006:112.

productivity in countries like Ethiopia is not only the land tenure system's structural problems, which is to be dealt with through land law reform. Technical problems of the smallholder sector's *modus operandi* related to lack of access to modern agricultural inputs, implements, and services is also considered as an equally important factor.[319] It follows that taking agrarian reform measures to address those technical problems is thus another critical factor necessary to make a land law reform effective.

Furthermore, Borras has, for example, noted that particularly in transitional and developing countries like Ethiopia, providing smallholders with such transitory and strategic public support as those directed towards building the capacity and raising the awareness of smallholders both before and after the introduction of land law reform is important to boost effectiveness.[320] Specifically, FAO has enumerated that it is crucial for land law reform to be accompanied by the provision to newly-inducted smallholders of funding, technical assistance, and infrastructure to transport inputs and outputs to and from the new plot to ensure higher productivity.[321] On its part, DFID has concluded that to make land law reform effective in helping raise smallholder productivity, attention should be paid to building the capacity of smallholders through expanding their knowledge about the newly introduced land policies, laws, and institutions and opportunities they offer as regards acquiring and safeguarding land rights.[322]

2. 3. Land Law Reform's Contribution in Tackling Poverty

There is evidence to be drawn from established law and development research and experience that land law reform can contribute towards tackling poverty in countries with smallholder-based economy in two ways. One way is by conferring upon the poor the control and enjoyment of land as an asset that constitutes the principal form of acquisition, accumulation, and transfer of wealth and the main source of social and political capital.[323] It is thought that this would increase the net wealth of the poor[324], bring them into the cash economy by providing capital that can be traded, serve as collateral for loan, and used as a share against investment[325], and socially and politically empower them, as landlessness has been, for example in a World Bank study conducted in India, identified as the greatest

319 See, for instance, IFPRI and Asenso-Okyere and Samson, 2012:5.
320 Borras, 2003:371. See, also, World Bank and Deininger, 2003:155-156.
321 FAO 2004:16.
322 DFID, 2004:18.
323 World Bank and Burns, 2007:1; Rolfes, 2006:107; USAID, 2004: A-45; DFID, 2004b:5-6; Dercon, 1999:4.
324 See, for example, Eastwood, Kirsten, and Lipton, 2004:2; World Bank and Deininger, 2003: xix–xx.
325 See, for instance, de Soto, 2002:6 and 39-46.

predictor of poverty as social and political exclusion, even more than scheduled castes or literacy.[326] The grand idea is that being entitled to control and enjoy land and the concomitant rights and benefits would ultimately translate into higher spending power and access to more and better food, shelter, health, and education, other basic services and infrastructure, increased life expectancy and living standards, and the fulfilment of other economic, social, and political needs, roles, and goals.[327] The other way, central to this thesis, is by helping raise smallholder productivity. This Section will examine in greater detail how land law reform contributes towards tackling poverty in the latter way.

Analysts estimate that growth in smallholder productivity achieved with the help of land law reform may be up to eleven times more effective in reducing poverty than growth in other economic sectors in countries with smallholder-based economy at early stage of development, particularly those in sub-Saharan Africa, due to several reasons.[328] First, smallholders constitute the majority of the population and the poor in sub-Saharan Africa, where smallholder agriculture provides livelihood for around 65% of the population and 70% of the poor.[329] Second, as Christiaensen, Demery, and Kuhl suggested, smallholders often have difficulty in benefiting from growth in other sectors due to the possession of low skills and education by smallholders and the failure of markets and institutions in rural areas, leading to the exclusion of smallholders.[330] Third, wealth generated from growth in other sectors is less likely to be redistributed to smallholders due to "urban bias" against agriculture and rural areas.[331]

Generally, the contribution land law reform can make towards tackling poverty in those countries by helping raise smallholder productivity is thought to be not only significant, but also direct. That is because growth in smallholder productivity can enable smallholders to attain food security, earn higher incomes, and increase their consumption. And the attainment of food security by smallholders would improve their nutrition and health, which would in turn promote their productivity.[332] Growth in smallholder productivity is also believed can lead to greater supply of food at lower prices, as smallholders mostly produce staple crops that are mainly consumed and traded locally and have

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326 World Bank, 1997: xiv and 12.

327 See, for example, de Janvry, et al., 2001:2 and 5; World Bank and Deininger, 2003: xix–xx and xxvi-xxvii.

328 See, for instance, Hårsmar, 2010:1.

329 World Bank, 2001; Quan, 2011:2.

330 Christiaensen, Demery, and Kuhl, 2010:15.

331 Tsegaye Moreda, 2012:15-17.

332 Barrett, 2011:43.

relatively lower elasticity of demand.[333] This is an important contribution towards tackling poverty for several reasons. First, it can enable the rural and urban poor, who spend most of their incomes on food, to access more and better food and have larger disposable incomes for expenditure on other basic necessities.[334] Second, it can enable poor labourers in other economic sectors to access more and better food, have larger disposable incomes, improve their nutrition and health, and enhance their productivity.[335] Third, it can boost the ability of the countries in question to meet growing demand for food, which is essential not only to achieve successful overall economic, social, and political development, but also to maintain the status quo.[336] Fourth, it can enable the countries to save the foreign exchange they spend to import food for investment on health, education, and other economic, social, and political provisions. As IFPRI and Asenso-Okyere and Samson noted, "Africa spends about $30 billion to $50 billion a year to import food. This deprives the continent of funds for needed expenditures on infrastructure and social and economic amenities. It is estimated that if continental food supplies do not increase, Africa will spend about $150 billion on food imports by 2030."[337] Fifth, it can enable the countries to reduce their reliance on imported food. The 2007-2008 global food price crises and the economic turmoil, social unrest, and political instability it triggered in some sub-Saharan African countries has demonstrated the volatility, unpredictability, and unreliability of international food markets, as well as the necessity of enhancing reliance on domestic production as a matter of national security of a first-order priority, particularly given the ever growing world population, increasing scarcity of land, water, and other resources, the challenges of climate change, and the expanding demand for food from emerging economies.[338] Barrett has succinctly captured the far-reaching contribution that greater supply of cheaper and better food achieved through growth in smallholder productivity can make towards tackling poverty as follows: "agricultural productivity growth facilitates escape from poverty [through] the impact of expanded supply on food prices, nutrient intake and human health. For most of human history, lives were short and unhealthy due to insufficient nutrient intake. Since the 18th century, countries escaped widespread hunger and premature death due to advances in food availability and associated income growth broadening access to satisfactory diet. The apparent reinforcing feedback between nutritional status and productivity has

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333 DFID, 2004a:11.
334 IFPRI and Asenso-Okyere and Samson, 2012:1.
335 Hårsmar, 2010:2.
336 Haggblade, Hazell, and Dorosh, 2008:144.
337 IFPRI and Asenso-Okyere and Samson, 2012:1.
338 Tsegaye Moreda, 2012:5.

led several scholars to hypothesize that escape from nutritional poverty trap helped to catalyze the unprecedentedly rapid and widespread advance of living standards over the past 300 years."[339]

Moreover, growth in smallholder productivity is generally thought can help increase the incomes of smallholders, as they can be able to sell more products in the market and save assets they would have spent to buy food, which would help them have larger disposable incomes that can in turn enable them to increase their consumption. For example, from a survey of rice-producing smallholders in Cambodia, Acharya and Sophal have reported that a 10% increase in yields had resulted in an 8.8% increase in household incomes in dry season cultivation.[340] de Janvry and Sadoulet have produced similar evidence from Latin America.[341] It should also be emphasised that as reported by DFID from a survey of smallholder rice farmers in Bangladesh, smallholder incomes generally continued to rise despite declining market prices resulting from major output expansion, as smallholders had already acquired the means to progressively reduce their costs of production by adopting new technologies and expanding irrigation, thereby effectively offsetting the impact of falling prices on their incomes.[342]

The significance of the contribution that growth in smallholder productivity can make in helping tackle poverty in countries with smallholder-based economy can be further explained by drawing comparison with the contribution that agricultural growth achieved through large-scale commercial farms can make. As de Schutter and DFID noted, greater supply of cheaper food is better achieved through growth in the productivity of smallholders, who mostly produce staple food crops that are mainly consumed and traded locally and have relatively lower elasticity of demand; than large-scale commercial farms, which mostly produce cash crops or bio-fuels destined for export.[343] Moreover, as Mellor and Hårsmar observed, besides being broad-based, the increase in income that growth in smallholder productivity would help achieve has stronger multiplier effects on growth in agriculture and other sectors of the local economy because smallholders are believed would spend about 80% of the increase in their incomes on local products and services.[344] In contrast, it is generally thought that a fraction of the wealth generated from agricultural growth achieved through large-scale commercial farms would trickle down to the local economy, as large-scale commercial farmers are mostly

339 Barrett, 2011:43
340 Acharya and Sophal, 2002:1-3.
341 de Janvry and Sadoulet,1996.
342 DFID, 2004a:10-11.
343 de Schutter, 2011:260 and 272; DFID, 2004a:11.
344 Hårsmar, 2010:2; Mellor, 1999.

absentee landlords and thus do not demand local products and services, often spend a far lower proportion of their incomes, and spend it largely on importing inputs and machinery.[345] Specifically, Li has shown that due to the way large-scale commercial agriculture combines capital, land, and labour, growth in this sector yields diminishing marginal return as regards employment opportunities and labour productivity.[346] In fact, studies conducted in countries like Bolivia and Brazil have found that agricultural growth achieved through large-scale commercial farms had benefitted only a few, did not significantly reduce poverty, and had even worsened rural-urban wealth disparity and cleavage.[347]

To conclude, the poverty alleviation that can be achieved through growth in smallholder productivity in countries like Ethiopia would be more meaningful than that can be possible through growth in large-scale commercial agriculture and the other economic sectors, or even under such ideal scenarios of boom as the discovery of huge oil or mining reserves. That is because since smallholder agriculture is the primary source of livelihood and the mainstay of the economy in those countries, growth in smallholder productivity would have a direct, broad-based impact, including greater supply of cheaper and better food and increase in incomes for smallholders, who constitute the majority of the population and the poor, reduction in staple food prices and hence growth in real and disposable incomes for both the rural and urban poor, who often spend the bulk of their incomes on food, and generation of powerful growth linkages to the rest of the economy. It would also be more orderly because, it is less susceptible to evils associated with other boom scenarios, such as inflation, corruption, inequality, exclusion, and vulnerability. Moreover, it would be more sustainable, not just in the environmental protection sense of the term. It would also equip the people with the bottom-up economic, social, and political empowerment necessary to sustain the poverty alleviation process.[348]

2. 4. Land Law Reform's Relationship to Legal Pluralism

As mentioned earlier, land law reform introduced in countries like Ethiopia operates to bring the change in the provision and implementation of smallholder land rights it needs to bring to deliver the smallholder productivity and poverty outcomes it is thought would help achieve not only through formal state land policies, laws, and institutions established under the current and previous land law

345 de Schutter, 2011:262; Hårsmar, 2010:2; de Janvry and Sadoulet, 1993.

346 Li, 2011:285.

347 Tsegaye Moreda, 2012:13.

348 Mellor and Dorosh, 2010:1-7; Diao, Headey, and Johnson, 2008; Bezemer and Heady, 2008; Diao and Pratt, 2007; Thirtle, Lin, and, Piesse, 2003; Dorosh and Haggblade, 2003; Mellor and Gavian, 1999; Mellor and Desai, 1985.

reforms, but in the context of a land tenure system characterised by legal pluralism, which also comprises non-formal customary ones. It is thus imperative to examine land law reform's relationship to legal pluralism in the light of evidence drawn from established law and development research and experience about the role it plays in helping raise smallholder productivity and tackle poverty in such countries. This Section briefly explores the definition and the origin of legal pluralism in general, and in the context of the challenges of land law reform, smallholder productivity, and poverty in particular.

2. 4. 1. Defining the Concept of "Legal Pluralism"

The term "legal pluralism" first began to be used in legal anthropology in the 1970s in the study of law in colonial and post-colonial contexts to refer to the incorporation or recognition of customary norms and institutions under state laws and institutions, or to the independent coexistence of the pre-existing indigenous customary norms and institutions alongside the laws and institutions subsequently introduced by the state.[349] It is probably in consideration of this fact that there is a widespread perception that tends to associate legal pluralism with sub-Saharan Africa. However, although, as Adelman noted, "African societies are amongst the most pluralist in the world, comprising as they do a diversity of tribal, ethnic, cultural and religious groups, different traditions, and people divided along urban and rural lines"[350], legal pluralism is peculiar neither to sub-Saharan Africa, nor to land tenure systems governing land relations in the countries in the region - colonial, post-colonial, or otherwise.

In fact, as Tamanaha succinctly put it, "Legal pluralism is everywhere. There is, in every social arena one examines, a seeming multiplicity of legal orders, from the lowest local level to the most expansive global level."[351] Similarly, Griffiths has argued that "'Law' is present in every 'semi-autonomous social field', and since every society contains many such fields, legal pluralism is a feature of social organisation in which law and legal institutions are not all subsumable within one 'system' but have their sources in the self-regulatory activities of all the multifarious social fields present, which may support, complement, ignore or frustrate one another." Griffiths concluded that legal pluralism is "a concomitant of social pluralism; the legal organisation of society is congruent with its social organisation".[352] And according to Connolly, "No state in the world contains an entirely homogeneous

349 Benda-Beckmann, 2002:37 and 52.
350 Adelman, 1998:73.
351 Tamanaha, 2008:375.
352 Griffiths, 1986:38-39.

population subscribing to a precisely defined set of norms. In many states, often entire communities hold norms quite distinct from those of the remainder of the population, and in many cases those groups have developed mechanisms to manage disputes arising out of those norms."[353] As Spector observed, legal pluralism assumes "there is a plurality of conflicting and incommensurable universal values".[354] In short, as Benda-Beckmann noted, the term "legal pluralism" is employed to refer to "the possibility of more than one legal order or mechanism within one socio-political space, based on different sources of ultimate validity and maintained by forms of organisation other than the state."[355]

At this juncture, a note on the problems associated with the concept of legal pluralism is in order. Since its inception, the notion of legal pluralism has been plagued by a fundamental conceptual problem and heated disagreement owing to the lack of definition of "law" and the resultant difficulty of distinguishing state from non-state normative orders so as to establish the concept of legal pluralism. The purpose here is not to attempt to construct a definition of "law", or to draw a line that enables to make a distinction between state and non-state normative orders. The idea is to avoid the risk that Tamanaha has warned against, stating that "Scholars who invoke legal pluralism without an awareness of this conceptual problem and its implications will risk building upon an incoherent and unstable foundation."[356] After all, the question "What is law?" has never been answered in legal philosophy, and, consequently, as Woodman stressed, despite decades of hard work, legal pluralists have been unable to identify a clear line separating the state and the non-state normative orders.[357]

Two approaches have been used in attempts to define law for the purpose under discussion, although each approach has both adherents and critics. The first approach, found in the works of Weber, Hoebel, and Hart, defines law in terms of public institutionalised enforcement of norms. Despite the fact that this approach, which views law as tied directly to political organisation, is not explicitly tied to state law, as this political organisation need not necessarily have the character of a state, it was derived from the core elements of the state law model.[358] There are two problems with the approach. First, many institutions enforce norms, and there is no uncontroversial way to distinguish those that are "public" from those that are not, which entails the risk of subsuming all forms of institutionalised

353 Connolly, 2005:2.
354 Spector, 2009:355.
355 Benda-Beckmann, 2002:37.
356 Tamanaha, 2008:376.
357 Woodman, 1998:45.
358 Benda-Beckmann, 2002:53.

norm enforcement under the term "law". Second, although all societies have law, some lack institutionalised norm enforcement, which, as per this approach, would lead to the conclusion that such societies do not have law, just like Hart's assertion about what he called "primitive societies".[359]

The second approach was developed by Malinowski building on Durkheim's conception of law as a social phenomenon that reflects all the essential varieties of social solidarity, and Mauss' idea of the possible existence of many legal systems interacting with each other. According to this approach, which defines law in terms of the maintenance of normative order within a social group, since every social group has normative regulation, every social group has "law", regardless of the presence or absence of state institutions. For Malinowski, "law" is not to be found in "central authority, codes, courts, and constables", but in social relations.[360] Moore, who criticised this approach stating that "the conception of law that Malinowski propounded was so broad that it was virtually indistinguishable from the study of the obligatory aspect of all social relationships", instead put forward the notion of the "semi-autonomous social field (SASF)", although she declined to apply the label "law" to her own concept.[361] Griffiths, who adopted Moore's concept of the SASF - social fields with capacity to produce and enforce rules, applied the label "law" to same, which Moore herself had declined to do, and described it as the best way to identify and delimit law for the purposes of legal pluralism in his 1986 seminal article entitled "What is Legal Pluralism?"[362] To set the scene for his analysis of the issue of legal pluralism vs. legal monism and state vs. non-state normative orders, Griffiths began by restating the gist of the argument of those in favour of "legal centralism" or "legal monism", the antonym of "legal pluralism", as being a view that "law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions."[363] Yet, Griffiths, who called the norms of the SASF "law" despite Moore's demurral, arrived at the same problematic conclusion owing to which she objected to Malinowski's conception of law - failing to make a distinction between different normative orders or forms of social regulation. As a result, Griffiths came under criticism from numerous corners, including Moore herself. For instance, Merry, a critic of Griffiths who stressed that "calling all forms of ordering that are not state law by the term law confounds the analysis", posed the question "Where do we stop speaking of law and find ourselves

359 Hart, 1961:89-91.
360 Malinowski, 1926:14.
361 Moore, 1978:220.
362 Griffiths, 1986:38.
363 Griffiths, 1986:3.

simply describing social life?"[364] Finally, Griffiths made a dramatic U-turn in his 2005 article entitled "The Idea of Sociology of Law and its Relation to Law and to Sociology", conceded it is impossible to conceptualise law for social scientific purposes, and agreed with his critics that what he previously identified as "legal pluralism" is better conceptualised as "normative pluralism". In his own words, Griffiths stated that "In the intervening years, further reflection on the concept of law has led me to the conclusion that the word 'law' can better be abandoned altogether for purposes of theory formation in sociology of law. It also follows from the above considerations that the expression 'legal pluralism' can and should be reconceptualised as 'normative pluralism' or 'pluralism in social control'."[365]

However, despite its conceptual problems, the notion of legal pluralism continues to spread and gain popularity across a wide range of academic disciplines. Moreover, after the first Law and Development Movement of the early 1960s, which sought to transplant templates of Western-styled legal systems, and the second of the late 1970s, which focused on institution building and rule of law promotion, to spur development in developing countries[366] ended having been discredited for conceiving law ethnocentrically as Western law and yielded "little law and less development"[367], the notion of legal pluralism and the role of non-state normative orders have received increasing attention during the third and the current one, which began in the 1990s and is described as the period of "new developmentalism".[368] Furthermore, with the emergence of globalisation, decentralisation, and community empowerment as top international development agenda, the role of legal pluralism and non-state normative orders have increasingly become the focus of the law and development literature.

Yet, both legal pluralism and non-state normative orders have always been a fact of life almost everywhere. Therefore, what gave rise to the notion of legal pluralism and the seemingly irrevocable conceptual problems associated with it is the way those at the helm of state power characterise different normative orders. As Tamanaha succinctly described it, "State law is currently the paradigm example of law".[369] Conversely, the non-state normative orders are excluded from being considered as law because those in state power do not want them to be considered so. After all, despite often being enacted and enforced in a different way, state law mostly derives its material contents from non-state

364 Merry, 1988:878.
365 Griffiths, 2005:63-64.
366 Messick, 1999:125-126.
367 Brietzke, 2001:1.
368 Sherman, 2009:1261.
369 Tamanaha, 2008:396.

normative orders, although (state) law being the will of the sovereign, it gets its binding force from the endorsement and enforcement capacity of those in state power. However, despite being theoretically repealed by the state either explicitly or tacitly with the coming into effect of state law, practically the pre-existing non-state normative orders would often continue to exist, operate, and be used by society, as centuries of legal tradition could not be erased or wished away as instantly as the enactment of state law. Moreover, as Brietzke observed, "Traditional law is best understood as a residual category of social control, as 'a class of rules too practical to be backed up by religious sanctions, too burdensome to be left to mere goodwill, too personally vital to individuals to be enforced by any abstract agency'. Law leaves older social controls - religion, custom, habit and rules of practical prudence and art - intact where intervention would be hazardous to the power of political authorities. Many differences in legal systems can thus be explained by the degree of centralised political authority."[370]

In short, the issue of legal pluralism vs. legal monism and state vs. non-state normative orders boils down to the issue of state power. As McAuslan put it, "the issue of pluralism v. monism is and always has been an issue of power; a question of who has political power, and over whom that political power is exercised".[371] Thus, what the attention legal pluralism and non-state normative orders have received recently reflects is not their discovery, but the change in the way those in power characterise and use different normative orders that already exist and operate in society. Other than that there is no ground whereby state law may be considered as "law", whilst other normative orders are not. After all, no working definition of the term "law" that would enable to identify what constitutes "state law" itself and distinguish it from other normative orders has been formulated. Moreover, notwithstanding that state law is the current paradigm example of law, as Tamanaha observed, "at various times and places, including today, people have considered as law: international law; customary law; religious law; the *lex mercatoria*; the *ius commune*; natural law and more. These various manifestations of law do not all share the same basic characteristics - beyond the claim to represent legitimate normative authority - which means they cannot be reduced to a single set of elements for social scientific purposes."[372]

And in a world where non-state actors exercise normative power as significant as the state, it would not be necessary, if at all tenable, to construct a clear distinction between state and non-state normative orders. As Berman remarked, "Law operates based on a fiction that nation-states exist in territorially

370 Brietzke, 1974:155.
371 McAuslan, 2009:1.
372 Tamanaha, 2008:396.

distinct spheres and activities fall under the jurisdiction of one regime: a state could exercise complete authority within its territorial borders and no authority beyond it. In a world where non-state actors exert significant normative pull, can we build a sufficiently capacious understanding of the very idea of jurisdiction to address the incredible array of overlapping authorities that are our daily reality? Thus, a simple model that looks to territorial delineations is now untenable (if it was ever useful)."[373]

To conclude, as Tamanaha noted, it is possible to avoid the conceptual problems and conduct analysis of legal pluralism "by accepting as 'legal' whatever was identified as legal by the social actors", and understanding that "Legal pluralism exists whenever social actors identify more than one source of 'law' within a social arena."[374] Thus, the term "legal pluralism" will be broadly used here to refer to the largely independent existence of formal land policies, laws, and institutions the state establishes through land law reform, alongside the pre-existing non-formal customary land policies, laws, and institutions, whether or not consistent with, or recognised under formal state ones, in the land tenure system governing the provision and implementation of smallholder land rights in developing countries such as those in sub-Saharan Africa. After all, since "land rights" are "property rights" concerning relations amongst people pertaining to rights and duties recognised by society involving issues of control, use, and transfer land[375], non-formal customary land tenure systems recognised as "legal" by society in sub-Saharan African countries should be accepted as "legal", at least as much as formal state ones recognised as "legal" by the state in those countries, or by society in the "developed world" are accepted as such. As Lund succinctly put it, "Property can be seen as a social convention that defines the relationship between people *vis-à-vis* things backed up by the sanctions and administrative structures of society. Thus, while African tenure forms may seem obscure and irrational from a distance, [they] make sense to those for whom they matter: the immediate stakeholders."[376]

2. 4. 2. The Origin of Legal Pluralism

As mentioned earlier, the origin of legal pluralism in the land tenure system governing the provision and implementation of smallholder land rights in sub-Saharan African countries such as Ethiopia is attributable to land law reform.[377] The modern state in most of sub-Saharan Africa was formed as a

373 Berman, 2012:4-5.
374 Tamanaha, 2008:396.
375 See, for instance, Singer, 1996:71; Munzer, 1990:16; Lastarria-Cornhiel, 1997:1317.
376 Lund, 2000:17-18.
377 See, for example, McAuslan, 2009:9; Cotula, Toulmin, and Hesse, 2004:2.

result of European colonisation, whilst the modern state of Ethiopia, which has never been fully colonised, was formed during the reign of Menelik II parallel to the colonial scramble for Africa at the end of the 19th century.[378] In most of sub-Saharan Africa, including Ethiopia, before the modern state was formed and started to enact land law reform, the land tenure system governing the provision and implementation of smallholder land rights comprised only the indigenous African traditional land policies, laws, and institutions. As van Asperen observed in relation to sub-Sahara African countries that had experienced direct colonial rule, "In general, before colonisation, the legal system, including land law, was based on customary, unwritten, law."[379] Similarly, in Ethiopia, the legal system, including the land tenure system, consisted of indigenous customary laws although they themselves were the product of a long process of "legal stratification" involving the experiences, norms, and practices of various cultural groups and the principles of Christianity, Islam, Judaism, and other local religions.[380] Yet, in both cases, even after the state started to enact land law reform and thereby introduce new formal land policies, laws, and institutions to the land tenure system, the pre-existing indigenous ones, which have since come to be known as "non-formal customary land tenure arrangements", have continued to exist, operate, and be used by society alongside the formal ones introduced by the state, which have since come to be referred to as "formal state land tenure arrangements", thereby giving rise to the phenomenon known as "legal pluralism".[381] As Cotula noted, despite the existence and operation of formal land policies, laws, and institutions the state has introduced to the land tenure system through land law reform, in most of sub-Saharan Africa, "local resource users tend to continue to gain access to natural resources through local systems of property rights, particularly with regard to land and surface resources. These local tenure systems are based on (usually unwritten) rules founding their legitimacy on 'tradition', as shaped both by practices over time and by systems of belief. Because of this, they are usually described as 'customary'".[382]

Therefore, it is due to land law reform that the legal pluralism in the land tenure system governing the provision and implementation of smallholder land rights in sub-Saharan African countries, including Ethiopia, came into being. In most sub-Saharan African countries that had experienced direct colonial rule, the legal pluralism is a legacy of European colonisation, as colonial rulers imported and

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378 Aberra, 1998:5; Assefa Fiseha, 2006:16.

379 van Asperen, 2007:1.

380 See, for instance, Connolly, 2005:7; Brietzke, 1975:46.

381 See, for example, Cotula, Toulmin, and Hesse, 2004:2.

382 Cotula, 2009:158.

transplanted their own countries' formal land policies, laws, and institutions on top of the pre-existing indigenous African customary land tenure arrangements. As McAuslan conveniently summarised it, despite much variation, the colonial legal order tended to build on the legal system of the colonial power. For instance, in much of Anglophone Africa, the "reception clause" adopted by colonial legislators provided for the application of the legislation, common law, and doctrines of equity in force in England at a specified date. Similarly, in much of Francophone Africa, the basic principles, laws, and institutions in force in France were put in place.[383] But in the case of Ethiopia, the legal pluralism is the result of the land law reform that the country's own native rulers introduced, particularly since Menelik II enacted the first land law reform programme of the modern state of Ethiopian in 1908.[384]

However, legal pluralism emerged as a prominent feature of the land tenure system in most of sub-Saharan Africa, including Ethiopia, due to two similar reasons. One reason is because in most sub-Saharan African countries that had experienced direct colonial rule, non-formal customary land tenure systems were simply ignored or tolerated to govern land relations amongst locals particularly in rural areas, though in different degrees and often subject to "repugnancy clauses" that subjected their operation to consistency with their formal counterparts, the broader public order, and other colonial standards. As van Asperen noted, "Colonisation introduced state law, based on law of the colonial powers, which concerns the entire country. Concerning property, statutory land law was often only applicable in urban areas and rural areas with high agricultural potential. In the remaining areas customary land law was still applicable. Geographically speaking, land is legally subdivided into state land and customary land."[385] In Ethiopia's case, particularly during the decades after the 1908 land law reform, as Connolly emphasised, "Until the 1950s, the law in Ethiopia was an amalgamation of codes, legislation, and a variety of customary rules. [T]he central government did nothing to prevent the traditional systems of law from operating [as] an interference with that operation can have meant a complete disruption of the institution most closely valued by members of traditional society."[386]

The other reason is because non-formal customary land tenure arrangements have continued to exist, operate, and be used by society notwithstanding attempts the state has made to replace them with formal state land policies, laws, and institutions through land law reform, and despite not being

383 McAuslan, 2000:76-77.
384 Scholler, 2006:9 and 2008:100; Aberra, 1998:98-100; Selamu and Vanderlinden, 1967:411-415.
385 van Asperen, 2007:1.
386 Connolly, 2005:7.

consistent with, or recognised under the formal state ones. In other words, the non-formal customary land tenure arrangements continued to exist and operate because of the formal state arrangements' lack of "legal penetration", or failure to take hold in terms of both the number of actors and spheres of action influenced. As Cotula, Toulmin, and Hesse noted, "For long, the policy response to this situation [of legal pluralism] has been an attempt to eradicate customary systems and replace them with a 'modern' system of land tenure."[387] And as Crewett, Ayalneh, and Korf briefly summarised it, "Scholars writing on African land tenure systems have often emphasised this struggle between customary forms of tenure and 'modern' legal forms of individual private property imposed by the state and have argued that a top down interference into customary institutions have largely failed."[388]

In any case, despite the existence of formal land tenure arrangements that the state has introduced through land law reform, as Menski stressed, non-formal customary arrangements have continued to operate de facto in much of rural Africa.[389] Cotula has also argued that "On the ground, local resource users tend to continue to apply local tenure systems based on usually unwritten rules and founding their legitimacy on 'tradition'."[390] Specifically in Ethiopia, Brietzke has observed that "traditional tenures remained largely unaffected by the laws enacted, with great fanfare, from 1944 to 1974."[391]

Numerous factors are considered responsible for the failure of formal state land tenure arrangements to take hold in most of sub-Saharan Africa, which can be broadly subsumed into two: those that are imputable to the state itself, and those that are to do with society, particularly smallholders themselves. For example, de Soto has highlighted that most of the poor in developing countries continue to practise subsistence smallholder agriculture and be poor because they have "informal" land rights based on custom and are isolated from the "formal" land law of the state, which does not recognise and enforce their land rights, and vice versa, as the poor do not follow the formal land law that does not address their economic and social needs.[392] Moreover, as Cotula observed, "In much of rural Africa, lack of financial resources and of institutional capacity in government agencies, lack of legal awareness, socio-political deals between government and customary chiefs and, often, lack of perceived legitimacy of official rules and institutions all contribute to limit the outreach of state

387 Cotula, Toulmin, and Hesse, 2004:2.
388 Crewett, Ayalneh, and Korf, 2008:5.
389 Menski, 2000:402-408.
390 Cotula, 2009:50.
391 Brietzke, 1976:645.
392 de Soto, 2000:161-162.

legislation."[393] And as Brietzke noted, in Ethiopia's case, "Government investments in land reform, in terms of monetary and legal resources, were minimal, and legal manoeuvres, far from promoting rural change, seemed to solidify peasant suspicions of the Government's intentions. As a result, rural people continued to rely on traditional land laws."[394] Furthermore, since as Friedman concisely put it, "legal penetration is fostered by participation", where the process of formulation and implementation of land law reform does not take into account the values and needs of smallholders, or if formal channels of participation in the process are unavailable or ineffective, participation would take the form of resisting, subverting, or ignoring the newly introduced formal land policies, laws, and institutions.[395]

2. 5. The Implications of Legal Pluralism

As mentioned in the preceding sub-section, due to the legal pluralism land law reform has brought about, the land tenure system governing the provision and implementation of smallholder land rights in most sub-Saharan African countries such as Ethiopia consists in not only formal state land policies, laws, and institutions, but also non-formal customary ones.[396] It is therefore imperative to examine the implication this legal pluralism might have to the provision and implementation of productivity-raising smallholder land rights and thus the conditions of smallholder productivity and poverty in such countries. This Section briefly explores the implication the legal pluralism might have in that regard.

To begin with, as discussed in the preceding Section, tenure security is about not only the assurance, but also the confidence or expectation of the smallholders themselves that they will not be arbitrarily deprived of the control and enjoyment their land rights and the concomitant benefits. As such, tenure security has both objective and subjective elements. The objective element, which is otherwise called "de jure tenure security", pertains to the assurance the state provides through the land tenure system's formal land policies, laws, and institutions that it introduces using land law reform.[397] In contrast, the subjective element, which is otherwise known as "de facto tenure security", relates to the confidence or expectation of smallholders to do with the smallholders' own perception of their tenure security.[398]

The distinction between the objective, de jure tenure security that the state provides through the land

393 Cotula, 2009:50.
394 Brietzke, 1976:645.
395 Friedman, 1969:29.
396 Cotula, Toulmin, and Hesse, 2004:2.
397 van Asperen, 2007:3.
398 Crewett and Korf, 2008:211.

tenure system's formal land policies, laws, and institutions, and the subjective, de facto tenure security that the pre-existing non-formal customary land tenure arrangements provide is particularly important for the purposes of this thesis for the following two reasons. First, the distinction would enable to better understand the implication that the legal pluralism in the land tenure system might have to the provision and implementation of the bundles of productivity-raising smallholder land rights to do with the enhancement of tenure security, as the objective element corresponds to the de jure tenure security that the formal state land policies, laws, and institutions provide, whilst the subjective element is associated with the de facto tenure security that the non-formal customary arrangements provide. Second, the subjective, de facto tenure security that the non-formal customary arrangements provide is more important for smallholders in most sub-Saharan African countries such as Ethiopia because the objective, de jure tenure security the formal state land policies, laws, and institutions provide is largely irrelevant. As the influence of the state and the formal land tenure system it introduces through land law reform is mostly limited in rural areas, most smallholders are unaware of the formal state land policies, laws, and institutions, or the objective, de jure tenure security they provide due to the lack of education, access, and often interest. The involvement of the state through land law reform in the land relations of those countries usually meant eviction or the disruption of the pre-existing non-formal customary arrangements without putting in place a viable formal alternative. Generally, non-formal customary systems are often more accessible and affordable, provide service in the absence of the formal state ones, and their non-state nature engenders trust in society, particularly where the state is seen as a remote or suspicious establishment as is the case in most of the rural sub-Saharan Africa.[399]

In short, since non-formal customary land tenure systems are not only operational in most countries, but are also more important in governing land relations than the formal state ones put in place through land law reform, it is imperative for any discussion of land law reform in sub-Saharan Africa to account for the implication of legal pluralism.[400] The issue of tenure security is no exception. Analysts note that in sub-Saharan Africa, non-formal customary systems provide stronger tenure security to smallholders than the formal ones.[401] Even the World Bank, which prescribed the replacement of non-formal customary systems by formal private land ownership policy in its 1975 Land Reform Policy Paper, has since changed its view. As Deininger and Binswanger noted, "the 1975 World Bank land

399 See, for example, Penal Reform International, 2000:113 and 124-126; Brietzke, 1976:645.

400 See, for instance, van Asperen, 2007:1; Cotula, Toulmin, and Hesse, 2004:2.

401 See, for example, Bruce and Migot-Adholla, 1994.

reform policy recommended communal tenure systems be abandoned in favor of freehold titles. Today it is recognized that some communal tenure arrangements can increase tenure security and provide a (limited) basis for land transactions in ways that are more cost-effective than freehold titles."[402]

As for the role non-formal customary land tenure systems play in facilitating the transfer of rights over land, a recent market study involving titled and untitled land in Uganda has indicated that markets in untitled land were more vibrant despite the absence of formal registration and recognition. The main reasons for lack of dynamism in the titled land market were the expensiveness of transaction charges paid to the state in administrative fees and the complicatedness of the registration procedure, as well as the lack of accessibility, transparency, and corruption of registration officials.[403] Similarly, in Ethiopia, despite formal restrictions and prohibitions, thanks to non-formal land tenure systems, smallholders freely engaged in land transactions, including selling, leasing, donating, and bequeathing.[404]

By the same token, the role that non-formal customary land tenure systems play as regards the collateralisation of land rights in sub-Saharan Africa in general, and in Ethiopia in particular must not be overlooked. Studies show that credit transactions involving the use of land as collateral are conducted extensively through the non-formal systems throughout Africa.[405] This is despite the fact that neither the land rights provided by the non-formal systems, nor the credit transactions carried out through them are recognised, exercised, and enforced under the formal systems backed by the state.[406] Similarly, in Ethiopia, although the collateralisation of land rights for smallholders has long been formally prohibited and remains illegal, there has always been a vibrant credit market provided by the non-formal systems, in which smallholders freely use their land rights as collateral to obtain credit.[407]

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402 Deininger and Binswanger, 1999:248.

403 Mwebaza and Gaynor, 2002:12-17.

404 Interviews with land administration experts at the Agricultural Investment Support Directorate of the MoA and the Bureaus of the SNNPRS, Oromia, and Tigray regions, discussions with smallholders, and personal observation. These findings are consistent with the findings of other studies conducted on the issue (Crewett and Korf, 2008:216; Hailegabriel, 2004; Deininger et al., 2003; Berhanu, Berhanu, and Seyoum, 2003; EEA/EEPRI, 2002.

405 Bledsoe, 2006:159; Migot-Adholla et al., 1991.

406 Peters, 2007:7; Connolly, 2005:6-8; World Bank and Deininger, 2003:35 and 57.

407 Interviews with land administration experts at the Agricultural Investment Support Directorate of the MoA and the Bureaus of the SNNPRS, Oromia, and Tigray regions, discussions with smallholders, and personal observation. These findings are consistent with the findings of other studies conducted on the issue (Crewett and Korf, 2008:216; Hailegabriel, 2004; Deininger et al., 2003; Berhanu, Berhanu, and Seyoum, 2003; EEA/EEPRI, 2002.

Chapter 3

The Political Economy of Land Law Reform, Smallholder Productivity, Poverty, and Legal Pluralism in Ethiopia

Chapter 2 has briefly reviewed the relevant law and development research and experience and explained both from theoretical and practical perspectives in general why land law reform can help raise smallholder productivity and thereby tackle poverty in countries in roughly comparable position with Ethiopia if it is designed to change the land policies, laws, and institutions of the land tenure system in a way that improves the provision and implementation of bundles of productivity-raising smallholder land rights. It has also outlined the definition and origin of legal pluralism, and demonstrated why, how, and to what extent legal pluralism in the land tenure system that involves both formal state and non-formal customary land policies, laws, and institutions affects the change land law reform brings to the provision and implementation of smallholder land rights and thus the conditions of smallholder productivity and poverty in such countries. This Chapter discusses the political economy of land law reform, smallholder productivity, poverty, and legal pluralism in Ethiopia in particular.

3. 1. General Background and Context

In order to fully grasp the land law reform, smallholder productivity, poverty, and legal pluralism experience of Ethiopia, it is essential to understand the general background and context of this experience. It is particularly imperative to understand the salient geographical, demographical, topographical, and historical features of the country, as well as the economic, social, and political settings, ideological, policy, and constitutional frameworks, national development conditions, needs, and priorities, and influential internal and external contexts that potentially help explain the critical importance of land and smallholder agriculture both as source of poverty and development potential, influence the formulation and implementation of land law reform, dictate the origin and implication of legal pluralism, and determine the concomitant fate of smallholder productivity and poverty in the past, present, and future. This Section will briefly outline the general background and context in question.

Ethiopia is an independent nation located in northeast Africa, in the region otherwise known as “the

Horn of Africa". The country had been a unitary state since the formation of the modern Ethiopian state at the end of the 19th century[408], until it was restructured as a federal state under the rule of the incumbent EPRDF, which has been in power since May 1991. As of this period, during which Eritrea was allowed to secede and Ethiopia made to surrender its Red Sea coastline and be landlocked, the country has a land area of around 1.1 million square kilometres. It is situated between 3 and 15 degrees north latitude and 33 and 48 degrees east longitude. Since South Sudan became an independent state, Ethiopia is bordered by Eritrea to the north, Djibouti to the east, Somalia to the southeast, Kenya to the south, South Sudan to the southwest, and Sudan to the west.[409]

Ethiopia's capital is Addis Ababa.[410] Nationally, Addis Ababa is the seat of government, the largest city, and the principal political, commercial, educational, and cultural centre. Internationally, it is host to foreign diplomatic missions and bilateral and multilateral organisations, including the headquarters of the AU (African Union) and the UNECA (United Nations Economic Commission for Africa).[411]

Demographically, Ethiopia is characterised by a large religious, ethnic, and cultural diversity; as well as a big, rapidly growing population. Around 50% of Ethiopians are Orthodox Christians, whilst about 18% are Protestants and Catholics. Islam is the second largest religion. Various estimates put the Muslim community between one-quarter to one-third of the population. Ethiopia also has a sizable Jewish community, although many have made aliyah to Israel in recent years. The country is also known to be the origin of Rastafarianism and other smaller indigenous, localised religions, which together account for the religious makeup of the rest of the population.[412] Ethiopia is home to over 80 ethnic groups, with population sizes ranging from more than 26 million to fewer than 100.[413] The people of the country together speak over 80 different languages, including 12 Semitic, 22 Cushitic, 18 Omotic, and 18 Nilo-Saharan languages.[414] The current population of Ethiopia is estimated at more than 90 million, the second largest in Africa next to Nigeria.[415] Ethiopia's population is estimated to

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408 Aberra, 1998:5; Assefa Fiseha, 2006:15.
409 CSA, 2009:15-16.
410 FDRE Constitution: Article 49(1).
411 CSA and ICF International, 2012:1.
412 CSA, 2009.
413 CSA, 2010b.
414 MOI, 2004.
415 CSA, 2008; CIA World Factbook, U.S. Department of State, and Area Handbook of the Library of Congress, 2008.

grow at the rate of close to 3% per annum, one of the fastest growing in the world.[416] Close to 85% of the country's population lives in rural areas, where the rate of population growth is higher.[417]

Topographically, the terrain of Ethiopia, which is described as "a land of contrasts", consists of the central plateau and the surrounding lowland plains that produce three distinct climatic and agro-ecological zones: tropical in the south and southwest, cold to temperate in the highlands, and arid to semi-arid in the north-eastern and south-eastern lowlands.[418] Ethiopia's topography is dominated by the central plateau composed of a chain of mountains formed by volcanic activity, where almost 90% of the population lives.[419] Although it lies within the tropics, the mountainous topography means that many parts of the country have moderate tropical climate. The highlands provide fertile soil and fairly adequate rainfall as compared to other countries close to the Sahara.[420] They are also the source of numerous rivers, lakes, and streams. The country has twelve river basins, eleven fresh, nine saline, and four crater lakes, more than twelve major swamps and wetlands, and enormous underground water.[421]

Economically, as in many other developing countries, smallholder-based agriculture has historically been the primary source of livelihood and the mainstay of the economy in Ethiopia. Smallholder agriculture contributes close to 95% of Ethiopia's aggregate output in agriculture (Appendix 3, Table 3[422]), which generates about 88% of the country's export earnings, supplies more than 73% of raw materials for the predominantly agro-based domestic manufacturing and service industries, and accounts for around 50% of GDP.[423] The smallholder agriculture practised in Ethiopia is land-centred even by the standards of developing countries, as smallholders mostly rely on the utilisation of land to practise labour-intensive, rain-fed, low-input mixed farming focused predominantly on crop production.[424] As discussed earlier, the country's smallholder productivity is generally low due to structural problems of the land tenure system pertaining to the land policies, laws, and institutions that constrain the provision and implementation of productivity-raising smallholder land rights, and technical problems of the smallholder sector's *modus operandi* related to the lack of access to modern

416 CSA, 2010b; USAID, 2011b:1; World Bank, 2007a.
417 CSA, UNDP, and Statistics Finland, 2012:2.
418 Chamberlin, Pender, and Yu, 2006:11-12.
419 Devereux, 2000:10.
420 Alemu et al., 2007:14.
421 Seleshi et al., 2007:4-5.
422 Alemayehu, Dorosh, and Sinafikeh, 2011:2.
423 See, for example, CSA, June 2008; USAID, 2011b:2.
424 See, for instance, Devereux and Guenther, 2009:5; EEA/EEPRI, 2005:10.

agricultural inputs, implements, and services. Consequently, smallholder agriculture is considered as the primary source of poverty in Ethiopia[425], which had an annual per capita income of $170 and ranked 174th out of 187 countries in the UNDP Human Development Index in 2011.[426] Yet, smallholder agriculture is thought to provide the principal development potential, as it is the primary source of livelihood and the mainstay of the economy, and the country has little other resources under commercial exploitation than land, labour, water, and climatic conditions suitable for agriculture.[427]

Historically, Ethiopia is widely regarded as the cradle of mankind, as evidenced by the discovery of the 3.5 million-years-old "Dinknesh" or "Lucy", the famous human ancestor considered crucial in the chain of human evolution, in the Afar region in 1974, and many other subsequent archaeological discoveries of the remains of the earliest ancestors of the human species in the country.[428] However, like many other issues pertaining to Ethiopia, the country's history is subject to contestation. Some trace Ethiopia's history back to millions of years, mainly citing the abovementioned archaeological discoveries, others to thousands of years, invoking the mentioning of its name in the Old Testament and the well-documented records of Ethiopian civilisation dating back to the Axumite Kingdom that existed from the 1st century AD to 1150, and a few others to hundreds of years, referring to the time of the formation of the modern Ethiopian state under Menelik II at the end of the 19th century.[429]

The present-day Ethiopia is an outcome of centuries of expansion, contraction, disintegration, and reunification. As Marcus succinctly put it, "Ethiopia's history contains an analytic truth. From time to time, the nation disintegrated into component parts, but it never disappeared as an idea and always reappeared in fact."[430] Analysts characterise the pre-modern Ethiopian state as something close to a federal polity in terms of duality of authorities and decentralisation of power. For example, according to Bahru, at least since the 13th century, the imperial throne, which often claimed legitimacy based on descent from the Solomonic line, or being the descendant of the dynasty of Menelik I, the legendary son of King Solomon of Jerusalem and Queen of Sheba of Ethiopia, and had the title of "Nigusa Nagast" (King of Kings), represented the centre; whilst a number of strong provincial nobilities, who often held the title of "Nigus" (King), effectively exercised power in the territories falling under their

425 See, for example, DFID, 2003b:3; Devereux and Guenther, 2009:3.
426 USAID, 2011b: vii; UNDP, 2011.
427 Mulat, Fantu, and Tadele, 2004:1.
428 Twibell, 1999:3.
429 See, for example, Teshale, 1995; Marcus, 1994.
430 Marcus, 1994: xiii.

respective sphere of influence.[431] Clapham has also noted that "historic Ethiopia approximated a federal system".[432] Assefa Fiseha has made a similar observation, noting that "Except for the twentieth century, Ethiopia has for the most part been under a decentralised rather than a centralised system of governance." He also explained that "the balance often swayed, albeit slightly to the *Niguse Negast* (King of Kings). Defined in broad terms, the regional nobility submitted to the throne, contributed a fighting force in time of crisis or rebellion and collected and paid tributes to the monarchy: the collection of tribute and maintenance of national security being the function of the emperor. In return for this administrative and military function, the nobility were granted autonomy and the right to retain some amount from the tributes they collected for the centre. They had their own army."[433] Even after he completed the formation of the modern Ethiopian state, Menelik II did not dismantle this long-standing tradition of unity and autonomy. As Levine noted, Menelik II did not decisively undercut the authority of provincial nobilities, who even became largely independent around the end of his reign.[434]

Ethiopia, which under the leadership of Menelik II defeated the Italian colonial forces at the battle of Adwa in 1896 in what has been registered in history as the first victory of a black nation over a European colonial power and subsequently managed to have its sovereignty recognised by the then world powers, has never been fully colonised.[435] It does not this have the colonial legacy experienced by most other sub-Saharan African countries, whereby colonial rulers imported and transplanted their own countries' formal land policies, laws, and institutions on top of the indigenous African customary arrangements, thereby giving rise to legal pluralism.[436] In Ethiopia, that was carried out by the country's own native rulers through land law reforms they enacted.[437] In most other sub-Saharan countries, the pre-existing non-formal customary arrangements were either replaced or simply ignored to govern land relations amongst locals, though in different degrees and often subject to "repugnancy clauses" that conditioned their operation on consistency with formal ones and other colonial standards. In any case, non-formal customary arrangements have continued to operate in much of rural Africa.[438]

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431 Bahru, 1991:1.
432 Clapham, 1993:29.
433 Assefa Fiseha, 2006:19 and 23.
434 Levine, 1965:177-185.
435 Twibell, 1999:3; Assefa Fiseha, 2006:3.
436 Cotula, Toulmin, and Hesse, 2004:2.
437 Crewett, Ayalneh, and Korf, 2008:5.
438 Menski, 2000:402-408.

It is against this backdrop that Menelik II introduced the 1908 land law reform programme. This land law reform was motivated by the vision of Menelik II internally, to make Ethiopia a modern, prosperous, and strong country by attracting foreign trade, investment, and technology, and externally, to secure Ethiopia's recognition as a sovereign state, acceptance as an equal "civilised" member of the community of nations, and integration into the global economy from the then world powers.[439] Notably, the land law reform was more rigorously implemented in and around the national capital, Addis Ababa, which Menelik II founded, where foreigners were deemed would most likely reside.[440]

Moreover, the formal state land policies, laws, and institutions introduced through the land law reforms enacted in 1908 and during subsequent decades were largely meant to supplement, but not to substitute pre-existing non-formal customary arrangements. Connolly has conveniently summarised the overall environment in which land law reform operated during this period, emphasising that "Until the 1950s, the law in Ethiopia was an amalgamation of codes, legislation, and a variety of customary rules. More than sixty non-state justice systems existed, based variously in the Christian *Fetha Nagast*, Muslim *Shari'a* law, or general customary law." Connolly has also suggested the possible reasons why, the ways how, and to what extent the state at the centre allowed the operation of the non-formal customary arrangement, noting that "Each king administered justice in the area under his control, and the law to be applied in each case depended upon facilitation of community cohesion, rather than a consistent set of legal principles. Despite the declining power of chiefs, the central government did nothing to prevent traditional systems of law from operating [as] an interference with that operation could have meant complete disruption of the institution most closely valued by members of traditional society."[441]

However, the coming to power of Haile Sellassie I in 1930 opened a new chapter in the history of Ethiopia in a number of aspects. Haile Sellassie I promulgated the 1931 Constitution, the first written constitution in the history of the country, which was designed to push his ambitious policy of centralisation and marked the end of the long-standing tradition of unity and autonomy. Although Haile Sellassie I retained for himself the title of "Nigusa Nagast" (King of Kings) and assumed absolute power, he abolished the autonomous kingdoms and provincial administrations - completely subjugating them to central rule under himself, and made sure that all potential contenders for power were members of the two houses established under the 1931 Constitution, which in effect had only an

439 Scholler, 2006:9 and 2008:100.
440 Aberra, 1998:98-100 and 123-124.
441 Connolly, 2005:7.

advisory roles.[442] The Derg, which deposed and took over power from Haile Sellassie I in the 1974 Revolution, continued the push for the centralisation of power in earnest, as other than the replacement of the Solomonic genealogy by a Marxist ideology, the centralisation of power and the marginalisation of the people was conducted at a scale that was unprecedented even during the imperial era.[443]

The reign of Haile Sellassie I had also opened a new chapter as regards the treatment of the non-formal customary land policies, laws, and institutions in Ethiopia. Attempts to comprehensively replace the non-formal customary land tenure arrangements with formal state ones started to be made after Haile Sellassie I enacted what was then the country's most comprehensive and systematised land law reform in the 1950s and 1960s. Nevertheless, those attempts do not seem to have succeeded. For example, as Gopal observed, "after 1960, customary laws were invalid, but for the most part communities continued to apply the same customs and traditions."[444] Numerous other studies suggest that regardless of formal land tenure arrangements the state has since been introducing through land law reforms, non-formal ones have continued to exist, operate, and be used by society to govern more than 85% of land relations in the country.[445] Beckstrom has, for instance, published a research in 1973 on the reception or penetration of codified laws in Ethiopia. He noted that the degree to which the Civil Code and other codes embodying the formal land tenure arrangements introduced by the land law reform programme of Haile Sellassie I had taken hold was slight both in terms of the number of actors and spheres of action influenced. By 1973 even urban residents lacked substantive familiarity with the codes, and were resorting to traditional courts eight times more frequently than formal courts.[446] Beckstrom concluded that "The new laws have had little effect to date on the social fabric of even the urban areas of the highland plateau. [There has been] no deeper, lasting effect on general social patterns."[447]

In order to fully grasp the current constituents of the formal land policies, laws, and institutions of that make up the land tenure system in force in Ethiopia, it is necessary to explore the background of the overall legal tradition, state structure and power relation, and hierarchy of laws of the country. Ethiopia traditionally follows the continental or civil law legal system, although there is evidence of use of

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442 Perham, 1963:262.

443 Young, 1996:534.

444 Gopal, 1999:7.

445 Clapham, 1969:139; Brietzke, 1976:645; Beckstrom, 1973:571-573; Hailegabriel, 2004; Berhanu, Berhanu, and Seyoum, 2003; EEA/EEPRI, 2002; Aberra, 1998; Shiferaw, 1995; Pausewang, 1983; Krzeczunowicz, 1963.

446 Beckstrom, 1973:571 and 573.

447 Beckstrom, 1973:568.

precedents in the adjudication of cases before the second half of the last century.[448] As such, the formal state laws, including those that promulgate and put into effect the formal land policies, laws, and institutions established through land law reform, are made by way of legislation in the form of codes or statutes enacted by the legislature or other organs of the state entrusted with lawmaking power.[449] In Ethiopia, the term "hierarchy of laws" describes a chain of subordination between laws, whereby laws are put at various levels of importance depending on the rank of authority that the maker of each law possesses within the state structure and power relation in force. Each law should be consistent with the one above it in the hierarchy ladder. Otherwise, if challenged, it may be declared null and void.[450]

Accordingly, the formal land policies, laws, and institutions promulgated and put into effect through legislation issued as part of a land law reform programme will remain effective, unless and until repealed by other legislation of equivalent position in the hierarchy of laws of the country issued by an organ of the same or different government that has been entrusted with a lawmaking power equivalent to the organ that had issued the earlier legislation within the state structure and power relation in force. However, amongst those formal land policies, laws, and institutions that are put into effect through legislation issued as part of an earlier land law reform programme, what subsequent governments usually change significantly through the legislation they promulgate as part of the land law reform programmes they enact are mostly those that they perceive are to do with their own distinct ideologies and national development strategy objectives and goals, which they often espouse depending on the prevalent influential internal and external contexts. To that extent, there are significant continuities and discontinuities in the formal land policies, laws, and institutions of the land tenure system of Ethiopia.

For example, the forms and contents of the formal laws and institutions of the country dealing with transactions over land, registration of those transactions, and modes of proof of transfer and possession of land rights that were put into effect through the 1960 Civil Code promulgated as part of the land law reform programme introduced by Haile Sellassie I have not been significantly changed through the legislation that either the Derg or the EPRDF subsequently issued as part of their own land law reform programmes. Many important formal laws and institutions embodied in different titles and parts of the Civil Code that was promulgated during the imperial era still remain effective and constitute the land tenure system currently governing smallholder land relations in Ethiopia, without their forms and

448 Paulos, 1968:xx-xxi.

449 See, for instance, Aberra, 1998:97 and 183.

450 Krzeczunowicz, 1964:111.

contents having been significantly changed. They specifically include the definition of immovable property in Title VI; rights in *rem* or real property, such as usufruct and servitude in Title VIII; public domain, expropriation, and association of land rights holders in Title IX, register of immovable property in Title X, and contracts relating to immovable properties, such as lease in Title XVIII.

Therefore, the EPRDF has since it took power framed virtually all aspects of life in the country along ethnic lines as per its commitment to what it called "the national question", including the land law reform it enacted. It restructured Ethiopia into a federal polity composed of constituents formed mainly along ethnic lines under the FDRE Constitution. This Constitution instituted a parliamentary system of government.[451] As such, parliaments constituting the legislative organs are entrusted with the highest state power both at the federal and regional levels. According to Article 50 of the Constitution, "The House of Peoples' Representatives is the highest authority of the Federal Government. The House is responsible to the People. The State Council is the highest organ of State authority. It is responsible to the People of the State."[452] The Constitution has also established a federal executive body called the Council of Ministers, which is headed by the Prime Minister and composed of various Ministries.[453] It has also authorised the formation of regional executive bodies at state, sub-state, and local administrative levels, which are known as, from top downwards, Region, Zone/Special Woreda, Woreda, and Kebele.[454] The Executive Council, which is headed by the regional president and composed of various Bureaux, constitutes the highest executive organ at the regional level.[455] Furthermore, the Constitution provides for a three-tiered, parallel federal and state judiciary, including first instance, high, and supreme courts.[456] The Constitution has also authorised the regions "to enact and execute" their own constitutions to be drafted, adopted, and amended by the State Council.[457] Accordingly, the regional states and the city administrations have issued their own constitutions and charters, which were adopted in 1995 and revised in 2001 and henceforth.[458] Since the FDRE Constitution is the supreme law of the land, the position of the regional constitutions and city

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451 FDRE Constitution: Articles 45 and 53-68.
452 FDRE Constitution: Article 50(3).
453 FDRE Constitution: Article 72.
454 FDRE Constitution: Article 50(4).
455 FDRE Constitution: Article 50(6); Tsegaye Regassa, 2009:61-64.
456 FDRE Constitution: Articles 78 and 79.
457 FDRE Constitution: Articles 52(2) [b] and 50(5).
458 Tsegaye Regassa, 2009:35 and 67.

administration charters in the hierarchy of laws of Ethiopia is subordinate to the FDRE Constitution.[459]

As in most other countries following the civil law tradition, legislation in Ethiopia is broadly categorised as being primary or subordinate. Primary legislation is a law made by the legislative body, which is known in the context of Ethiopia as "proclamation". Within the current state structure and power relation in the country, a proclamation is enacted by the House of Peoples' Representatives and the State Council at the federal and regional levels, respectively. However, the legislative body may, in the proclamation it enacts, delegate its lawmaking power to the pertinent executive organ in order to allow room for more localised expertise and detailed provisions for implementation. By the same token, the executive may further delegate its power to an organ subordinate to it. A law based on a legislative power obtained through delegation is therefore called a subordinate legislation. For example, the House of Peoples' Representatives and the State Council often delegate to the Council of Ministers and the Executive Council, respectively, such lawmaking power in the proclamations they issue. Laws issued by the Council of Ministers and the Executive Council in this way are known as "regulations". Laws issued by a federal Ministry or a regional Bureau based on the power further sub-delegated to it by the Council of Ministers or the Executive Council are called "directives".[460]

For example, the FDRE Constitution, which established the current federal state structure[461], proclaims to have been adopted by "the Nations, Nationalities and Peoples of Ethiopia"[462], declares that "All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia"[463], and that "This Constitution is an expression of their sovereignty."[464] Thus, since the FDRE Constitution is thought to have been made by the people, the possessors of sovereign power, it occupies the uppermost position in the hierarchy of laws of the country.[465] However, the Constitution qualifies the sovereign power that it proclaims to reside in the people, stating that "Their sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic

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459 For example, the supremacy clauses under Article 9 of the Afar, Harari, SNNPRS, Oromiya, Amhara, and Tigray regional constitutions and Article 10 of the Benishangul-Gumuz and Somali constitutions assert their subordinate position to the FDRE Constitution at the federal level, but their supremacy at the regional level.

460 See, for example, Aberra, 1998:97.

461 FDRE Constitution, Article 1.

462 FDRE Constitution, Preamble.

463 FDRE Constitution: Article 8(1).

464 FDRE Constitution: Article 8(2).

465 See, for instance, Tsegaye Regassa, 2010:89-90.

participation."[466] And as per the federal state structure and parliamentary system of government, the elected representatives through whom the people express their sovereignty are members of the House of Peoples' Representatives at the federal level, and of the State Council at the regional level, which are the highest authority and legislative body next to the people in as much as their respective jurisdictions are concerned.[467] As such, the laws that these organs enact are primary legislation called proclamation, which occupy the second highest position in the hierarchy of laws below the FDRE Constitution. Laws made by the federal Council of Ministers or the regional Executive Council based on the lawmaking power delegated to them by the House of Peoples' Representatives or the State Council are subordinate legislation called regulations, which thus occupy the third position in the hierarchy of laws below proclamation. And laws made by a federal Ministry or a regional Bureau based on the lawmaking power further sub-delegated to it by the Council of Ministers or the Executive Council are called directives, which occupy the lowest position in the hierarchy of laws. It should, however, be emphasised that since the regional constitutions are directly made by the State Council of the region concerned, although they are the supreme law within their respective territories, their position in the hierarchy of laws of Ethiopia is subordinate to the FDRE Constitution. It should also be noted that since most of the codes issued during the imperial era that still partially or fully remain in force, including the Civil Code, were issued as primary legislation in the form of proclamation, their position in the current hierarchy of laws is the same as other proclamations more recently promulgated.

State Structure and the Hierarchy of State Powers and Laws

Rank	Name and Rank of the Law		Name and Rank of the Lawmaker	
	At National Level	At Regional Level	At National Level	At Regional Level
1st.	The FDRE Constitution	The FDRE Constitution	People	People
2nd.	-	Regional Constitution	-	State Council
3rd.	Proclamation	Proclamation	House of Peoples' Representatives	State Council
4th.	Regulations	Regulations	Council of	Executive Council
5th.	Directives	Directives	Ministries	Bureaux

The FDRE Constitution may arguably be considered as one of the constituents of the current formal

466 FDRE Constitution: Article 8(3).

467 FDRE Constitution: Article 50(3).

land tenure system of Ethiopia for several reasons. As the supreme law of the land and an embodiment of the formal land policy involving the EPRDF's state land ownership policy now in force in the country, it provides the framework for the current land law reform, directs the establishment, substantive contents, and procedural rules of the formal land laws and land institutions, and shapes the composition and operation of the overall formal land tenure system. In addition, although it may not be directly invoked and relied upon, the Constitution sets out provisions concerning smallholder land rights, and guides the manner of interpretation, explanation, and application of smallholder land rights provisions set out in specific formal land laws in the course of implementation by executive land institutions, exercise by smallholders, and enforcement by dispute resolution mechanisms.

Specifically, as the supreme law of the land, the Constitution entrusted power to formulate the country's land policy to the federal government under Article 51, which enumerates the "Powers and Functions of the Federal Government" and states that the federal government "shall formulate and implement the country's policies, strategies and plans in respect of overall economic, social and development matters."[468] The Constitution also embodies under Article 40 the current formal land policy of the country that the EPRDF has formulated accordingly. Although the regional constitutions and city administration charters contain provisions concerning smallholder land rights in particular, like most of their other provisions, they are either verbatim copies of, or closely similar with those of the FDRE Constitution. As Tsegaye Regassa observed, "The major material or substantive source of the norms of the state constitutions is apparently the federal constitution. A cursory glance at the provisions of the state constitutions confirms this observation. There is a striking similarity."[469] Nonetheless, for the same reasons discussed above in relation to the FDRE Constitution, the regional constitutions and city administration charters may be considered as constituents of the current formal land tenure system of Ethiopia, particularly in as much as their respective territories are concerned.

Land is one of the matters on which the division of federal and regional powers has been made under the FDRE Constitution.[470] This Constitution designated land as a "federal matter". According to Article 51, the federal government "shall enact laws for the utilisation and conservation of land and other natural resources".[471] In contrast, the Constitution under Article 52 enumerates the "Powers and

468 FDRE Constitution: Article 51(2).
469 Tsegaye Regassa, 2009:51.
470 FDRE Constitution: Articles 51(5) and 52(2) [d].
471 FDRE Constitution: Article 51(5).

Functions of States", and declares that "All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States."[472] As regards land matters, the Constitution, which further states under the same Article 52 that "Consistent with sub-Article 1 of this Article, States shall have the following powers and functions", specifically authorises the regional states "To administer land and other natural resources in accordance with Federal laws".[473] Accordingly, the federal government enacted its first land law entitled "Federal Rural Land Administration Proclamation No. 89/1997" on 7th July 1997.[474] However, it has since replaced this law by "The FDRE Rural Land Administration and Land Use Proclamation No. 456/2005".[475]

Nonetheless, the federal government has in land laws it issued as per the lawmaking power conferred upon it in the Constitution given regional states power to "enact rural land administration law, which consists of detailed provisions necessary to implement this [federal] Proclamation."[476] The federal government has also conferred upon regional states power to "establish institutions at all levels that shall implement rural land administration and land use systems."[477] Accordingly, by the time this thesis was written, the regional states of Tigray, Amhara, Oromia, and SNNPRS have put into effect their own formal land laws setting out provisions of smallholder land rights and land institutions dealing with implementation of smallholder land rights provisions, which thus form part of the current formal land tenure system of Ethiopia, though the remaining five regions, namely Benishangul-Gumuz, Afar, Gambella, Somali, and Harari, have yet to put into effect their own formal land laws and institutions.[478]

Finally, it is necessary to emphasise that the formal federal and regional land policies, laws, and institutions that constitute the current formal land tenure system of Ethiopia have not been promulgated in the form of a "land code", unlike, for example, the Commercial and Criminal Codes of the country. As a result, provisions concerning those policies, laws, and institutions are found scattered in various federal and regional legislation pertaining to land. For instance, the allocation of land for investment in commercial agriculture is governed by the FDRE Investment Proclamation No. 280/2002. Whereas, urban land, the acquisition of which is subject to a lease contract concluded with the government, is

472 FDRE Constitution: Article 52(2) [d].
473 FDRE Constitution: Article 52(2) [d].
474 FDRE Proclamation, 1997: Article 1.
475 FDRE Proclamation, 2005b: Articles 1 and 20(1).
476 FDRE Proclamation, 2005b: Article 17(1).
477 FDRE Proclamation, 2005b: Article 17(2).
478 See, also, Imeru, 2010:2.

governed by the FDRE Land Lease Holding Proclamation No. 272/2002. It is also necessary to stress that, though they do not exist in a consolidated, systematised manner due to the absence of a land code, the federal government and the regional states of Tigray, Amhara, Oromia, and SNNPRS, which put into effect their own land laws and land institutions, have also enacted land regulations and directives and other legislation concerning land, which thus form part of the country's formal land tenure system.

3. 2. Ethiopia's Land Law Reform Experience under Three Previous Governments

In order to fully grasp the present challenges of land law reform, smallholder productivity, and poverty in Ethiopia, it is necessary to understand the historical antecedents and precedents of the subject matter. That will also help identify strengths and weaknesses and garner useful experiences that will enable to devise strategies to effectively deal with those challenges in the future. This Section provides a brief historical overview of the chronologies, policy contexts, development objectives, and continuities and discontinuities pertaining to land law reform under the three major previous governments of modern Ethiopia led by Emperor Menelik II, Emperor Haile Sellassie I, and the Derg.

3. 2. 1. Emperor Menelik II (1889-1913)

Emperor Menelik II, whom many Ethiopians affectionately call "emiye', which loosely translates into "darling", is one of the most popular leaders in the history of Ethiopia credited with a number of landmark achievements that shaped the country's modern history. He is also a luminary in the history of black people around the world. It was under the leadership of Menelik II that Ethiopians defeated the Italian colonial forces at the battle of Adwa in 1896 in what has been registered in history as the first victory of a black nation over an invading white colonial power.[479]

Menelik II is particularly known for his effort to unify, modernise, and end the centuries-old isolation of Ethiopia from the global community and economy. He completed the formation of the modern Ethiopian state parallel to the scramble for Africa at the end of the 19th century two years after the defeat of the Italian colonial forces.[480] Menelik II, who was the ruler of Abyssinia, which encompassed the northern and central parts of what is now Ethiopia, also oversaw the formation of the modern

479 Assefa Fiseha, 2006:3.
480 Aberra, 1998:5.

Ethiopian state by reintegrating the territories that now form the southern parts of the country.[481]

However, as this was a period when the scramble for Africa was at its heyday, the then world powers were reluctant to recognise Ethiopia as a sovereign state. Ethiopia itself was such a poor country characterised by backward feudalistic economic, social, and political relations. It was a country in full-blown crisis, having undergone relentless resource and identity-based international and civil wars, a long-drawn isolation from the rest of the world for centuries, and an exceptionally severe rinderpest epidemic and famine that affected the northern province of Tigray.[482]

Therefore, Menelik II had to undertake multifaceted, rigorous reform programmes aimed at modernising the economic, social, and political relations, the land tenure system, and the agriculture sector of the country with the following two major objectives. One, to realise his vision of making Ethiopia a modern, prosperous, and strong country by attracting foreign aid, trade, investment, and technology. Two, to secure Ethiopia's recognition as a sovereign state, acceptance as an equal "civilised" member of the community of nations, and integration into the global economy from the then world powers, which had conditioned that upon the enactment of the reforms.[483]

Accordingly, Menelik II introduced Ethiopia's first land law reform comprising Western-modelled formal land tenure legal and institutional arrangements in 1908.[484] He also established the first Western-styled government cabinet of the country.[485] The reward Menelik II achieved from his reform enterprises was immediate, particularly in relation to the second objective. In that same year, Menelik II secured Ethiopia's recognition as a sovereign state from the colonial powers that had taken over the entire region, including territories that used to be part of the country. International agreements, whereby boundaries were delimited, if not always demarcated, were signed: With French Somaliland (Djibouti) in March 1897; British Somaliland (June 1897); Italian Eritrea (1900); Anglo Sudan (1902); British East Africa (Kenya) 1907; and Italian Somaliland (1908).[486]

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481 Bahru, 1991:111; Gebru Mersha and Githinji, 2005:2.
482 Bahru, 1991:71; Vaughan, 2003:108 and 114-115.
483 Scholler, 2006:9 and 2008:100.
484 Aberra, 1998:98-100.
485 Selamu and Vanderlinden, 1967:411-415.
486 Vaughan, 2003:104.

Menelik II established the country's first Western-styled government cabinet in 1908.[487] He also in the same year achieved his objective of securing Ethiopia's recognition as a sovereign state from the colonial powers that had taken over the entire region, including territories that were part of the country. International agreements whereby boundaries were delimited, if not demarcated, were then signed: with French Somaliland (Djibouti) in March 1897; British Somaliland (June 1897); Italian Eritrea (1900); Anglo Sudan (1902); British East Africa (Kenya) 1907; and Italian Somaliland (1908).[488]

As regards the first objective, however, the achievement of Menelik II was not as immediate and straightforward as the second one. The Western-modelled liberal and capitalist agenda and formalisation and individualisation of land rights that were superimposed upon the pre-existing land-based feudalistic social relations, political economy, and indigenous land tenure arrangements, which were considered as "primitive", did not work as well as expected. According to analysts of law and development such as Chua and Adelman and Paliwala, that is largely due to the lack of accommodation of the local wisdom and context and the divergence of interests and values. [489]

In general, despite being meant to bring agricultural land, growth, and development to smallholders, the land law reforms undertaken by Menelik II led to the control of Ethiopia's land and agrarian relations by members of the royal family, the nobility, and the Ethiopian Orthodox Church; top civil service, army, security, and local government officials; and foreign government agencies and business enterprises.[490] The absence of a full-blown colonisation that could have allowed the establishment of a Western-modelled formal land tenure system throughout the country, coupled with the dictation by the colonial powers of the reform agenda of Menelik II, appears to have led to the establishment of a dysfunctional land tenure system characterised by legal pluralism. That is because Ethiopia neither wholeheartedly transformed the transplanted formal arrangements into a complete, functional formal land tenure system, nor maintained and built on the pre-existing indigenous land tenure arrangements.

The land law reform introduced by Menelik II affected more the national capital, Addis Ababa, and the ethnically more diverse southern parts of the country reintegrated upon the formation of the modern Ethiopian state, where the formalisation and individualisation of land rights was implemented

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487 Selamu and Vanderlinden, 1967:411-415.

488 Vaughan, 2003:104.

489 See, for example, Chua, 1998:12-13; Adelman and Paliwala 1993:2-3.

490 Gebru Mersha and Githinji, 2005:2; Bahru, 2002:191.

relatively rigorously. Yet, the northern and central parts of Ethiopia, including the provinces of Tigray, Gondar, Gojjam, Wello, and Shewa were largely left to keep on with their indigenous land tenure systems, which were as diverse as their ethno-linguistic groups.[491] This is believed to have injected ethnic element and strengthened the social and political aspects in the country's land law reform enterprises meant to raise smallholder agricultural productivity and tackle poverty. Smallholder eviction, landlessness, and tenancy and absentee landlordism occurred far more widely in the southern parts of the country where the privatisation of land was carried out rigorously, as a result of which the indigenous ethnic groups' land rights based on their customary land tenure systems was jeopardised.[492]

3. 2. 2. Emperor Haile Sellassie I (1930-1974)

Emperor Haile Sellassie I, who assumed power after a period of internal power struggle following the end of the reign of Menelik II in 1913, launched an agriculture-centred national development strategy as of the early 1950s. He is credited with that because it was for the first time in the history of Ethiopia that the country had formally adopted such a development strategy. The strategy involved the enactment of land law and agrarian reforms in a systematised, comprehensive, and integrated manner.

Haile Sellassie I enacted the land law reform embodied in the Civil Code and other codes issued during the "Era of Codification" as part of the "Law and Development Movement I". This Movement traces its origin to the emergence of a new conception of development and development economics after the end of World War II. The Movement stipulated law - the liberal, positive, Western notion of law – a central role in bringing about "the modernisation of Africa, Latin America, and Asia".[493] Ethiopia is one of the countries where this conception was first tested.[494] The conception views the indigenous socio-economic politico-legal order, including the land tenure system, as anathema to development; and law itself both as a part and a tool of development.[495] In short, as per this conception, as development entails the transformation of the "traditional" to the "modern", the indigenous socio-economic and politico-legal order should have to be transformed into a Western-modelled liberal and capitalist order that prioritises the individual and the market through the transplantation of Western templates of formal law akin to the prescriptions of Max Weber with a view to "supplanting Third

491 Aberra, 1998:98-100 and 123-124.
492 Markakis, 1974:125-127; Markakis and Ayele, 1976:56-59.
493 Chua, 1998:12-13; Chibundu, 1997.
494 Paul, 1977:1.
495 Benda-Beckmann, 2000:3; Chibundu, 1997.

World 'localism'" with the "unity, uniformity and universality of [the] modern Western State".[496]

Accordingly, Haile Sellassie I enacted the land law reform embodied in the 1960 Civil Code in pursuit of the promised modernisation of the country's indigenous socio-economic and politico-legal order and land tenure system, as well as agricultural and overall economic growth. In the words of Haile Sellassie I, the 1960 Civil Code, including the land law reform it embodied, was enacted because "Ethiopia requires the modernisation of the legal framework", and that "In order to consolidate the progress already achieved and to facilitate yet further growth and development, precise and detailed rules must be laid down regarding those problems which do not only face the individual citizen but the nation as a whole."[497] Moreover, to produce local professionals who would ensure the implementation and implantation of the newly-enacted codes of law, the present-day Law Faculty of Addis Ababa University, the first of its kind in the country's history, was founded in 1963 and staffed by American and European instructors with the support of the Staffing of African Institutions of Legal Education and Research (SAILER) Project initiated under the auspices of the Ford Foundation of the USA.[498]

In addition, Haile Sellassie I enacted an agrarian reform that started in 1953 with the establishment, using the land grant system of the USA as a model, of the then Imperial Ethiopian College of Agriculture and Mechanical Arts (IECAMA), later renamed "Alemaya Agriculture University" and now called "Haromaya University", which was assigned teaching, research and extension responsibilities, and tasked with transferring local research outputs and technologies to farmers, and importing technologies and improved practices from abroad and introducing them to farmers in the country.[499] Haile Sellassie I further expanded his reform programmes in a way that heavily favoured large-scale commercial farms to augment agricultural production for export in line with the modernisation drive that gained currency among the underwriters of the programmes at the time. Increase in production was expected to be achieved through accelerated foreign and domestic investment in large-scale farms as per the dominant line of thinking of the time, which was somehow akin to what Williamson later in 1989 named the "Washington Consensus" to describe the set of prescriptions constituting the "standard" reform package promoted for developing countries such as Ethiopia by Washington DC-based funding institutions, including the World Bank, the IMF, and the

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496 Likhovski 1999:383-85; Kronman 1983; Trubek 1972.

497 Civil Code of Ethiopia, 1960: "Preface", v.

498 Paul, 1977:1-2; Scholler, 2006 and 2008.

499 Berhanu, Hoekstra, and Azage, 2006:9; Mohammed, 2004.

US Treasury Department.[500] Accordingly, the imperial government introduced the First (1957-1961) and Second (1962-1967) Five Year Development Plans, which were mainly designed to expand large-scale commercial agriculture and produce "high-value" cash crops for export.[501] Yet, in recognition of the perils of neglecting smallholder subsistence agriculture, the government made a policy shift toward the modernisation of the smallholder sector through the dissemination of modern technologies, promotion of improved seed varieties, provision of credit and extension services, development of transport infrastructure, and formation of marketing cooperative societies under the Third Five Year Development Plan (1968-1973).[502] This Plan introduced the package project approach composed of the Comprehensive Integrated Package Projects (CIPPs), which were implemented with SIDA financing under the management of the AIDB and MoA.[503] The objective was to raise smallholder productivity throughout Ethiopia by first focusing on pilot projects, including selected smallholder farms of individual households and organised groups in "high-potential" areas, through the provision of access to modern inputs such as improved seed and fertiliser, whilst simultaneously reducing the level and cost of services provided to smallholders.[504] The geographic coverage of the pilot projects was to be expanded through the First Minimum Package Program (1971–1979), which was interrupted due to the eruption of the 1974 Revolution, in which Haile Sellassie I, Ethiopia's last monarch, was deposed.[505]

Overall, the land law reform of Haile Sellassie I is praised for being Ethiopia's first comprehensive and systematised reform. It is also credited for economically, bringing about "enclaves of agrarian progress" and modest overall growth; socially, leading to the creation of a small, largely urban-based elite loyal to him; and politically, consolidating his power externally and internally by pleasing his Western allies and benefitting his predominantly elite domestic powerbase.[506] However, the feudalistic nature of the government means that, the land law reform did not address the concentration of land in the hands of absentee landlords, including loyal members of the upper echelons of the royal family, the nobility, the army, the police, the civil service, the business community, and the Ethiopian Orthodox Church, as well as the rampant landlessness, arbitrary eviction, and tenancy of peasants that prevailed during the imperial era. The agrarian reform programmes of Haile Sellassie I are believed to have been

500 Williamson, 1989; Kydd and Dorward, 2001:467; Williamson, 1994.
501 Rashid, Meron, and Gezahegn, 2007:3.
502 Spielman, Dawit, and Dawit, 2011:6.
503 Berhanu, Hoekstra, and Azage, 2006:9-10.
504 Dejene, 1990:50.
505 Spielman, Dawit, and Dawit, 2011:6.
506 See, for instance, Brietzke, 1975:46.

effective in expanding access to improved technologies and modern agricultural inputs, implements, and services, although their success was restricted due to limited coverage, lack of financial and technological resources, shortage of skilled human power, unfavourable land tenure system, and poor infrastructural and market development, as well as initial bias in favour of export-oriented large-scale commercial agriculture.[507] In short, despite their modest success, the land law reform and agrarian reform programmes of Haile Sellassie I did not address the widespread grievances related to the distribution of land rights and agricultural products that fuelled the 1974 Revolution, which rallied around the slogan "Land to the Tiller".[508] Nor did they help avert the 1973 famine that ravaged northern Ethiopia, which, though kept secret to the rest of the country and the world, was exposed by a documentary film Jonathan Dimbleby produced, and served as an immediate cause for the culmination of the Revolution in the deposition of Haile Sellassie I and the last imperial government of Ethiopia.[509]

3. 2. 3. The Derg Military Junta (1974-1991)

The Derg, which was made up of a group of junior military officers who carried out a "creeping coup", assumed power in the 1974 Revolution that deposed Haile Sellassie I, and officially named themselves the PMAC, then enacted the 1975 land law reform considered as the most "radical" in the country's history[510] in the form of PMAC Proclamation No. 31/1975.[511] The Derg proclaimed to have espoused socialist economic programmes, ethnic-based social agenda, and Marxist political worldview. Analysts note that this is due to the Derg's new-found alliance with the former Soviet Union and communist bloc, which promised to provide military and economic support by substituting for the aid the Western bloc had cut due to its alliance with the imperial government, as well as the necessity of meeting the "land to the tiller" demand, which was the Revolution's rallying cry in consideration particularly of the land and agriculture-related grievances that were more pronounced in the ethnically more diverse southern Ethiopia, breaking the imperial-era landed aristocracy, and consolidating its grip on power.[512]

The national development goals of the Derg were to: (i) ensure that social justice and equity are promoted; (ii) generate more resources required to accelerate economic development for improving the

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507 See, for example, Kassahun, 2012:5.
508 Markakis and Nega, 1978:56-59; Markakis, 1974:125-127.
509 Andargachew, 1993:68-69.
510 See, for instance, Crewett, Ayalneh, and Korf, 2008:1.
511 PMAC Proclamation, 1975: Article 1.
512 Hussein, 2004:12; Gebru Mersha and Githinji, 2005:4-5; Rashid, Meron, and Gezahegn, 2007:3.

living standards of the people; and (iii) expedite the construction and management of the economy via planning and in a resource allocation system that would ensure a steady progress in economic and social development.[513] In order to achieve these broad national development goals, the Derg took a number of measures, including the nationalisation of all banks, insurance companies, industrial and commercial firms, and the introduction of the land law reform programme that made all land the property of the state.[514] In the programme of the Workers Party of Ethiopia (WPE) it later established, the Derg expanded its development goals to include: (i) accelerating the growth of the productive forces so as to build a strong and internally self-sustaining national economy free from the influences of the capitalist market; (ii) expanding, strengthening and ensuring the dominance of the socialist production relations with a view to creating a conducive environment for the growth of the productive forces, and expanding socialist economic organisations and management; and (iii) accelerating sustained growth of the standard of living and cultural well-being of the working people.[515]

However, in line with its ideological orientation, the Derg left no room for the participation of the private sector in the effort to accomplish its national development goals.[516] The Derg made this clear in its declaration of 1974, emphasising that "resources that are crucial for economic development or are of such a character that they provide indispensable service to the community will have to be brought under government control or ownership."[517] Moreover, the Derg set a maximum ceiling on the value private investment at Birr 250,000 for a domestic investor and US$500,000 for a foreign investor.[518]

The main strategy the Derg sought to use to accomplish its development goals was the 1975 land law reform, the objective of which was to "provide work", means of living, and increased incomes "for all rural people", as well as to "increase agricultural production and, by liquidating the feudal system, [to] narrow the gap in rural wealth and income."[519] Thus, the Derg's land law reform abolished imperial-era land tenure systems, nationalised all land without compensation, and introduced the policy of state land ownership. The Derg's land policy declared that "All rural lands shall be the collective property of the Ethiopian people", that "No person or business organization or any other organization shall hold

513 Eshetu and Mekonnen, 1992:9.
514 Mulat, Fantu, and Tadele, 2003:4.
515 Eshetu and Mekonnen, 1992:10.
516 Vaughan and Mesfin, 2011:18.
517 Eshetu and Mekonnen, 1992:9.
518 Mulat, Fantu, and Tadele, 2003:4.
519 PMAC Proclamation, 1975: Preamble.

rural land in private ownership", and that "No compensation shall be paid in respect to rural lands." [520] Specifically, the Derg's land law reform every adult citizen was guaranteed equal rights of access to a maximum of 10 hectares of land per household free of charge with usufruct rights excluding rights to transfer through sale, lease, collateralisation, and succession, except to primary family members.[521]

The Derg's land law reform was liked to its agriculture-led national development strategy known as "agrarian socialism", which sought to achieve Soviet-style "socialist transformation of agriculture" and was marked by the centralisation of the supply of modern agricultural inputs, implements, and services; formation of peasant associations and service cooperatives; establishment of state and cooperative farms, and implementation of forced villagisation and resettlement programmes intended to create "large-scale Soviet-style mechanised farms."[522] The Derg, which started by continuing the implementation of the First Minimum Package Program launched under Haile Sellassie I, then augmented its land law reform with agrarian reform aimed at alleviating the lack of access to modern agricultural inputs, implements, and services.[523] According to Mulat, Fantu, and Tadele, the Derg's resettlement and villagisation programmes, which involved planned, compulsory relocation of smallholders, were also intended to make way for the establishment of large-scale state-owned commercial farms and assemble smallholders in villages so as to make it easier for political control.[524]

Overall, the Derg's land law reform is widely considered to have succeeded in dealing with the land and smallholder agriculture-related deprivations and exploitations prevalent during the imperial era.[525] The policy of state ownership of land was enforced throughout all parts of Ethiopia and land was provided to the previously landless and land-constrained smallholders free of charge, thereby addressing the ethnic and social aspects of the land question.[526] Its agrarian reform is also praised for expanding modern agricultural inputs, implements, and services throughout the entire country.[527]

However, the land law reform and agrarian reform programmes of the Derg are generally considered to

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520 PMAC Proclamation, 1975: Article 3(1), (2), and (3).
521 PMAC Proclamation, 1975: Articles 3, 4 (5), 5, and 6 (3).
522 Devereux, 2000:12 ; Griffin, 1992:24 and 57.
523 Berhanu, Hoekstra, and Azage, 2006:11.
524 Mulat, Fantu, and Tadele, 2006:5.
525 Bahru, 2002:239-243.
526 Ottaway and Ottaway, 1978:66-68.
527 Brune, 1990: 25-27.

have failed with respect to helping raise smallholder productivity and tackle poverty. The land rights given to smallholders under the Derg's land law reform were so attenuated with restrictions and prohibitions that analysts such as Yigremew, Dessalegn, and Teketel have argued that the Derg freed the country's smallholders from being tenants of the imperial-era absentee landlords and only to make them "tenants of the state".[528] In short, the land tenure system the Derg's land law reform established was unfavourable to the provision and implementation of productivity-raising smallholder land rights, and, as Clapham observed, through time, access to land became a mechanism to reward supporters and punish opponents, and arbitrary administration led to corruption and favouritism at the local level.[529]

The success of the Derg's agrarian reform programmes is thought to have been limited due to the persistence of the imperial-era problems related to the lack of capacity, the use of the programmes as political tool, and the continuation of the extraction of the smallholders' meagre surplus, although this time around the state itself was perpetrator.[530] Overall, the land law reform and agrarian reform programmes of the Derg are considered to have favoured large-scale state-owned and collective farms at the expense of smallholders in the supply of land and modern agricultural inputs, implements, and services.[531] In any case, despite its land law reform and agrarian reform programmes, the Derg, which grabbed power by capitalising on the famine of 1973, ended up presiding over the 1984 famine that is believed to be the worst in the country's history[532], and was eventually removed in May 1991 in the same way as its rose to, and stayed in power during the 17 years of its existence - through force.[533]

3. 3. The Current Land Law Reform Experience under the Post-1991 EPRDF Rule

The EPRDF, which has been in power since it helped fight, overthrow, and succeeded the Derg in May 1991[534], then enacted its own land law reform programme that is currently in effect in Ethiopia. As Atakilte and Hussein suggested, the EPRDF had the same socialist economic programmes, ethnic-based social agenda, and Marxist political worldview as the Derg.[535] And as Crewett and Korf, Merera,

528 Yigremew, 2001a:58; Dessalegn, 1992:43-57; Teketel, 1998.
529 Clapham, 2002:15.
530 Kassahun, 2012:6; Yigremew, 2001a:58.
531 Brune, 1990: 25-27; Kassahun, 2012:6; Yigremew, 2001a:58.
532 See, for example, Assefa Fiseha, 2006:54.
533 Vaughan, 2003:13.
534 Vaughan, 2003:13.
535 Atakilte, 2004:60; Hussein, 2004:12.

and Abbink observed, the EPRDF is originally a Marxist ethnic liberation movement and the successor of the TPLF (Tigray People's Liberation Front) that still constitutes the backbone of the political organisation and the current government it leads in the country, which had fought an armed struggle against the Derg claiming ethnic-based oppression and seeking ethnic-based solution for the settlement of Ethiopia's longstanding problems, including those pertaining to land law reform, smallholder agricultural productivity, and poverty.[536] However, the fall of the Derg and the coming to power of the EPRDF in May 1991 was accompanied by major internal and external events, which appear to have considerably shaped the ideological orientation of the EPRDF, the national development strategy objectives and goals it designed, as well as the formulation and implementation of the land law reform it enacted to help raise smallholder productivity and tackle poverty to attain those objectives and goals.

Internally, Ethiopia was a country almost in full-blown crisis, with protracted war, extreme poverty, widespread dislocation and emigration, maladministration, corruption, and a state, though inept and illegitimate, that controlled virtually every aspect of life, leaving little space for grassroots activity, civil society or the private sector.[537] Moreover, the period was marked by the existence of numerous political organisations with various national and ethnical platforms, the dire situation of smallholder productivity and poverty, and the prominence of a view that blames the Derg's legacy, especially the policy of state ownership of land, for this situation.[538] Externally, the period was characterised by the collapse of the Soviet Union its communist bloc, the advent of the "New World Order" marked by the dominance of Western bilateral and multilateral funding agencies, particularly the World Bank and the IMF, the emergence a school of thought viewing the Western economic, social, and political principles of capitalism, individualism, and liberalism as the only viable path for transitional countries like Ethiopia[539], and the commencement of "structural adjustment" as a condition for Western aid under the auspices of bilateral and multilateral funding agencies, such as the World Bank and the IMF.[540]

Therefore, despite its socialist economic programmes, ethnic-based social agenda, and Marxist-oriented political worldview, the EPRDF had no alternative but to also accommodate the Western principles of capitalism, individualism, and liberalism, which has thus by the EPRDF's own admission

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536 Crewett and Korf, 2008:205; Merera, 2003; Abbink, 1997.
537 Scholler, 2006:55-56 and 67-70.
538 EPRDF, 2005a:29-34. See, also, EPRDF, 2000 and 2005b; Vaughan, 2003:27-31.
539 Adelman, 1998:75.
540 Barron, 2005:2.

forced it to adopt the governing ideology that it claims to be a pragmatic mixture of Marxism-liberalism and later gave it the name "Revolutionary Democracy".[541] The EPRDF framed virtually all aspects of life in Ethiopia along ethnic lines as per its commitment to what it called "the national question". Accordingly, it restructured the country into a federal polity composed of a central government and regional administrations that were formed mainly along ethnic lines under the TPCE (Transitional Period Charter of Ethiopia), which was the supreme law of the land from its adoption at the TNC (Transitional National Conference) in July 1991[542] until it was replaced as such by the FDRE Constitution, which was put into effect on 21 August 1995[543], proclaims to have been adopted by "the Nations, Nationalities and Peoples of Ethiopia"[544], and to be "the supreme law of the land".[545] The TPCE and the Constitution emphasise ethnic-based group rights and contain provisions such as a "secession clause", which authorises the federating units formed mainly along ethnic lines units to seek "unconditional" secession[546], which turned out to be controversial, as, for its proponents, it provides the only formula to achieve ethnic harmony and maintain Ethiopia as a political unit formed by the voluntary unification of ethnic groups[547], whilst, for its opponents, it invites ethnic conflict and risks the eventual disintegration of the country.[548] However, the Constitution also contains provisions setting out fundamental human rights and individual freedoms and creating a series of liberal institutions, including elected, representative legislature[549], accountable executive[550], and independent judiciary.[551]

On the other hand, since the EPRDF had the same socialist economic programmes, ethnic-based social agenda, and Marxist political ideology as the Derg, it continued the Derg's policy of state ownership of land under its land law reform programme.[552] The major objective of the EPRDF's land law reform is to "put in place legal conditions conducive for sustainable rural land use, whereby rural land is

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541 EPRDF, 2005a:29-34. See, also, Vaughan, 2003:27-31.
542 Vaughan, 2003:15.
543 FDRE Proclamation, 1995: Article 3; FDRE Constitution: Article 9(1).
544 FDRE Constitution, Preamble.
545 FDRE Constitution: Article 1.
546 TPCE: Article 2(1); FDRE Constitution: Article 39(1) and (4).
547 See, for example, EPRDF, 2005a.
548 See, for instance, Vaughan, 2003:14-15.
549 FDRE Constitution: Articles 8(3) and 50(3).
550 FDRE Constitution: Articles 72 and 50(4) and (6).
551 FDRE Constitution: Articles 78 and 79.
552 Atakilte, 2004:60; Hussein, 2004:12.

conserved and sustainably used in a manner that gives a better output".[553] The FDRE Constitution, which embodies the current land policy of the country, validates the policy of state ownership of land, declaring that "Land is a common property of the Nations, Nationalities and Peoples of Ethiopia".[554]

The land law reform programme of the EPRDF is linked to its agriculture-led national development strategy called ADLI, which has been the flagship of the EPRDF government since it unveiled it immediately after assuming power declaring it to be an effective instrument for attaining food security and pro-poor economic growth in Ethiopia.[555] ADLI, which the EPRDF adopted arguing that Ethiopia is a smallholder-based economy, and that the country has little capital and other resources necessary for outright industrial development except abundant agricultural land, labour, and water, was tasked with its objective of helping attain food security and foster overall economic growth mainly by raising smallholder productivity in staple crops.[556] In short, in the words of the EPRDF government, "ADLI is a strategy in which agriculture and industry are brought into a single framework, wherein the development of agriculture is viewed as an important vehicle for industrialisation by providing raw material, a market base, surplus labour, and capital accumulation."[557] ADLI is hoped to ultimately help accomplish the four national development policy goals the EPRDF has been pursuing, which are to (i) bring about rapid economic growth; (ii) benefit the majority of the population therefrom; (iii) move the country from aid-dependency to self-sufficiency; and (iv) establish a well-developed market economy.[558] In view of that, although the EPRDF's land law reform has made significant continuities from the Derg's, including the enforcement of the policy of state ownership of land, the provision of usufructuary land access, the restriction of succession to family members, the prohibition of sale, and disallowance of collateralisation, it has also recognised the right to compensation for investment made on land upon expropriation, lifted the 10-hectare restriction on maximum plot size, abolished the prohibition of tenancy and hired labour, allowed the leasing of land, expanded the succession of land rights from spouse and children to all family dependents, and decentralised the governance of land.[559]

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553 FDRE Proclamation, 1997: Preamble; FDRE Proclamation, 2005b: Preamble and Article 2(3).
554 FDRE Constitution: Article 40(3).
555 Amdissa, 2006:23.
556 EPRDF, 2005b:8-17; MoFED, 2002:13.
557 MoFED, 2002:13.
558 EPRDF, 2005b:1; MEDAC, 2001:9; MoI, 2001:4.
559 See, for example, FDRE Constitution: Articles 40, 51(5) and 52(2) [d].

The EPRDF's land law reform was also accompanied by several agrarian reform programmes undertaken within the framework of the ADLI strategy. One is the agricultural extension programme known as the Participatory Demonstration and Training Extension System (PADETES), which was launched in 1994/95 to merge the training and visit system with the technology diffusion experience of the Sasakawa Global 2000, and thereby demonstrate to smallholders the benefits of a package of inputs, notably balanced and higher rates of fertiliser, improved seeds, pesticides, and management practices.[560] The other is the Sustainable Agriculture and Environmental Rehabilitation Program (SAERP), which was intended to expand small-scale irrigation and watershed management schemes to reverse environmental degradation and boost agricultural productivity.[561] Yet, the EPRDF has made continuities in its agrarian reform from the Derg's, particularly as regards the state's dominant position in the supply of modern agricultural inputs, implements, and services, arguing that "the private sector will play a leading role in these activities, but given the early stages of transition to market agriculture, a range of public sector investments and services is needed to help jump-start the process".[562]

3. 4. Legal Pluralism and the Land Law Reform Experience of Ethiopia

Legal pluralism that land law reform gave rise to in the land tenure system, which comprises both formal state and non-formal customary land policies, laws, and institutions that govern the provision and implementation of productivity-raising smallholder land rights, has been the most significant of the challenges of land law reform, smallholder productivity, and poverty throughout the history of modern Ethiopia. But what makes legal pluralism particularly a major challenge in Ethiopia is not just the fact that land law reform enacted in the country has to operate to bring the change in the provision and implementation of productivity-raising smallholder land rights that it needs to bring about in order to deliver the smallholder productivity and poverty outcomes it is hoped would help achieve not only through the formal state land policies, laws, and institutions introduced under the current and previous land law reforms, but also in the context of a land tenure system that comprises the pre-existing non-formal customary ones. After all, as McAuslan observed, "Customary tenure is - and always has been -

560 Sasakawa Global 2000 is an NGO that started operation in Ethiopia in 1993. The extension approach of Sasakawa Global 2000 is based on smallholders' half-hectare demonstration plots, utilising improved seeds, improved management practices, and more balanced and higher rates of commercial fertilisers (Mulat, 1999:4).

561 Mekonnen, 1999:10.

562 MoFED, 2005:27. See, also, Lavers, 2011:3; MoFED, 2002:56; Hussein, 2004:1-2 and 2001:48-49; Crewett and Korf, 2008:204-206; Yigremew, 2001a:57; Gebru Mersha and Githinji, 2005:7-8.

one of the foundational elements of the land laws of all states in Africa."[563] It is not even the fact that despite the existence of the formal land policies, laws, and institutions that the state has been establishing and operating through land law reform, the pre-existing non-formal customary ones have continued to exist, operate, and be used by society to govern more than 85% land relations in Ethiopia.

Instead, what makes legal pluralism particularly a major challenge in the country is the fact that the non-formal customary land policies, laws, and institutions have remained more popular, influential, and legitimate in the eyes of society despite having been delegitimised, abolished, and replaced by the formal state land policies, laws, and institutions, which, though are backed and considered legitimate by the state, appear to be illegitimate in the eyes of society and have thus largely remained irrelevant, unimplemented, and unused. As a result, the non-formal customary land policies, laws, and institutions have continued to exist, operate, and be used by society in Ethiopia despite often being not consistent with, and recognised under the formal state ones. Moreover, there is no clear hierarchy or other form of coordination between the formal state and non-formal customary land policies, laws, and institutions. This can create confusion and adversely affect the provision and implementation of smallholder land rights, and, through that, the smallholder productivity and poverty outcomes that land law reform is hoped would help achieve in the country. For example, parties to a dispute concerning such smallholder land rights may invoke different land laws to support competing claims, or may choose different land institutions that they feel would likely be favourable to their cause.[564] With that in mind, this Section will highlight the treatment that successive governments of Ethiopia have given to the legal pluralism in the land tenure system, particularly the non-formal customary land policies, laws, and institutions, and examine the implication that this treatment might have to the provision and implementation of smallholder land rights and the conditions of smallholder productivity and poverty.

As legal pluralism in the land tenure system, which comprises not only formal state land policies, laws, and institutions introduced through land law reforms, but also the pre-existing non-formal customary ones, affects the manner of provision and implementation of productivity-raising smallholder land rights, it thus seems to have affected the smallholder productivity and poverty outcomes of land law reform. As Brietzke argued, state law, including land law enacted through land law reform, "has failed

563 McAuslan, 2009:9.

564 See, for example, Cotula, Toulmin, and Hesse, 2004:2.

to promote development in Ethiopia."[565] That, according to Brietzke, who stressed that "Development and rural development are virtually synonymous in Ethiopia"[566], is because "the impact of state-sanctioned law on rural Ethiopia has been slight. In many areas, defined, perhaps, as lying beyond a day's walk from the nearest all-weather road, government law has had no effect upon daily life."[567]

It should, however, be emphasised that what matters is not the existence of legal pluralism per se, but the way in which this legal pluralism is formally treated. Research and experience suggest that if treated appropriately, legal pluralism can enhance rather than hinder land law reform's effectiveness. For example, McAuslan has argued that land law reform and the resultant legal pluralism can be used as a tool to make effective use of land as an engine of wealth creation in Africa if the indigenous customary land tenure arrangements are taken as a foundation and the formal land laws and institutions that are imported and transplanted are treated as an add-on. To use the words of McAuslan, "Customary tenure is not an add-on to received law; indeed, received or imposed law is the add-on. Received law thus needs to be adapted and adjusted to indigenous law, not vice versa, and proponents of received law should be advancing the case for legal pluralism".[568] Ethiopia provides an interesting litmus test for McAuslan's argument. The country has experimented with several land law reforms that treated legal pluralism in different ways. And the way in which the land law reforms treated legal pluralism appears to have shaped their smallholder productivity and poverty outcomes they delivered.

Specifically, under the land law reform Menelik II introduced in 1908, the pre-existing customary land tenure systems were taken as a foundation, whilst the formal state systems that were transplanted were treated as an add-on. As a result, a land tenure system composed of both formal state and non-formal customary systems governed land relations until the enactment of the country's most comprehensive and systematised reform in the 1960s. As Connolly noted, "Until the 1950s, the law in Ethiopia was an amalgamation of codes, legislation, and a variety of customary rules."[569] During this period, the condition of smallholder productivity and poverty was such that Ethiopia was able to ensure national

565 Brietzke, 1975:52.
566 Brietzke, 1976:637.
567 Brietzke, 1975:51.
568 McAuslan, 2009:9.
569 Connolly, 2005:7. See, also, Redden, 1968:41-42.

food self-sufficiency and even export to countries in East Africa and the Middle East.[570]

Nevertheless, under land law reforms that have since been enacted, the indigenous customary land tenure arrangements of Ethiopia were not taken as a foundation. Nor were they modified, reinforced, and complemented by the foreign formal land laws and institutions that were imported and transplanted. In fact, they were not even treated as an add-on to the newly introduced formal land laws and institutions. Instead, they were delegitimised, abolished, and replaced by the formal ones. Exceptionally, few instances of incorporation and recognition of certain aspects of the customary arrangements have been made in the 1960 Civil Code of Ethiopia, which embodied most elements of the reform programme enacted under Haile Sellassie I, although this has been progressively avoided under the subsequent reform programmes. Yet, even those few customary elements that were retained in the Code were neither adequate nor effective. Besides being reflective of the customs of only the then politically more important ethno-cultural groups and hence as foreign as the formal ones to the many others, those customary elements were never communicated and put into effect sufficiently. As Vanderlinden observed, "for many inhabitants of the Empire, the few traditional norms kept in the Codes are utterly foreign, as they reflect the traditions of other politically more important groups."[571]

Commenting on the treatment accorded to customary land tenure arrangements, David, the Civil Code draftsman, has stated that "The Ethiopians have sorted out their customs, keeping only the necessary ones which either correspond to their profound sentiment of justice, or else appear too generally and too profoundly rooted for one to hope to take them away from Ethiopians in the foreseeable future."[572] Several things are unclear in David's comment. It is not clear what is meant by, by whom, and on what basis the customs of Ethiopians that correspond to their "pro-found sentiment" and that are "too profoundly rooted" were decided; or if, by whom, and how the customs will be taken away from them.

One thing is clear, though. The customary land tenure arrangements were neither taken as a foundation, nor treated as an add-on to the formal land laws and institutions that were imported and transplanted. The incorporation and recognition of certain aspects of them has been made, but only exceptionally and rarely. In short, the 1960 Civil Code of Ethiopia made it clear under Article 3347(1) that "Unless otherwise expressly provided, all rules whether written or customary previously in force

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570 Howard et al., 1995:1; Markos, 1997; Hailu, 1991.

571 Vanderlinden, 1969.

572 David, 1964:194.

concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed."

The Derg and the EPRDF were even less generous in their treatment of the customary land tenure arrangements under the reform programmes they enacted. The main objective that the Derg assigned to its reform was "by liquidating the feudal system, to lay the basis upon which the Ethiopian peasant masses may be liberated from age-old feudal oppression, injustice, poverty and disease, and all Ethiopians may henceforth live in equality, freedom, and fraternity."[573] For the Derg, in order to liquidate the feudal system, customary arrangements "concerning land tenure [that] strongly reinforce the feudal framework of Ethiopian rural life" had to be abolished.[574] Accordingly, Article 32 of the PMAC Proclamation delegitimised and abolished all non-formal customary land tenure arrangements.

On its part, the EPRDF pursued ethnic-based agenda. Accordingly, it declared under Article 40(3) of the FDRE Constitution 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 land laws the EPRDF issued as part of its reform programme also declared that the reform is intended to promote the ethnic-based agenda and realise the policy of state ownership of land "confirmed in the Constitution of the FDRE as a result of the bitter struggle waged by the Nations, Nationalities and Peoples of Ethiopia."[575] Furthermore, the Constitution stipulated under Article 9(1) 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." Similarly, contravening provisions and operations of the customary land tenure systems have been rendered null and void under Article 17(2) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 30(2) of the Oromia Proclamation 2007, and Article 32(2) of the Tigray Proclamation 2007.

However, notwithstanding those radical abolition provisions and despite often being in conflict with the provisions of the formal ones, the non-formal customary land tenure arrangements continue to exist and operate. Notably, they remain far more popular and important than the formal ones in governing smallholder land relations. This fact epitomises the failure of land law reform and the challenge of legal pluralism. In other words, the outcome of land law reform has been a dual, dysfunctional land

573 PMAC Proclamation, 1975: Preamble.
574 Brietzke, 1974:155.
575 FDRE Proclamation, 1997: Preamble.

tenure system characterised by legal pluralism. On the one hand, land law reform has given rise to a formal land tenure system, which, despite being legitimate in the eyes of the state, is apparently illegitimate in the eyes of the people. It is such laws of the country that resulted from this failed attempt to abruptly erase numerous centuries of legal history, turn it into a tabula rasa, and fill it with alien laws that Schiller has characterised as "fantasy law."[576] And, on the other, land law reform has neither recognised nor neutralised pre-existing non-formal customary land tenure systems, which, despite having been formally abolished, are apparently considered legitimate in the eyes of the people and remain far more popular and important in governing smallholder land relations. In fact, application of the five parameters that Friedman developed to measure the legitimacy of a legal system suggests that the non-formal land tenure systems are more legitimate than the formal ones.[577] In short, land law reforms enacted in modern Ethiopia have produced neither the functional formal land tenure system nor the agricultural growth successive governments anticipated. The legal pluralism it brought about means that, instead of clarity and predictability, land law reform has entailed confusion and uncertainty in the land tenure system governing the provision and implementation of smallholder land rights. Moreover, as evidenced by the fact that Ethiopia has been in structural food deficit since the enactment of the country's first comprehensive land law reform in the 1960s, which also marked the beginning of the wholesale abolition and replacement of customary land tenure arrangements by formal ones, and that the deficit has worsened with the increasing sidelining of the customary land tenure arrangements under the subsequent land law reforms suggests that the way legal pluralism was handled is the crucial factor behind the outcome land law reform delivered. Brietzke has succinctly summarised the situation, noting that "In Ethiopia, effective everyday social control is maintained under traditional laws. Recourse to 'government law' only occurs in extraordinary cases - penal problems, tax disputes, and cases in which traditional dispute settlement has failed. Even in these cases, the judge is often unaware of the existence of relevant state-sanctioned law, misunderstands it, or refuses to apply it", and that "the laws currently applicable in rural Ethiopia are an often overlooked development constraint." [578]

But why did not "penetration" of formal state land policies, laws, and institutions take place? That is

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576 Schiller, 1966:200.

577 According to Friedman, the legitimacy of a legal system is measured on the basis of: (a) the existence of public knowledge of the laws and the positiveness of the attitudes and behavioural patterns towards these laws; (b) the favourable action and reaction of the people with respect to the procedural institutions like courts; (c) their willingness to use such institutions like courts; (d) their consideration of the laws (or substantial part of them) as legitimate; and (e) the people's knowledge of the laws (Friedman, 1975:193).

578 Brietzke, 1975:46-47.

arguably because land law reforms undertaken throughout Ethiopia's history have been designed primarily to serve the interests of those in state power. The state often did little to engage beyond ensuring that those interests are served; and lacked the motivation and means to consult or benefit smallholders or the public at large in the formulation and implementation of land law reforms.[579] On their part, suspicious or unaware of the formal state land policies, laws, and institutions, smallholders tended to ignore them and stick to the pre-existing non-formal customary tenure systems. For example, as Dunning suggested, "There have been land reforms throughout Ethiopian history, but have been with highly political flavour designed to reward one group or to punish another, and always ultimately to consolidate the power of the ruler."[580] This political purpose of using land law reform to put land under state control has since continued. Crewett, Ayalneh, and Korf have observed that "Ethiopia has a long legacy of state intervention in land relations throughout different political regimes", and that "It is evident that the quest for state control over rural land exhibits long continuity in Ethiopian history."[581] Similarly, Crewett and Korf have argued that "it is very unlikely that the Ethiopian government departs from the dependence path in rural politics and the practices to govern the rural populace and gives up its most precious power resource in the rural realm - the power to distribute land."[582]

Land law reforms undertaken in the country have thus been not primarily based on economic considerations of raising agricultural productivity and tackling poverty, but taking into account social and political interests associated with land. Through their land law reforms, Haile Sellassie I sought to promote community cohesion and national unity; the Derg waged class struggle to bring land equality and classless society by "liquidating the feudal system" and laying "the basis on which Ethiopians may live in equality, freedom, and fraternity"; and the EPRDF pursued ethnic-based agenda and sought to realise the policy of state land ownership "confirmed in the Constitution of the FDRE as a result of the bitter struggle waged by the Nations, Nationalities and Peoples of Ethiopia." Haile Sellassie I enacted his land law reform because "Ethiopia requires the modernisation of the legal framework of social structure" and "In order to facilitate growth and development."[583] The Derg's reform was meant to "increase agricultural production and, by liquidating the feudal system, [to] provide work for all rural

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579 See, for example, Gebru Mersha and Githinji, 2005:1.
580 Dunning, 1970:277.
581 Crewett, Ayalneh, and Korf, 2008:5 and 21.
582 Crewett and Korf, 2008:215.
583 Civil Code of Ethiopia, 1960: "Preface", v.

people [and] narrow the gap in rural wealth and income."[584] The EPRDF enacted its reform to promote its ethnic-based agenda, as well as "put in place legal conditions conducive for sustainable rural land use, whereby rural land is conserved and sustainably used in a manner that gives a better output."[585]

However, apparently successive governments not only viewed the pre-existing non-formal customary land tenure arrangements as "illegal" superstructures and denied them the status of "law", but also considered them anathema to the economic, social, and political goals they sought to pursue through their land law reforms. That is why each of them enacted their own land law reform and used it to emphatically declare the wholesale repeal and replacement of the indigenous non-formal customary arrangements by the foreign-modelled formal state land policies, laws, and institutions they imported and transplanted. For example, David, the draftsman of the Civil Code and the chief architect of the first comprehensive land law reform of Ethiopia, has explained the perception that underpinned the treatment accorded to the non-formal customary arrangements, noting that "The development and modernisation of Ethiopia necessitate the adoption of a 'ready-made' system; development and modernisation force the reception of a foreign system of law in such a manner as to assure as quickly as possible a minimal security in legal relations."[586] In fact, David did not recognise "customs" as "law", and considered them responsible for the country's underdevelopment. According to David, Ethiopia's adoption of a 'ready-made', foreign system of law was justified because the country did not have, and "cannot wait 300 or 500 years to construct in an empirical fashion a system of law". As regards the situation before codification, David remarked that "Only ten years ago there existed neither a collection of jurisprudence, nor a doctrinal work on the civil law; neither were there any laws except some very fragmentary dispositions. Under these conditions citizens were left without a guide to their rights and obligations. The door was open to arbitrariness and all security was lacking. With conditions in the modern world, where highly developed states exist, it is inconceivable that one might build in a country such as Ethiopia the road built in Western Europe in the course of centuries of groping."[587]

But could the governments have been able to pursue their economic, social, and political goals using the pre-existing non-formal customary land tenure arrangements rather than the foreign-modelled formal land policies, laws, and institutions they imported and transplanted through land law reform?

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584 PMAC Proclamation, 1975: Preamble.

585 FDRE Proclamation, 1997: Preamble; FDRE Proclamation, 2005b: Preamble and Article 2(3).

586 David, 1963:188.

587 David, 1963:187-188.

The decentralised, vague, and diverse nature of the customary arrangements, as well as the fact that the social pressures inducing compliance with them are too diffuse, makes them ill-adapted to pursue those goals. Different cultural groups have different rules, impairing the efficiency of centralised formulation and implementation of development interventions. The non-formal customary arrangements inherently reflect and reinforce the patriarchal, feudal, and subsistence framework Ethiopia's smallholder-based rural life, emphasise traditional structures, values, and beliefs, focus on upholding past relationships and maintaining the relative status quo, and hinder the reduction of reliance on families, neighbours, and communities and the expansion of wide-scaled face-to-face relationships necessary to foster broad-based economic, social, political development.[588] Since unwritten custom is vague and depends on the knowledge of particular judges or jurors, people cannot predict the consequences of their actions with the degree of certainty required for development. Relations between persons with differing cultural groups are made more difficult by the diversity of rules.[589] Codification of customary laws, such as was attempted in Kenya, could only result in a lowest common denominator type of law that would mean little to a person of a particular cultural group, and would be ill-adapted to advance development.[590]

Nonetheless, the governments could have been able to better advance the economic, social, and political goals they sought to pursue through their land law reforms using the foreign-modelled formal state land policies, laws, and institutions they imported and transplanted as an add-on to, and a means to modify and complement rather than repeal and replace the pre-existing non-formal customary arrangements. Such land law reform would be more efficient and effective, and the land policies, laws, and institutions it establishes more legitimate and functional than would be otherwise. That is because it would allow concentration of the country's scarce legal resources upon those elements of the pre-existing land tenure system that most constrain smallholder land rights and productivity. It would also enable to avoid a situation whereby non-formal customary arrangements are repealed and replaced by foreign-modelled formal ones, which, despite being backed by the state, largely remain irrelevant, unimplemented, and ineffectual. As Brietzke observed, land law reform can be efficiently and effectively used to foster smallholder productivity and development in countries like Ethiopia if the new formal land laws and institutions are put into effect to the extent they can serve as a substitute for the traditional values and structures and are able to ensure that the legal rule and the associated reward

588 Wilson and Wilson, 1965:24, 88, 108, and 162.
589 Brietzke, 1975:46-47.
590 Marein, 1955:250.

or punishment receive maximum spontaneous obedience. Otherwise, land law reform can disrupt the pre-existing land relations and entail more harm than good. For Brietzke, "The development potential inherent in law can best be realised by concentrating scarce legal resources upon those narrowly defined laws, values, and structures which most hinder development." Brietzke has further argued that reform "programmes that exceed political and administrative capacities should not be attempted: the payoff from the utilisation of scarce resources is too small and disrespect for law and governmental policies will result."[591] More importantly, the formal state land policies, laws, and institutions that such land law reform establishes would be more legitimate and functional, thereby entailing better penetration. As Friedman noted, "penetration is fostered by participation."[592] The fact that it is the newly introduced formal land policies, laws, and institutions that are adapted to "their" indigenous customary arrangements would ensure the continuation of smallholders' knowledge, consideration as legitimate, and willingness to use the land tenure system that would result from such land law reform.

3. 5. Land Law Reform's Smallholder Productivity and Poverty Effects in Ethiopia

Any assessment of land law reform's effect in helping raise smallholder productivity and tackle poverty in Ethiopia should include examination of cereals. That is because cereals, particularly teff, barley, wheat, maize, and sorghum are the most important crops in the country in terms of the number of producing smallholders and the amount of cultivated land, output, expenditure, and consumption.[593] For instance, cereals were grown by almost 11.2 million smallholder households accounting for close to 85% of the country's smallholder households numbering around 13.25 million on 73.4% of the total of 113 million hectares cultivated during the 2004/05-2007/08 main "Meher" production season.[594] Together, those smallholder households produced a yearly average of 12 million ton of cereals, which is about 68% of the agricultural output of Ethiopia (Table 3, Appendix 3[595]). According to the 2004/05

591 Brietzke, 1975:46 and 51.

592 Friedman, 1969:29.

593 Kassa, van Rompaey, and Poesen, 2012:945.

594 Unless stated otherwise, all figures pertaining to the amount of cultivated land, output, and input provided herein refer to the Meher crop production season in Ethiopia. Most of the major agricultural production areas of Ethiopia have two rainy seasons, namely Meher and Belg. Meher is the crop production season associated with the main rainy season. Therefore, defined in terms of harvesting, the term Meher is used to refer to the main crop production season that runs from the month of Meskerem (September) to Tahsas (December); while the term Belg is used to refer to the minor rainy and crop production season that runs between the months of Megabit (March) and Ginbot (June). See, for example, Fantu, 2012:1; Alemayehu, Dorosh, and Sinafikeh, 2011:4.

595 Alemayehu, Dorosh, and Sinafikeh, 2011:2.

Household Income, Consumption, and Expenditure Survey (HICE), the average share of food expenditure in total expenditure being 51%, cereals accounted for more than 46% of food expenditure and were the source of 62% of national average per capita daily calorie intake during that year.[596]

The period around 1960 provides a suitable starting point to assess land law reform's role in helping raise smallholder productivity and tackle poverty in Ethiopia. This period marks the enactment of the country's most comprehensive land law reform linked to its first agriculture-led national development strategy. It was also around this period that national statistics about agriculture started to be collected.

Data from FAO indicates a modest but steady growth of 1.9% per annum on average in overall agricultural output during the 1961/62-1969/70 – the first decade following immediately the start of implementation of land law reform along with agrarian reform as part of the agriculture-centred national development strategy formally adopted by Haile Sellassie I. However, it was the expansion of cultivated land area that contributed much of the growth, which was 1.1% per annum. In contrast, rise in smallholder agricultural productivity accounted only for 0.8% of the growth, which betrays the little or no positive impact of land law reform (Appendix 4, Table 4[597]). Overall, agricultural output plunged sharply during the next decade from 1970/71-1979/80, which was marked by the 1974 Revolution that led to the fall of Haile Sellassie I and the rise of the Derg. It was also characterised by the enactment of the Derg's land law reform that introduced the policy of state ownership of land – the most radical and comprehensive in Ethiopia's history, and its agrarian reform programme that expanded the provision of modern agricultural inputs, implements, and services, but put it under exclusive state control. The growth of agricultural output during this decade was -1.4% per annum (Appendix 4, Table 4[598]).

The major cause of the decline was a -4.9% decrease in cultivated land area that analysts note was attributable to the economic, social, and political turmoil associated with the 1974 Revolution, as well as the subsequent implementation of the Derg's land law reform and agrarian reform programmes that transferred the land tenure system and the smallholder sector's modus operandi to state control, banned private enterprise, and introduced multifaceted restrictions, which reduced incentives for production, or encouraged under-reporting.[599] Notably, the adverse effects of the land law reform and agrarian reform

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596 Alemayehu, 2008:3-4; CSA, May 2007.

597 Alemayehu, Dorosh, and Sinafikeh, 2011:11.

598 Alemayehu, Dorosh, and Sinafikeh, 2011:11.

599 Alemayehu, Dorosh, and Sinafikeh, 2011:10.

programmes could have made the negative growth rates even worse, had it not been for the 3.7% rise in smallholder agricultural productivity due largely to the expansion of the provision of modern agricultural inputs, implements, and services throughout the country.[600] Similarly, the average growth rate of agricultural output under the Derg during the 1979/80-1989/90 decade was -0.3% according to FAO data, whilst data from CSA indicates a growth rate of 0.6%[601] (Appendix 4, Table 4[602]).

During the decade from 1990/91-1999/00, which was marked by the fall of the Derg and the rise of the EPRDF to power, the average growth rate of overall agricultural output accelerated to about 5% according to both FAO and CSA data. Yet, the growth was entirely owing to the expansion of cultivated land area by almost 6%, whilst smallholder agricultural productivity continued to decline by 0.7% and 0.5% according to FAO and CSA data, respectively. During the following decade from 1999/2000 to 2008/09, growth in overall agricultural output accelerated further to 6.5% and 7.0% according to FAO and CSA data, respectively (Appendix 4, Table 4[603]). The growth achieved during these two decades is attributed mainly to the liberalisation, as compared to the Derg era, introduced by way of the land law reform and agrarian reform programmes enacted by the EPRDF[604]; and a combination of other factors, including the absence of war and political stability, increase in foreign aid and public investment, and to some extent good rainfall and climatic conditions.[605]

When it comes to land law reform's role in helping tackle poverty in Ethiopia, over the period from 1960-2002, the national economy of Ethiopia grew at a rate of 2.60% per annum. Analysis of sectoral growth rates during this period suggests that the larger share of the growth of real GDP came from the industrial and services sectors than agriculture. Whilst agricultural GDP grew by 1.35% on average annually, industrial GDP and service GDP grew by 3.35% and 4.70% per annum, respectively (Appendix 8, Table 8[606]). Likewise, decomposing the growth trend into different sectors shows that agriculture contributed only 0.78% of the growth of the national economy, whilst industry and services

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600 Gebru Mersha and Githinji, 2005:5-7; Griffin, 1992: 24 and 57.

601 CSA data was not provided for previous decades because the CSA was established by the government in 1981/1982. Analysts note that at times data the CSA releases appear to have been designed to support the government's position (Lavers, 2011:3; Dercon, Vargas Hill, and Zeitlin, 2009:2; Dercon and Vargas Hill, 2009:11). The CSA is tasked "to collect basic quantitative information on the country's agriculture that is essential for planning, policy formulation, monitoring and evaluation of food security and other agricultural activities" (CSA and MoFED, July 2011:1).

602 Alemayehu, Dorosh, and Sinafikeh, 2011:11.

603 Alemayehu, Dorosh, and Sinafikeh, 2011:11.

604 EEA, 2011:53.

605 Fantu, 2012:1.

606 Mulat, Fantu, and Tadele, 2006:4.

contributed 0.35% and 1.50%, respectively, during the same period.[607] The rate of economic growth has been more impressive during the period since 2003. The country's economy has been growing at a rate of more than 8% per annum according to the IMF, and by around 11% as per the government (Appendix 9, Table 9[608]). Though the actual rate of growth has been controversial and data provided by the government has been widely contested, which it routinely rejects as "politically motivated", there is an overall consensus that the country has seen strong economic growth during this period.[609]

Nevertheless, the economic growth registered during the period since 1960 was attributable largely to the services sector followed by manufacturing (Appendix 8, Table 8[610]; and Appendix 9, Table 9[611]). Nonetheless, even the growth in the services sector was due to public investment in the form of expansion in administration and defence expenditures. It had little to do with the expansion of such services as education and health, which are crucial for overall poverty alleviation and development.[612] In general, whilst the poor performance of the agricultural sector demonstrates the little positive impact that land law reform had, the fact that the sector remains to be the mainstay of the national economy suggests that structural transformation has not yet been achieved. In short, the economic growth achieved during the period since 1960 is not attributable mainly to agriculture, particularly the smallholder sector. Nor has it translated into broad-based poverty alleviation and economic development. In fact, the condition of poverty in Ethiopia seems to have been worsening during this period. For example, whilst overall agricultural output and the national economy grew at a rate of 1.35% and 2.60% per annum, respectively, during the period from 1960-2002, the population grew by 2.71% during the same period. This implies an annual decline of 1.36% and 0.11% in the growth of per capita food production and income, respectively (Appendix 5, Table 5[613]; and Appendix 8, Table 8[614]).

It can be argued that government policies have influenced poverty alleviation. For instance, the period 1960-1973 during the imperial era was characterised by a land tenure system that included private land

607 Mulat, Fantu, and Tadele, 2006:3-4.
608 Kassahun, 2012:7.
609 Oxford Analytica, 2011.
610 Mulat, Fantu, and Tadele, 2006:4.
611 Kassahun, 2012:7.
612 Mulat, Fantu, and Tadele, 2006:3-4.
613 Befekadu and Berhanu, 2000:85.
614 Mulat, Fantu, and Tadele, 2006:4.

ownership and a more liberal economic policy under the traditional system of public administration.[615] During this period, though estimates vary, the annual average growth rate of agriculture was close to 3%, thanks mainly to investment in commercial agriculture.[616] Similarly, the economy grew 4% per annum, though it falls to around 1.5% per capita growth, given the high population growth rate[617] (Appendix 6, Table 6[618]; Appendix 7, Table 7[619]; and Appendix 8, Table 8[620]).

During the rule of the Derg, the performance of the agriculture sector was the worst in the country's history. Though estimates vary, agriculture grew by around 0.5% per annum (Appendix 6, Table 6[621]; Appendix 7, Table 7[622]; and Appendix 8, Table 8[623]). Overall economic growth decelerated to 2.3% per annum, which is equivalent to -0.4% per capita growth when population increase is factored in.[624]

In contrast, the rule of the incumbent EPRDF is characterised by liberalisation in some aspects as compared to the Derg period. Though estimates vary, agriculture performed better than during the Derg period - growing at a rate of more than 2% per annum (Appendix 6, Table 6[625]; Appendix 7, Table 7[626]; and Appendix 8, Table 8[627]). The country's economy has also seen strong growth – a rate of around 7% per annum for the entire post-1991 period combined.[628] Yet, the remarkable economic growth rate registered during the period since 1991 has not reversed the poverty situation in Ethiopia. In particular, the performance of the agricultural sector has been poor both in absolute terms and as compared to the manufacturing and services sectors. The fact that despite its poor performance, agriculture remains the primary source of livelihood and the mainstay of the economy suggests that structural transformation has not yet been achieved. This demonstrates the little positive role land law reform has been playing in helping raise agricultural productivity and tackle poverty in the country.

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615 Vaughan and Mesfin, 2011:17.
616 Alemayehu, 2005:6-7.
617 Vaughan and Mesfin, 2011:17.
618 Rashid, Meron, and Gezahegn, 2007:37.
619 Rashid, Meron, and Gezahegn, 2007:28.
620 Mulat, Fantu, and Tadele, 2006:4.
621 Rashid, Meron, and Gezahegn, 2007:37.
622 Rashid, Meron, and Gezahegn, 2007:28.
623 Mulat, Fantu, and Tadele, 2006:4.
624 See, for example, Alemayehu, 2005:7.
625 Rashid, Meron, and Gezahegn, 2007:37.
626 Rashid, Meron, and Gezahegn, 2007:28.
627 Mulat, Fantu, and Tadele, 2006:4.
628 Vaughan and Mesfin, 2011:21; Oxford Analytica, 2011.

Chapter 4

Land Policies and the Choice of a Land Ownership Policy Promoting Smallholder Land Rights in Ethiopia

4. 1. Introduction

As discussed earlier, land policy is one of the constituents of the land tenure system land law reform establishes and through which it operates to bring the change in the provision and implementation of productivity-raising smallholder land rights it needs to bring to deliver the smallholder productivity and poverty outcomes it is hoped would help achieve. "Land policy", defined broadly here, relates to a general statement the state promulgates using its legislative organ that specifies the possible forms of property rights in land as per the essential national interest concerning land, which thus broadly reflects the purpose, composition, and operation of the overall land tenure system, highlights the administration of land, guides the management of land relations, and directs the manner of provision and implementation of land rights.[629] Land policy plays a critical role in making land law reform effective.

As Wily noted, land law reform "is mainly first articulated in new national land policies".[630] As mentioned above, the articulation of land policy conducted during the formulation of land law reform intended to help raise smallholder productivity and tackle poverty in a given country involves specification, as per the essential national interest concerning land, of the possible forms of property rights in land to be applied, exercised, and enforced under the formal state land tenure system in the form of private, state, or customary land ownership or a variation or a combination of some or all of those, which therefore means stipulation of the breadth, duration, and assurance of smallholder land rights in broad terms. The upshot is that land policy will also broadly guide the composition, operation, and contribution of the other two constituents of the formal state land tenure system, namely land laws and institutions, that land law reform will subsequently put into effect and through which it will later operate to bring about the change in the provision and implementation of productivity-raising smallholder land rights that it needs to bring about in order to deliver the smallholder productivity and poverty outcomes it is hoped can help achieve. Specifically, land policy will shape the forms and contents of provisions of productivity-raising smallholder land rights set out in the land laws that will

629 See, for example, McAuslan, 2003:3-9 and 251.

630 Wily, 2003:4.

be subsequently issued to clarify, give binding force to, and translate into action the land policy; and direct the composition and operation of land institutions that will be established to carry out the implementation of provisions of the land laws through application in the course of administering land, managing land relations, and enabling exercise by smallholders, as well as through interpretation, explanation, and enforcement in the course of dispute resolution. Moreover, although land policy may not be directly binding and relied upon, it guides the manner of interpretation, explanation, and application of smallholder land rights provisions land laws set out during implementation by executive land institutions, exercise by smallholders, and enforcement by dispute resolution mechanisms.[631]

On the other hand, as discussed earlier, land has historically been a resource of vital economic, social, and political importance in Ethiopia.[632] In view of this and the critical role that land policy plays, it would not therefore be surprising to see that the choice of a land ownership policy which land law reform should introduce in order to be effective in helping raise smallholder productivity and tackle poverty in the country has been a subject of a longstanding, passionate debate. This debate, which revolves around the issue of whether the policy of state or private ownership of land is preferable for the country, first arose during the heyday of the 1974 Revolution that deposed Haile Sellassie I, which was fuelled by grievances related to the distribution of land rights and agricultural products. As Bahru noted, although all agreed on the need for a radical land law reform and rallied around the slogan "land to the tiller", the issue emerged as a bone of contention amongst the discrete groups of students, teachers, political organizations, trade unions, and military officers that were the driving force behind the Revolution.[633] Amidst the turmoil that prevailed during the Revolution, junior military officers calling themselves "the Derg" took over power and enacted the 1975 radical land law reform in the form of the PMAC Proclamation No. 31/1975, which abolished the numerous land tenure systems that were in force during the imperial era and introduced the policy of state ownership of land throughout Ethiopia.[634] The Derg grabbed power and enacted its land law reform in the name of peasants, although as Brietzke stressed, it never consulted or involved them in the process.[635] According to Gebru Mersha and Githinji, the Derg did so realizing the necessity of such a radical land law reform programme to uproot the landed aristocracy from rural areas, appease the left opposition, and win over the support of

631 See, for instance, Lindsay, 2002:212-217. See, also, McAuslan, 2003:3-9 and 251.
632 See, for example, Dunning, 1970:271; Mesfin, 1986:76; Crewett, Ayalneh, and Korf, 2008:2.
633 Bahru, 2002:239-243.
634 PMAC Proclamation, 1975: Articles 32 and 3.
635 Brietzke, 1976:637.

peasants - thereby consolidating its power.[636] The Derg subsequently claimed that its land law reform would implement the "land to the tiller" rallying cry of the Revolution and put the debate to rest.[637]

Nonetheless, the debate was rekindled in earnest in the period of uncertainty that followed the fall of the Derg and the coming to power of the EPRDF in May 1991. Considering that the existing policy of state ownership had detrimental effect on smallholder productivity and poverty during the Derg era, and that the country was undergoing a "post-socialist transition", many local and international development analysts, practitioners, and funders expected a move towards privatisation.[638] Moreover, during the period of uncertainty that accompanied the transfer of power, both the options of continuing the policy of state ownership and of replacing it with a private ownership policy were discussed.[639] A case in point is a Symposium on "Rehabilitating the Ethiopian Economy" organised in January 1992 in Addis Ababa by Inter-Africa Group, which was attended by a multitude of participants, such as local and international development analysts, as well as representatives of bilateral and multilateral funding agencies, particularly the World Bank and the IMF, and of political organisations, including the ruling and opposition parties. In the Symposium's Final Report, it was noted that "There was a consensus that the current system, because it does not guarantee security of tenure and undermines incentives, has detrimental effects on agricultural productivity and natural resource conservation."[640] However, the EPRDF persisted with its decision to continue the state ownership policy it had already declared in the NEP the TGE issued in November 1991, although a referendum was promised to decide the issue.[641]

Yet, during the deliberation conducted in the constituent assembly to decisively formulate and institute the country's land policy in the new FDRE Constitution that was being drafted under the auspices of the EPRDF, the issue was so contentious that the continuation of the state land ownership policy was approved narrowly only by four votes – with 499 votes in favour, whilst 495 members of the assembly voted against the continuation and for the introduction of the policy of private land ownership.[642] The policy of state land ownership was thus validated under the FDRE Constitution. Specifically, the Constitution provides that "The right to ownership of rural and urban land, as well as of all natural

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636 Gebru Mersha and Githinji, 2005:4-5.
637 Crewett, Ayalneh, and Korf, 2008:12.
638 Crewett and Korf, 2008:203.
639 Hussein, 2004:1-2 and 2001:35-37.
640 Inter-Africa Group, 1992:6-7.
641 TGE/NEP, 1991.
642 Gebru Mersha and Githinji, 2005:7.

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."[643] All federal land laws issued subsequently validate the state land ownership policy provided under the Constitution. For example, Article 4 of the FDRE Proclamation No. 89/1997 and the Preamble and Article 5(3) of the FDRE Proclamation No. 456/2005 set out the same provisions as the Constitution. Likewise, the constitutions and land laws issued by all regions confirm this policy. For instance, Article 40(3) of the SNNPRS Constitution contains a restatement of the provisions of the FDRE Constitution. Similarly, the Preamble and Article 5(14) of the SNNPRS Rural Land Proclamation No. 110/2007 are restatements of provisions of the FDRE Proclamation No. 456/2005.

Meanwhile, the referendum that was promised to decide the issue never took place.[644] The government has also tried to suppress the debate thereafter publicly declaring that land ownership policy is a "dead issue" and that any policy change will be made only "over the grave of the EPRDF."[645] Despite that, the debate has continued in earnest between, on the one hand, the government and its supporters defending the policy of state land ownership the government has been enforcing[646], and, on the other hand, critics arguing against it and in favour of the introduction of a private land ownership policy.[647]

With that in mind, this thesis seeks to contribute to the debate by synthesising, analysing, and assessing the antagonistic arguments of the two poles in the light of the relevant law and development research and experience. Therefore, this Chapter will specifically examine what advantages the state land ownership policy that the government currently enforces, the private ownership policy that the critics mostly favour, and the non-formal customary land tenure systems that society frequently uses offer in promoting the provision and implementation of productivity-raising smallholder land rights. The Chapter will also explore if it is possible and preferable for Ethiopia to adopt a hybrid state-private-customary policy combining the advantages both the formal state and private ownership policies and the non-formal customary land tenure systems offer, outline the form and content that this hybrid state-private-customary land policy should have, and demonstrate the way how it may be put into effect.

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643 FDRE Constitution: Article 40(3).

644 Crewett and Korf, 2008:203-204.

645 Kassahun, 2012:8.

646 Lavers, 2011:3; MoFED, 2002:56; MoFED, 2006; EPRDF, 2005; MEDAC, 2001; MoPED, 1993; Hussein, 2004:1-2 and 2001:48-49; Crewett and Korf, 2008:204-206; Yigremew, 2001a:57; Gebru Mersha and Githinji, 2005:7-8.

647 Kassahun, 2012:8; Dessalegn, 2009:285, 2006:vi;, 2004:13; 1999, 1997, 1994, and 1992; Samuel, 2006c:5, 2006b, and 2006d; Yigremew, 2001a:57-58, 2001b, and 2002; EEA/EEPRI, 2002:vi; EEA, 2004, 2006, 2011.

4. 2. Justifications of the Government for State Land Ownership Policy

The justification the government and other proponents of its position offer for the enforcement of the current state land ownership policy is arguably shaped by the socialist economic programmes, ethnic-based social agenda, and Marxist-oriented political outlook of the EPRDF - the political organisation in charge of the country's post-Derg government and land law reform. This justification is underpinned by the premise that land is a resource of vital economic, social, and political importance, and that Ethiopia's smallholders have historically endured widespread landlessness, arbitrary eviction, exploitative tenancy, and deprivation of their produces. Therefore, for the proponents, the most important national interest that a land policy introduced in Ethiopia should serve ought to be ensuring fairness for smallholders in the control and enjoyment of land rights and the concomitant benefits.[648] According to McAuslan, "fairness" or "equity" may be defined as making available an equitable and reasonable proportion of resources, in this case land, to all members of society who need it, in this case smallholders. It also includes taking steps to ensure this is done and the position is maintained.[649]

In short, the proponents justify the current state land ownership policy based on two strands of justice as fairness principle. The first is fairness as historical justice, which is redressing the injustices that smallholders historically suffered and preventing those injustices from coming into being again. The other is fairness as egalitarianism, which is enabling smallholders to have equal access to land without payment. The proponents further contend that the involvement of the state in the land relations of the country is necessary to guarantee that fairness is practically ensured and maintained.[650]

Moreover, the proponents argue that those historical injustices had profound economic, social, and political implications. Economically, since land and land-based smallholder agriculture are the primary source of livelihood and the mainstay of the economy, the injustices related to the distribution of land rights and agricultural products had entailed the impoverishment of smallholders individually and the economy nationally.[651] Socially, the proponents claim that those injustices had a devastating effect because Ethiopia is a country with diverse ethno-linguistic, religious, and cultural groups, where

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[648] EPRDF, 2000:185; MoFED 2002:56; MoI, 2001:86; Gebru Mersha and Githinji, 2005:23; Fantu, 1994:139-140; Gebru Mersha, 1998:9.

[649] McAuslan, 2003:10.

[650] See, for example, EPRDF, 2000: 175 and 186-187; MoI, 2001:67-70. See, also, Crewett and Korf, 2008:215.

[651] See, for instance, EPRDF, 2000:185; MoFED 2002:56; MoI, 2001:86.

ethnicity, religion, and culture are intimately tied to specific places, which were more pronounced as the alleged injustices occurred in the southern parts of the country that were reintegrated upon the formation of the modern Ethiopian state at the end of the 19th century.[652] As Markakis observed, "While Abyssinia had been a relatively homogenous state with deep Christian roots, the newly acquired territories were inhabited by a large number of ethnic groups among whom Islam predominated."[653] Whereas, Gebru Tareke, a vocal supporter of the EPRDF, has described the situation as follows: "By alienating lands of the annexed societies and thereby reducing them to servitude, and by imposing on them Abyssinian culture, the conquerors planted the seeds for national and class antagonism."[654] Politically, the proponents invoke the view widely held among analysts of Ethiopia's land and agrarian relations that those injustices emanate from the quest for state control over land throughout the history of the nation. According to Crewett, Ayalneh, and Korf, with a view to controlling power to distribute land – the most precious power resource in the country – and to thereby control and govern the rural smallholder masses and the populace at large, "The Ethiopian state has exerted considerable influence on local land tenure regimes throughout different political regimes."[655] Yet, the proponents tend to place particular emphasis on the ethnic dimension of the issue.[656] They are keen to emphasise that the practice has been instrumental in the exploitation and deprivation of ethno-linguistic groups, particularly in the southern parts of the country. That is why, they explain, "the land question" in Ethiopia is intertwined with "the question of nationalities" in terms of both the source and the solution of the problem, and needs to be approached as such to prevent political instability.[657]

The proponents further argue that the enforcement of the current state land ownership policy and the involvement of the state in the country's land relations are necessary because even in contemporary Ethiopia, the introduction of the policy of private land ownership would lead to the resurgence of those historical injustices along with their economic, social, and political implications. That, they explain, is because smallholders would sell off their land through distress sales and become landless and impoverished, which would give rise to the imperial-era absentee landlordism and exploitative tenancy

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652 See, for example, Gebru Mersha and Githinji, 2005:1-3.
653 Markakis, 2000:8.
654 Gebru Tareke, 1991:40-41.
655 Crewett, Ayalneh, and Korf, 2008:5. See, also Crewett and Korf, 2008:215.
656 Yigremew, 2002:27.
657 Gebru Mersha and Githinji, 2005:4-5.

institutions.[658] Specifically, the government claims that the introduction of the policy of private ownership of land would "obstruct our development", and "besides the huge economic harm it entails it will create a severe social crisis that endangers our peace, development, and even our survival."[659] It also contends that the privatisation of land ownership entails the acquisition and accumulation of land in the hands of a few individuals who are capable to buy, subsequent peasant eviction and poverty, and massive rural-urban migration of the then landless peasantry. It further explains that given the lack of industrial development and the high rate of unemployment in urban centres, large-scale rural-urban migration increases the potential for economic, social, and political unrest and ethnic conflict resulting from migration across ethnic boundaries.[660] Similarly, Gebru Mersha, a forceful proponent of the state land ownership policy, has argued that "privatization of land will create a massive eviction of peasants and the displacement of pastoralists. Landless and poor peasants, who comprise the overwhelming majority of the rural population, will be the first victims of that policy. Moreover, the pre-reform landlords, who battened on the meagre 'surplus' produced by the peasants, will now be replaced by 'capitalist' farmers who alienate peasants from their land."[661] Fantu Cheru, another proponent, has also warned that "the commoditization of land would turn the clock back to the situation before the 1974 Revolution. It would bring back the former landlords, open up the possibility of large-scale peasant evictions and thus create a massive influx of pauperized and destitute migrants into the towns".[662]

The proponents also maintain that the current state land ownership policy is tailored to make the post-Derg land law reform effective in improving the provision and implementation of productivity-raising smallholder land rights and helping raise smallholder productivity and tackle poverty.[663] They particularly claim that the state land ownership policy is meant to ensure the tenure security of smallholders by preventing them from selling or mortgaging their landholdings, thereby safeguarding them from the grabbing hands of an urban bourgeoisie and rural elites and protecting them from ending up landless.[664] They further assert that it has been declared under the FDRE Constitution that smallholders may not be dispossessed of their landholdings except under certain conditions specified by law, which they argue strengthens their tenure security by providing them with protection against

658 EPRDF, 2000:185; Gebru and Githinji, 2005:23.
659 MoI, 2001:86.
660 MoFED 2002:56.
661 Gebru, 1998:9.
662 Fantu, 1994:139-140.
663 MEDAC, 2001:9; MoI, 2001:4.
664 EPRDF, 2000:180.

arbitrary eviction. In addition, they point to Article 40(7), which stipulates that smallholders have full private ownership rights over immovable properties and permanent improvements they bring about on their landholdings with their own labour or capital. The proponents also reiterate the provisions of Article 40(8), which makes it clear that such property of smallholders may be expropriated only if it is needed "for public purposes", and "subject to payment in advance of compensation commensurate to the value of the property." Moreover, the proponents mention the land registration and certification programme envisaged under the federal and regional land laws, which they suggest is aimed at enhancing tenure security. Article 6 of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 15 of the Oromia Proclamation 2007, and Article 5 of the Tigray Proclamation 2007 provide for the registration and certification of smallholder landholdings that would grant lifelong usufruct rights, although the process has not yet been fully implemented in all parts of the country.[665]

When it comes to the facilitation of the transfer of rights over land, the proponents argue that although smallholders were prohibited from selling or mortgaging their landholdings so as to ensure their own tenure security, other transfer mechanisms have been provided by law. Indeed, despite the two principles of fairness, right to transfer landholdings through lease has been recognised under Article 8(1)-(3) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 10 of the Oromia Proclamation 2007, and Article 6 of the Tigray Proclamation 2007. Besides, any landholder has right to transfer his land use right through inheritance to members of his family under Article 8(5) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 9 of the Oromia Proclamation 2007, and Article 5(1) [d] and (2) of the Tigray Proclamation 2007.

As for the authorisation of collateralisation of land rights, the proponents maintain that investors engaged in commercial agriculture are allowed to use their landholdings as collateral to obtain credit under Article 8(4) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 15 (15) of the Oromia Proclamation 2007, and Article 15(3) of the Tigray Proclamation 2007. They also contend that smallholders were prohibited from using their landholdings as collateral to ensure their tenure security. Had collateralisation of land rights been authorised for smallholders, most would have been tempted to use their landholdings to obtain credit, default, and end up landless.[666]

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665 Imeru, 2010:6.

666 EPRDF, 2000:176-177.

Finally, it should be emphasised that the two core arguments set forth by the government in support of the policy of state ownership of land and against private land ownership are contradictory. On the one hand, it asserts that "the EPRDF strongly opposes"[667] the introduction of the policy of private ownership of land in Ethiopia because this policy would allow the country's private sector, which is "rent-seeking" and motivated by selfish interests and personal gains[668], to buy land from smallholders, who would "sell off their landholdings due to destitution" - thereby leading "inevitably to the accumulation of land in the hands of a few."[669] On the other, the government maintains that the main reason it favours the enforcement of the policy of state ownership of land in Ethiopia is because, contrary to the main argument of the supporters of private land ownership that this policy would enable private entrepreneurs to acquire land and engage in agriculture in a more productive and competitive manner, "in view of the limited capital and managerial capacity that the private sector of the country has, it cannot be expected to buy land and use it extensively in that manner."[670]

It should also be noted that it was the Derg which succeeded the imperial government and that first used the land and agriculture-related injustices of the imperial era to justify the introduction of the policy of state ownership of land and the intervention of the state in smallholder land relations in Ethiopia.[671] The Derg also had the same socialist economic programmes, ethnic-based social agenda, and Marxist political outlook as the EPRDF. As Hussein noted, however, the land law reform and agrarian reform measures that the Derg implemented to address the injustices were so interventionist that they undermined the initial gains and led to contradictions between the regime and smallholders, which opposition groups such as the EPRDF exploited effectively to overthrow it.[672] There is one subtle difference, though. The EPRDF gives precedence to the ethnic-based social aspects of the land question over the economic and political aspects of the issue. According to Assefa Fiseha, the EPRDF "has for long advocated that it is the oppression of nationalities that is at the heart of the crisis and the political and economic marginalisation is a consequence rather than a cause. Thus it championed for long for the nationalities right as a decisive remedy."[673] Nevertheless, some analysts, such as

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667 EPRDF, 2005b:27.
668 EPRDF, 2000:175 and 178.
669 EPRDF, 2005b:27.
670 EPRDF, 2005b:28.
671 Crewett and Korf, 2008:215.
672 Hussein, 2004:12.
673 Assefa Fiseha, 2006:212.

Vaughan[674] and Teshale[675], question the EPRDF's thesis of the oppression of nationalities by the Amhara elite and its commitment to bring about ethnic-based social justice in Ethiopia. They do so based on analyses of both the historical and contemporary situation of the political economy of ethnicity in Ethiopia under the rule of the EPRDF, which was founded and has since been led mainly by the TPLF. It should be remembered here that as Assefa Fiseha noted, like the Amhara, Tigrayans speak a Semitic language, adhere predominantly to the Ethiopian Orthodox Church, and belonged to Abyssinia – the predecessor to the present-day Ethiopia, although they were always a provincial contestant to the throne of Abyssinia and were by and large ruled by their own nobility.[676]

Finally, it should be mentioned that the current state land ownership policy's goal of ensuring fairness in allocation of land rights is incompatible with the post-Derg land law reform's and ADLI strategy's objective of raising smallholder productivity. For instance, Kassahun has noted "the anomaly" between the land policy's purpose of putting land under state ownership on the one hand; and, on the other, the land law reform's and the ADLI strategy's objective of raising smallholder productivity, as well as the national development policy goals of bringing about rapid economic growth, benefiting the majority of the population therefrom, moving the country from aid-dependency to self-sufficiency, and establishing a well-developed market economy.[677] Similarly, participants of the January 1992 Inter-Africa Group Symposium who supported the privatisation of land ownership have argued that it is impossible to achieve the objective of raising smallholder productivity through a state land ownership policy intended primarily for ensuring fairness.[678] However, the incompatibility appears to be a result of a conscious move. In the words of Crewett and Korf, it is a consequence of the government's attempt to "provide a 'dialectical' solution to the efficiency-fairness dichotomy and thus please [the pro-efficiency] donor agencies, [as well as to allow] the local bureaucrats pick those aspects that promise to satisfy the fairness principle and ensure peasant support for the ruling regime."[679] The dominant narrative pertaining to fairness, which is to be secured by a benevolent, paternalistic state through the enforcement of the policy of state land ownership and the rigorous involvement of the state in land relations as an arbiter to ensure fairness practically, is designed to maintain state control on

674 Vaughan, 2003; Vaughan and Mesfin, 2011.
675 Teshale, 1995.
676 Assefa Fiseha, 2006:87.
677 Kassahun, 2012:8.
678 Inter-Africa Group, 1992:6-7.
679 Crewett and Korf, 2008:215.

land and retain its most formidable power resource. Yet, considerations of efficiency were apparently deemed to be too important to completely discard, even though that might entail incompatibility. This is because it is only by bringing about growth in smallholder productivity that one can expect to ensure the achievement of food security at the household level, if not the accomplishment of the ADLI strategy objectives and national development goals. That would also enable to accommodate the wishes of critical pro-efficiency internal and external development analysts, practitioners, and funders, and secure their support without having to compromise the fairness narratives substantially.[680]

4. 3. Arguments of Critics in Favour of a Private Land Ownership Policy

The position of the critics of the policy of state ownership of land currently enforced in Ethiopia builds on neo-classical economic theories of property rights in land and emphasises the considerations of efficiency.[681] That contrasts with the position of the proponents of the policy, which is buttressed by narratives of land and agriculture-related injustices in the country and emphasises the considerations of fairness. The central argument of the critics is that the policy of state land ownership inherently entails negative effects on the provision and implementation of the three bundles of productivity-raising smallholder land rights. Therefore, they conclude, the policy naturally yields smallholder productivity lower than what would have been achievable if the policy of private land ownership were enforced.[682]

The critics particularly emphasise that the design and implementation of the policy of state ownership of land currently enforced hinders the growth of smallholder productivity, and thus the achievement of the ADLI strategy objectives, and the development needs and priorities of Ethiopia. That, they argue, is due to the barriers the policy inherently entails to the enhancement of tenure security, the facilitation of the transfer of rights over land, and the authorisation of collateralisation of land rights for smallholders. They explain that whilst land - the most vital factor of production – is kept outside the operation of the market and the private sector in an agrarian economy, it is impossible to achieve the main objective of ADLI, which is raising smallholder agriculture productivity, and thereby accomplish the four the national development policy goals of bringing about rapid economic growth; benefiting the majority of the population therefrom; moving the country from aid-dependency to self-sufficiency and

680 See, for example, Gebru and Githinji, 2005:1.
681 See, for example, Barzel, 1997, Posner, 1973, Demsetz, 1967.
682 Crewett and Korf, 2008:206.

integrating it into the global economy; and establishing a well-developed market economy.[683]

Specifically, critics provide the following reasons to support their argument against the policy of state land ownership. First, it undermines tenure security and incentives for investment on land, and thereby adversely affects productivity and sustainable land use. Second, it prevents the emergence of a dynamic rural land market that allows entrepreneurial smallholders to access credit and land. Third, it discourages smallholders on marginal land from out-migrating and ties them to inefficient land use, which leads to fragmentation of landholdings, overpopulation in rural areas, and land degradation. Fourth, it perpetuates the legacy of the Derg's land redistribution programmes that created tenure insecurity and discouraged smallholders from investing in sustainable land use.[684] It is by highlighting the disadvantages of the policy of state land ownership and by refuting the arguments the proponents use to justify its enforcement that the critics mostly make their case for the introduction of the policy of private ownership. For example, Dessalegn has argued that "freehold is the best means of ensuring absolute tenure security. Security of holding and pride of possession will restore peasant confidence which has been shattered by fifteen years of state ownership and socialist agrarian policies under the Derg. Freehold will provide strong incentives to peasants to invest on land, and will make land transactions easier and more efficient."[685] Similarly, at the Symposium Inter-Africa Group organised, critics arguing for private land ownership have maintained that "only private ownership will ensure security of tenure and provide the peasant with the incentives necessary to make investments and improvements on land"; and that "one cannot move towards a market economy whilst keeping land - the most vital means of production in agricultural economy - outside the operation of the market."[686]

In short, the position of the critics has the same themes as the analysis provided by Barrows and Roth. That is, individualisation of land ownership "increases investment by increasing tenure security and reducing transaction costs. Higher tenure security increases expected investment returns, thereby increasing demand for capital (including credit) for investment. The supply price of credit decreases because the cost of lending is reduced by improved credit worthiness and higher collateral value. Both supply and demand effects increase investment. Individualisation will cause a land market to emerge. Land will be transferred to those able to extract a higher value of product from the land as users who

683 Inter-Africa Group, 1992:6-7.
684 See, for instance, Hoben, 2000:7.
685 Dessalegn, 1994:12.
686 Inter-Africa Group, 1992:6-7.

are more productive bid land away from less productive users. [And individualisation] increases tenure security of the landholder, thereby reducing economic costs of litigation over land disputes."[687]

The critics challenge the historical and contemporary narratives pertaining to land and smallholder agriculture-related injustices that the proponents use to justify the enforcement of the policy of state land ownership and the intervention of the state in the country's land relations as an arbiter to ensure fairness. The critics do not dispute the fact that those injustices occurred during the imperial era. However, they assert that if those injustices could be addressed through the enforcement of the policy of state land ownership and the intervention of the state in land relations, then they had been addressed by the Derg and should no longer be an issue during the rule of the EPRDF. For the critics, ensuring fairness for smallholders requires allowing them to have the control and enjoyment of the rights to, and the fruits of their landholdings without interference from outside sources, including the state.[688]

The critics maintain that since the Derg introduced the policy of state ownership, the state has replaced landlords and become the sole entity with power to own, administer, and distribute land, making smallholders "tenants of the state".[689] For example, Mesfin has noted the Derg has, by declaring itself the sole owner of land, transformed Ethiopia from a country where absentee landlordism and tenancy were practised mainly in the south during the imperial era, into a country of all tenants.[690] Similarly, Dessalegn has emphasised that the Derg's land law reform has "replaced the landlord with the state, providing the latter direct and unencumbered access to the peasantry."[691] Dessalegn has further observed that "This is what 'state' ownership of land has done in this country: government authorities can give away land to investors and others without consulting landholders or their communities, and irrespective of the damage this may have on peasants' livelihoods and the natural environment."[692]

The critics also contend that the government's explanation and implementation of its policy of state land ownership defeats the principle of fairness as egalitarianism, as well as the arguments of maintaining economic fairness, social equity, and political stability used to justify the enforcement of the policy. For instance, the government has explained that "One of the ways in which the ownership

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687 Barrows and Roth, 1989:4.
688 See, for instance, Yigremew, 2001a:58.
689 Yigremew, 2002:29.
690 Mesfin, 1999:12.
691 Dessalegn, 1992:47.
692 Dessalegn, 2011:7.

of land by the state is expressed is the government controls land as an owner and ensures it is used for various purposes, including enabling private investors that want to engage in agriculture to get land through long-term lease."[693] The government has also explained that "investors have the opportunity to obtain large tracts of land smallholders do not cultivate through lease. This option is open. In addition, there is an opportunity for investors to lease land from smallholders without displacing them."[694] The critics specifically emphasise that large tracts of land are being provided in the name of investment to commercial agriculture enterprises that produce almost exclusively for export, which is reported to have resulted in massive eviction of smallholders belonging to indigenous ethnic groups, as well as in the much vilified absentee landlordism that the policy is supposed to prevent. The critics also cite the right of smallholders to transfer their landholdings through lease, which they assert entails the transfer of land from smallholders and accumulation in the hands of others, thereby defeating the equal land distribution to all citizens without payment argument of the proponents of the policy. Moreover, the critics stress that despite the policy's enforcement, landlessness is still a serious problem in Ethiopia, as many rural residents are landless, or have landholdings less than the minimum size required to guarantee adequate food production let alone the growth of smallholder productivity in the country.[695]

The critics further decry that even the offer to give "large tracts of land" for investment in commercial agriculture is intended for foreign investors that mostly produce for export to their home countries.[696] The government has declared that "the focus of attention should be on attracting foreign investors. Historically, efforts made to attract foreign investment are almost exclusively directed towards non-agricultural sectors. This needs to change if Ethiopia is to achieve its agricultural objectives."[697] In a document posted on its website in 2008, the Ministry of Agriculture and Rural Development (MoARD), which has been renamed Ministry of Agriculture (MoA) after it was re-established as such in 2010, stated that since out of the country's total land area of 111.5 million hectares, more than 74 million is suitable for annual and perennial crop production and only 18 million hectares is now under cultivation, some 54 million is available for investment in commercial agriculture, though the figure

693 MoI, 2001:68.
694 EPRDF, 2000:179.
695 Samuel, 2006a:43-44.
696 Oakland Institute, 2011:1-2; Dessalegn, 2011:8-9; Elias, 2011:175-176; Lavers, 2011:5; Vermeulen and Cotula, 2010:23; Cotula et al., 2009:4.
697 MoFED, 2003:52.

has since been reduced to close to 5 million hectares, which is still enormous by any standards.[698]

But why should all this land be allocated for investment in commercial agriculture in a country where numerous studies[699] have identified the smallness and fragmentation of landholdings as one of the major factors contributing towards low smallholder productivity and pervasive poverty? According to the government, the future of agricultural growth and development in Ethiopia lies in the promotion investment in commercial agriculture, as "The key actors in the sector's development will be relatively large-scale private investors and not the semi-subsistence small farmers."[700] This reflects the paradigm shift that has been made from the existing ADLI strategy centred on raising smallholder productivity in staple crops towards commercial agriculture.[701] For the government, private investment in commercial agriculture provides an opportunity for agricultural transformation through technology transfer, employment creation, infrastructure expansion, generation of foreign exchange and tax revenue, and even ensuring national food security, though investors are known to grow mostly such crops as flowers, sesame, cotton, sugarcane, bio-fuels, and rice, which are not staple crops in Ethiopia.[702] Why then are foreign investors given preference to domestic ones? In the government's view, "While there is no entry barrier for domestic private investment, empirical evidences abound that capital resources of domestic private investment might not be adequate for the anticipated scale of development. Moreover, local knowledge of certain agricultural disciplines, especially marketing skills and experience, are limited. Therefore, the focus of attention should be on attracting foreign investors."[703]

Nonetheless, the critics are generally sceptical of the arguments set forth by the government to justify the enforcement of the policy of state ownership of land and its preference of foreign investors to domestic ones in the allocation of land for investment in commercial agriculture. For example, Lavers has commented that "By prioritising land equality, government effectively blocks powerful independent economic actors (that might be able to translate their economic power into political influence) from emerging."[704] According to Dessalegn and Merera, the real motive of the government

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698 The document, which was available at <www.moard.gov.et> in 2009 and mid-2010, has since been removed. Dessalegn, 2011:10; Elias, 2011:177.

699 See, for example, Jayne et al., 2003:270-272; Devereux and Guenther, 2009:6; Berhanu and Samuel, 2002:35.

700 MoFED, 2003:52.

701 MoFED, 2005:27.

702 Tsegaye Moreda, 2012:21; Dessalegn, 2011:13; Elias, 2011:181; Lavers, 2011:5.

703 MoFED, 2003:52.

704 Lavers, 2011:3.

is the quest to control land and ensure the continued dependence of the rural smallholder masses on the state for accessing this vital resource.[705] Dessalegn explains his argument by constructing two scenarios of land rights. These are "'land sovereignty', which is grounded in secure rights of holders that enable them effective control and use of the land as well as the natural resources in their community; and 'land dependency', which creates insecurity, "dis-empowers" individuals and communities, and enhances the hegemonic authority of the state." Dessalegn contends that the whole purpose of the policy of state land ownership is creating land dependency. "Here the state assumes the role of sole active agent, and individuals and communities become passive recipients of decisions from above because of the underlying insecurity over their property and the fear of losing it at any time."[706]

Furthermore, the critics dismiss the proponents' assertion that the policy of state ownership of land currently enforced in Ethiopia is tailored to enhance the tenure security of smallholders. The critics conceptualise tenure security in the same way as the term is often defined in the context at hand, which is the confidence or expectation of a smallholder to keep physical possession of his landholding and enjoy the rights to, and the fruits of the landholding, as well as the value of improvements made with his labour or asset either in the course of use or upon transfer continuously without interruption, imposition, or interference from outside sources, including the state, private individuals, and other entities.[707] In the words of Dessalegn, for instance, "the only way peasant confidence will be restored, and insecurity of tenure abolished thus enabling peasants to take their land as their assets and to work it with great effort, is if peasants are assured that no one can take their land from them."[708]

The critics argue that it is impossible for the current policy of state ownership of land to enhance smallholders' tenure security because of the following reasons. First, as it stands now, smallholders in Ethiopia do not have the right of ownership over their farm land, which is "exclusively vested in the state".[709] For the critics, the core argument put forward by the proponents of the current policy as regards tenure security is based on the questionable assumption that smallholders would immediately embark en masse on selling or mortgaging their land through distress transactions, whilst the predatory bourgeoisie and elites would, on their part, go on a buying spree as soon as the policy of private

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705 Dessalegn, 2009:285; Merera, 2006:230.
706 Dessalegn, 2011:6-7.
707 Bledsoe, 2006:152; Place and Swallow, 2000:11; Roth and Haase, 1998:1; Place, Roth, and Hazel, 1994:19.
708 Dessalegn, 1992:53.
709 FDRE Constitution: Article 40(3).

ownership of land is introduced. There is no proof that the policy of state ownership of land would prevent smallholders from selling or mortgaging their land through distress transactions or otherwise. If anything, what the available empirical research demonstrates is that despite the enforcement of the policy of state ownership, (extra-legal) transfers of land have been taking place during the Derg period and thereafter on a scale comparable with, or even larger than the transfers that were undertaken during the imperial era, when such transactions were legal.[710] According to Dejene, "The view that the state will prevent excessive concentration of land amongst the rich and prevent the dispossession of the poor by imposing restrictions on the ownership or transfer of land has been challenged. The equity concerns of governments could, if they are genuine, be met through appropriate policy instruments such as the specification of farm-size ceilings without inhibiting land market. Unnecessary restrictions may deny efficient farmer access to farmland and would contribute to underutilisation of available land."[711] Second, even the access and usufruct rights to land to which smallholders are entitled are conditional upon the fulfilment of a number of requirements, including the residency requirement and several land use and management rules and obligations, which smallholders need to comply with in order to secure their land access and use rights.[712] For example, according to Articles 5, 9, and 10 of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, only residents of the locality have the right to get land for agriculture, every smallholder shall be obliged to use and protect his land, and where a smallholder has left the locality on own wish and "stayed over a given period of time", or "when the land gets damaged, the user of the land shall lose his use right." However, details of what constitutes, or how or by whom determination of staying "over a given period of time" or "when the land gets damaged" is made have not been provided. Likewise, Article 6(16) of the Oromia Proclamation 2007 "any rural land user shall be deprived of his land use right under the following conditions: leaving the land unused for two consecutive years, leaving the holding on his own reason, or neglect conserving the land. The detail shall be decided by Oromia Agricultural and Rural Development Bureau." Articles 12 and 14 of the Tigray Proclamation 2007 also contain similar provisions. Third, there is a likelihood of future state-sponsored large-scale redistribution of smallholder landholdings. For the critics, such redistribution is a real possibility as the practice has not been outlawed, and because the demand for

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710 Yigremew, 2002:30; Dessalegn, 1992:53 and 1999:10; Mesfin 1999:13.

711 Dejene, 1999:45.

712 Both the federal and regional states land legislations require smallholders to comply with a number of land use and management obligations in order to secure their access and usufruct rights. For example, the right to get access to land depends on one's residence in a kebele; whilst absence from the kebele for some period of time, often for two or more years, or failure to manage one's landholding in accordance with the law, including the planting of specific tree species and the preservation of water conservation structures, may entail loss of one's land use right.

land is skyrocketing largely due to rapidly expanding large-scale commercial farming and the burgeoning population that requires its cut, whilst land is becoming ever scarcer.[713] Fourth, the state still maintains power to expropriate smallholders' landholding for "public purpose" at anytime when it is needed for such a purpose as defined and determined by the administrative officials of the woreda.[714]

According to Yigremew, whilst the negative impact of smallholders' lack of the right of ownership over their landholding and the likelihood of state-sponsored redistribution of land on the tenure security of smallholders is self-evident, the implication of the government's power of expropriation is a cause of particular concern. He contends that besides being wide-open for abuse during implementation, this power of expropriation can lead to the mass eviction of smallholders in favour of private investors. He further argues that the government will most likely consider the large-scale commercial farming in which the investors are to be engaged as development projects falling within the scope of "public purpose" that warrant the expropriation of smallholders' landholdings.[715] This observation appears to have validity given the vagueness of the definition of the term "public purpose" under the laws governing the expropriation of smallholder landholdings for public purposes.[716]

4. 4. Revisiting the Debate on Land Ownership Policy Choice for Ethiopia

As the discussion in the preceding Sections might suggest, there are several problems with the debate on the issue of whether the policy of state or private land ownership is preferable for Ethiopia, which has dominated the discourse concerning the challenges of land law reform, smallholder productivity, and poverty in the country over the past several decades. First, the debate is narrowly-framed, which does not accommodate non-formal customary land tenure systems that studies indicate continue to govern more than 85% of land relations in the country. Second, the justifications and arguments that

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713 Articles 9 of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 14 of the Oromia Proclamation 2007, and Articles 22 and 23 of the Tigray Proclamation 2007.

714 "Woreda" is, according to the hierarchy of the current official governmental structure in Ethiopia, an administrative division, which is like a district or county that usually has its own (ostensibly legislative) council, (executive) office, and (regional first instance) court. A woreda is situated below a "zone" and above a "kebele" in the hierarchy ladder. Typically, more than one (often contiguous) kebeles are brought together to form a woreda; and more than one (often contiguous) woredas are grouped together to form a zone, which is the second highest administrative hierarchy subordinate only to the state government at the regional level. Different names are used to refer to woredas in certain regional states of the country. For instance, a woreda is called "aanaa" in the Oromia regional state.

715 Yigremew, 2002:35-40.

716 See, for example, FDRE Proclamation, 2005b: Articles 3(1) cum 2(5); and FDRE Regulations 2007, Article 2(8).

each party uses to highlight the advantages of the policy it supports and emphasise the disadvantages of the policy it opposes are driven by preconceived ideological and doctrinal considerations and economic, social, and political interests, rather than being based on empirical data. Third, the debate is underpinned by a questionable assumption involving a false, binary choice of a land ownership policy.

As discussed earlier, the enforcement of the policy of state or private ownership of land would not by itself necessarily make a land law reform effective or ineffective in helping raise smallholder productivity and thereby tackle poverty in developing countries like Ethiopia. Instead, evidence drawn from established law and development research and experience demonstrates that what is critical for the effectiveness of a land law reform is the establishment of a land tenure system comprising land policies, laws, and institutions that bring about improvement in the provision and implementation of bundles of productivity-raising smallholder land rights enhancing tenure security, facilitating the transfer of rights over land, and authorising the collateralisation of land rights. It also shows that despite the argument and counterargument of the two sides to the debate, both the policies of state and private land ownership can have advantages and disadvantages in this regard.

In fact, research and experience suggest that the policies of state and private land ownership exist in their pure forms only in theory, but not in practice, as, despite variations, the land tenure systems in force in all countries around the world happen to combine some features of both policies. Nor does a formal state land tenure system exist in its pure form anywhere, as, despite variations, the land tenure systems in force in all countries around the world happen to contain some features of non-formal customary land tenure arrangements in one way or another. Moreover, research and experience demonstrate neither the possibility nor the desirability of the enforcement of each of the formal state and private land ownership policies and non-formal customary land tenure arrangements in their pure forms. Instead, what they counsel is the adoption of a land policy that, taking into account particularly such factors as the specific economic, social, and political background, historical, geographical, and demographical contexts, and the development needs, priorities, and potentials of the country concerned, combines the features of both the formal state and private land ownership policies and the non-formal customary land tenure arrangements in order to be able to reap advantages each of them can have as regards the provision and implementation of productivity-raising smallholder land rights.

Specifically, the policy currently enforced in Ethiopia cannot be considered as a state land ownership policy in its pure form. Nor are the justifications and arguments set forth by the government and other

proponents of the current policy fully defensible. Those justifications and arguments, which were also used by the Derg, are questionable given the fact that any real and perceived injustices of the imperial era, ethnic-based or otherwise, and any possibility of their re-emergence have already been dealt with decisively by the Derg through its land law reform. Besides, the right of smallholders to transfer their landholdings through such means as lease, though encumbered by legal and practical limitations, has been recognised by law, which would entail land transfer from smallholders and accumulation in the hands of others, and undermine the equal land distribution and social equity narratives used to justify the policy of state land ownership. Moreover, large tracts of land are being provided to urbanites and foreigners engaged in commercial agricultural investment for almost exclusively export purposes, which is reported to have resulted in massive eviction of smallholders of indigenous ethnic groups, as well as in the vilified absentee landlordism that the policy is supposed to prevent. Furthermore, there is no evidence to substantiate the implicit assumption made concerning the clear and present danger the introduction of the policy of private ownership poses: that there exists a predatory army of urban and rural elite desirous and capable of buying large tracts of rural land from smallholders for agriculture waiting out there on standby. That is whilst any interested and capable person, irrespective of his background, is legally entitled, at least on paper, to easily acquire from the state itself a swath of land for a very cheap price through a lease contract lasting for numerous decades in the name of agricultural investment, without risking the trauma of dealing with the evacuating smallholders and the corruption and harassment of local authorities. However, the federal and regional state officials whom I interviewed have emphatically stated that it is not the landholdings of smallholders, but only land which is under state holding or which is "unutilised" that is being provided or set aside for such commercial farming investment purposes.[717] Nonetheless, this statement of the officials was strongly disputed by the local smallholders with whom I had FGDs and conversations subsequently. I have also personally witnessed several instances of large-scale commercial agriculture investment projects, which indicate otherwise.[718] Nor is there any evidence to support the assumption that smallholders are hell-bent on selling off their land and losing their livelihood en masse through distress sales; and would, therefore, need the defensive shield of the policy of state ownership of land and the protective hands of the state. What is more, the enforcement of the policy of state ownership of land has proven

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717 KIIs with land administration experts at the Agricultural Investment Support Directorate of the MoA and at the Bureaus of the SNNPRS, Oromia, and Tigray regional states.

718 FGDs and conversations with smallholders, and personal observation during community-level checklist and personal observation field visits in rural kebeles in the environs of Addis Ababa, the national capital, where the federal land laws are applicable, and in rural kebeles of the SNNPRS, Oromia, and Tigray regional states.

ineffective in preventing the widespread practice of selling, collateralising, and otherwise transferring land carried out freely all over the country through non-formal means.[719] As far as the issue of provision and implementation of productivity-raising smallholder land rights is concerned, the land law reform programme led by the policy of state ownership of land upheld by the state and proponents of its position has brought about laws containing provisions that can contribute toward the enhancement of smallholders' tenure security and the facilitation of the transfer of their rights over land. However, the authorisation of collateralisation of land rights has not been provided altogether for smallholders, although it has controversially been for investors engaged in commercial agriculture. Moreover, the implementation of the smallholder land rights set out in those provisions is encumbered by restrictions and limitations, as well as legal and practical impediments, which will be discussed in the coming sections. Overall, numerous empirical studies suggest that the policy of state ownership of land on which both the Derg and the post-Derg land law reform programmes are based has not been effective in raising smallholder agricultural productivity and tackling poverty in the country – a fact that has not been denied or refuted by the state and proponents of its position.

On the other hand, research and experience demonstrate that it is possible to use land law reform to improve the provision and implementation of productivity-raising smallholder land rights even in such countries as Ethiopia, where the policy of state ownership of land is enforced. For example, empirical studies Deininger et al conducted have shown that the process of registration and certification of smallholder landholdings had a significant positive impact on tenure security and investment in China[720] and, to an extent, in Ethiopia[721], despite the enforcement of the policy of state land ownership. Similarly, empirical studies indicate that it is possible to facilitate the transfer of rights over land in such countries where the policy of state ownership of land is enforced and sale is prohibited. For instance, the authorisation of the right to transfer land rights through lease has been shown to have increased land use right transfer transactions and smallholder agricultural productivity in China[722] and

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719 KIIs with land administration experts at the Agricultural Investment Support Directorate of the MoA and at the Bureaus of the SNNPRS, Oromia, and Tigray regional states, FGDs and conversations with smallholders, and personal observation. These findings are consistent with the findings of other empirical studies conducted on the issue (see, for example, Hailegabriel, 2004; Deininger et al., 2003; Berhanu et al., 2003; Yigremew, 2002; EEA/EEPRI, 2002; Haile, 1998).

720 Deininger and Feder, 2009:247; World Bank and Deininger, 2003:5, 31-32, 44-45, Deininger and Jin, 2002.

721 Deininger, Daniel, and Tekie, 2009; Deininger et al., 2008; Deininger and Jin, 2006; Holden, Deininger, and Hosaena, 2009.

722 World Bank and Deininger, 2003:54.

Ethiopia.[723] There have also been innovative practices involving the authorisation of the use of land rights as collateral without the risk of foreclosure whereby the landholding is surrendered altogether in the event of default in countries like Benin, where registered plots are given a "land certificate," which can be furnished as collateral.[724] Another case in point is Ethiopia, where, though its constitutionality and legitimacy is disputed, investors engaged in large-scale commercial agriculture, who have obtained land from the government through lease, are allowed to present their land rights as collateral.[725]

Similarly, neither the policy of private ownership of land critics favour practically exists in its pure form anywhere in the world, nor are the arguments of the critics concerning the comparative advantages of the policy as regards the provision and implementation of productivity-raising smallholder land rights to make the case for the introduction of the policy in Ethiopia fully defensible. As Lund masterfully described it, "what is termed private land in Europe is more often than not subject to a range of restrictions (concerning the land's development, its use, its division, zoning, construction on it, etc.). It is often forgotten that productivity and investment may actually be quite high under other tenure forms if other factors (such as market access, credit access, etc.) allow it."[726] Moreover, as discussed earlier, several studies conducted in sub-Saharan African countries have concluded that the privatisation of land had little or no immediate effect as regards the enhancement of tenure security, facilitation of the transfer of their rights over land, and increase in the collateralisation of land rights. However, the lack of proper implementation of the policy, as well as the overwhelming influence of non-formal land tenure systems in those countries, are important factors that need to be taken into consideration here. Therefore, unless measures that take into account the implementation capacity of the state and the perception and custom of smallholders are envisaged, the introduction of the policy of private land ownership alone is unlikely to bring a significant immediate effect on the provision and implementation of productivity-raising smallholder land rights in Ethiopia. Otherwise, far from working effectively, privatisation can have a harmful effect on smallholder productivity and poverty.[727] That is why even in countries where private ownership policy is enforced and land is subject to sale and other forms of transfer, targeted restrictions are placed on the marketability of land so as to protect

723 Deininger, Daniel, and Tekie, 2009; Deininger et al., 2008; Deininger and Jin, 2006; Deininger et al., 2003.
724 Deininger et al., 2010:30.
725 FDRE Proclamation, 2005b: Article 8(4).
726 Lund, 2000:17-18.
727 Bledsoe, 2006:161.

the poor without causing harm to land values and investment incentives.[728]

4. 5. The Possibility of a Hybrid State-Private-Customary Land Policy

This thesis argues that it is possible and preferable for Ethiopia to adopt a hybrid state-private-customary land policy that would enable to combine the advantages and avoid the disadvantages of each of the formal state and private land ownership policies and non-formal customary land tenure systems through a process that involves an initial stage starting with enforcement of the current policy of state land ownership, passes through a transitional period during which land would be categorised, administered, and used as state, private, and communal landholdings, and culminates in the installation of the policy of private land ownership. This approach can enable to address the concerns and interests of the two parties to the debate, as well as to selectively accommodate the non-formal customary land tenure systems. It can also enable to effectively use land law reform to help raise smallholder productivity and tackle poverty in Ethiopia due to reasons briefly discussed in this Section.

In other words, the thesis proposes the enactment of a land law reform that recognises the legal pluralism in the land tenure system in the short-run. That is because recognising legal pluralism in the short-run is the most effective way to make use of, and possibly end legal pluralism in the long-run. To paraphrase, the recognition of legal pluralism is proposed not as an end in itself, but as a means to use and then end legal pluralism itself. The recognition of legal pluralism is necessary for several reasons. First, established law and development research and experience demonstrates that past land law reform initiatives intended to help raise smallholder productivity and thereby tackle poverty that involved attempts to totally abolish and replace non-formal customary land policies, laws, and institutions with formal state ones in Ethiopia and other sub-Saharan African countries have brought about neither law nor development, as they resulted in pluralised, disorganised, and dysfunctional land tenure systems that constrained the provision and implementation of productivity-raising smallholder land rights, and adversely affected the conditions of smallholder productivity and poverty. Moreover, the recognition of legal pluralism can help make the land law reform proposed here effective in helping raise smallholder productivity and tackle poverty in Ethiopia, as it would enable to reap the advantages and avoid the disadvantages that the non-formal customary land policies, laws, and institutions have as

[728] Rolfes, 2006:126.

regards the provision and implementation of productivity-raising smallholder land rights, and allow the state to concentrate scarce resources needed for the formulation, implementation, and evaluation of the proposed land law reform upon changing only the most constraining formal or non-formal land policies, laws, and institutions of the pre-existing land tenure system. Furthermore, the recognition of legal pluralism would enable the pre-existing non-formal customary land policies, laws, and institutions to continue to operate alongside the newly introduced formal state ones and contribute to a stable, predictable legal environment acutely needed during the period of transition, and provide room for the gradual evolution, extinction, or absorption of non-formal customary land tenure arrangements into the formal state land tenure system – thereby leading to the end of legal pluralism in the long-run.

To begin with, the justifications set forth by the government and the other proponents of the policy of state land ownership currently enforced are not based on substantive empirical data does not mean that the concerns they have raised about what can follow if this policy is abruptly replaced by the policy of private land ownership have been disproved by empirical evidence. After all, Ethiopia is a country where land and land-based smallholder agriculture are so important that the prevalent economic, social, and political power and class positions, structures, and relations reflect the patterns of land distribution and smallholder agricultural production determined by the land tenure system in place. As such, land law reform, particularly of such magnitude that includes the changing of the overriding policy of land ownership abruptly, which has been superiorly governing land relations in the country for four decades now, cannot be expected to proceed along rational lines as planned theoretically, especially given the fact that it is not supported by conclusive empirical data. If anything, in view of the magnitude and multifariousness of the consequences such a land law reform entails, the events that can follow the reform exercise are unlikely to be predictable, and can involve the economic, social, and political instabilities that the proponents of the policy now in force claim would likely follow.

Nor can the possible interests of the government and other proponents of the policy of state land ownership be dismissed. Given the position and the power these parties currently have, they can easily block any effort aimed at bringing change. As Crewett and Korf correctly noted, “Agricultural economists may continue conducting studies to demonstrate the investment incentives of privatizing land. Their ambition to change Ethiopian government policy, however, is likely to fail. The government may respond to such pressures from international donors by implementing some kind of land certification as is currently part of the land policy documents. But it is very unlikely that the Ethiopian government departs from the dependence path in rural politics and the practices to govern

the rural populace and gives up its most precious power resource in the rural realm – the power to distribute land."[729] Though not so pessimistic, it is therefore important to be less optimistic and more realistic. On the other hand, the government should realise that the current approach whereby the state uses a sizable proportion of its limited resources to ensure allocation of the ever dwindling land to every adult citizen in need free of charge, oversee the provision and implementation of land rights, and control and administer land relations is neither sustainable nor favourable to effectively use land law reform to help raise smallholder productivity and tackle poverty in the country in the long-run.

By the same token, the critics' arguments are not fully based on substantive empirical data does not mean that the advantages of the policy of private land ownership has with respect to helping improve the provision and implementation of productivity-raising smallholder land rights, thereby raise smallholder productivity, and tackle poverty have been fully refuted empirically. In fact, the bulk of evidence from research and experience demonstrates that the policy of private ownership of land offers clear advantages, provided that its implementation is backed by an adequate legal framework, functional institutional arrangement, and developed market system, and is executed through a gradual, controlled process that adequately takes account of the objective situation and the specific development background, context, needs, and potential of the country and the people concerned. In short, although its implementation may be costly and entail difficulty particularly at the initial stage, the policy of private land ownership has a proven record of superior performance as regards promoting productivity-raising smallholder land rights and thereby helping raise smallholder productivity, tackle poverty, and even foster overall economic development. This has been practically demonstrated in the "more developed" Western countries, where the policy has long been enforced, as compared to the "less developed" countries in parts of Africa, Asia, and Eastern Europe, where it has been recently put into effect or not at all. Privatisation may be evil given the problems that it can entail, such as inequality, unemployment, inflation, corruption, and social exclusion, as well as the periodic global crisis like the one currently going on in the capitalist world. Nonetheless, it is a lesser evil as compared to living without it in what seems to be a perpetual state of low smallholder productivity, pervasive poverty, and lack of overall economic development, as has been the case in Ethiopia for close to half a century now since the introduction of the policy of state ownership of land.[730]

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729 Crewett and Korf, 2008:215.

730 See, for example, Brasselle, Gaspart, and Platteau, 2002:373-374.

Moreover, it is necessary to accommodate non-formal customary land tenure systems, which govern more than 85% of land relations in the country. Though earlier approaches emphasised their perceived disadvantages and called for their abandonment, notable law and development analysts, practitioners, and funders now agree that non-formal customary systems have advantages as regards the provision and implementation of productivity-raising smallholder land rights. For example, as Deininger and Binswanger noted, "the 1975 World Bank land reform policy recommended communal tenure systems be abandoned in favor of freehold titles. Today it is recognized that some communal tenure arrangements can increase tenure security and provide (limited) basis for land transactions in ways that are more cost-effective than freehold titles. Where that is the case, governments may find it useful to reduce the cost of cooperation, improve accountability, and facilitate a gradual evolution of communal systems to meet emerging needs, possibly for greater individualization of property rights over time."[731] Accordingly, in a recent World Bank land reform research report, it has been argued that "in customary systems, legal recognition of existing rights and institutions, subject to minimum conditions, is generally more effective than premature attempts at establishing formalised structures".[732] As Cotula summarised it, "As a result of the failure of early attempts to replace customary systems with modern systems of land tenure, and of the recent, more nuanced perception of customary systems, a shift in thinking has taken place. It is now generally recognized that land policies and laws must build on local concepts and practice, rather than importing one-size-fits-all models. This entails legally recognizing local land rights, the entitlements through which most people gain access to rural land."[733]

Yet, non-formal customary systems are inherently disadvantageous because they reflect the patriarchal, feudal, and subsistence framework Ethiopia's smallholder-based rural life, discriminate against women and other "vulnerable" groups, lack regularised amendment procedures necessary to adapt to change, and are unwritten, vague, and diverse. Since they reflect and reinforce the patriarchal, feudal, and subsistence framework Ethiopia's smallholder-based rural way of life, emphasise traditional structures, values, and beliefs, and focus on upholding past relationships and maintaining the relative status quo. Therefore, they not only favour men and "influential" members of the community, but also prevent the increase in social scale, including the expansion of face-to-face socio-economic relationships and the reduction of dependence on family, neighbours, and "the community", necessary to foster local,

731 Deininger and Binswanger, 1999:248.
732 World Bank and Deininger, 2003: xxvii.
733 Cotula, 2007:6.

regional, and national economic development. Moreover, since they lack regularised amendment procedures required for adaptation to change, they render the disengagement of the rural political economy from traditional social structures difficult, and hinder the transformation of smallholder agriculture from ensuring subsistence towards serving as an engine for fostering poverty alleviation and overall economic development. Specifically, because non-formal customary land policies and laws are unwritten, vague, diverse, and diffuse, which often depend on the knowledge and prerogative of particular traditional leaders, and the land institutions have through time become weakened, depleted, and corrupted, which often rely on social pressure and voluntary cooperation to induce compliance, they cannot offer an adequate framework for the provision and implementation of productivity-raising smallholder land rights with the degree of breadth, duration, and assurance required for the enhancement of tenure security, the facilitation of the transfer of rights over land, and the authorisation of the collateralisation of land rights. On the other hand, selective incorporation can enable the government to use non-formal customary land tenure systems not only to better advance its ethnic-based economic, social, and political agenda related to land and smallholder agriculture and reap the advantages they offer, but also to more successfully formulate and implement a land law reform programme that can be effective in helping raise smallholder productivity and tackle poverty in the short-run, and leading to the gradual evolution, extinction, or absorption of the non-formal customary land tenure systems into the formal ones and thus the end of legal pluralism in the long-run. Selective incorporation of non-formal customary systems can enable the government to introduce land law reform measures that respect diversity and reflect contextual needs and potentials, promote local ownership and community participation, allow decentralisation and at the same time advance regional and national integration, appease potential opposition and win voluntary cooperation, provide room for pre-existing non-formal customary systems to project a sense of continuity, stability, and predictability and for the newly introduced systems to move towards the set objectives, and offer opportunity to theoretically communicate, and practically demonstrate the advantages of formal state systems and the disadvantages of non-formal customary ones. Moreover, since efforts aimed at ending legal pluralism and establishing a uniform, functional formal state land tenure system should be the culmination of a long process of self-criticism, analysis, and informed, deliberate choice, selective incorporation of non-formal customary systems would provide the government with opportunity and capacity to pilot and study the strengths and shortcomings of, and identify formal state and non-formal customary systems to be embodied in possible future land law reform initiatives that would be undertaken to progressively establish local, regional, and national formal state land tenure systems and thereby end legal pluralism.

Chapter 5

Land Laws and the Provision of Smallholder Land Rights in Ethiopia

As discussed earlier, land laws are one of the constituents of the land tenure system that land law reform puts into effect and through which it operates to bring about the change in the provision and implementation of productivity-raising smallholder land rights that it needs to bring about in order to deliver the smallholder productivity and poverty outcomes which it is hoped can help achieve. The term "land law", defined broadly here, refers to legislation pertaining to land relations, which the state issues through its legislative organ, or parts of the executive branch to which the legislature delegates lawmaking power, as part of a land law reform programme, that specifically set out binding provisions recognising, amending, or repealing land rights often in accordance with specifications made earlier upon the formulation of the land policy, through which the general statement of the land policy is specified, clarified, and translated into action.[734] As Wily noted, land law reform "is mainly first articulated in new national land policies and then of necessity receives more exact (and binding) treatment in new land legislation."[735] Similarly, Brietzke has observed that "law can define, clarify, implement, and enforce policy."[736] And as Allott and Harvey suggested, in the context of a land law reform programme intended to help raise smallholder productivity and tackle poverty, once the land policy that specifies the possible forms of property rights in land as per the essential national interest concerning land has been formulated, what follows is the issuance of law, an action-oriented discipline, to take on the process of implementation.[737] Moreover, as Bruce emphasised, "Most land policy statements are so general that they provide only broad guidance for law reform. The law relating to land is a critical tool in realizing land policies. Policy reform logically precedes law reform, but law reform seeks to translate those policies into action. This is because, while policy determines broad directions, law answers the question, 'What must be done to get us there?' The law provides commands to officials and citizens alike." Bruce has also succinctly captured the numerous critical roles land laws play in the formulation, implementation, and evaluation of the overall land law reform programme. He underscored that "laws relating to land provide not only rules about land rights but

734 See, for instance, Bruce, 2006a:2.
735 Wily, 2003:4.
736 Brietzke, 1975:53.
737 Allott, 1970:164; Harvey, 1970:152.

also regulatory frameworks and administrative competences that are the basis for mobilizing non-legal incentives. Through enactments relating to land, the State creates property rights, determines the scope of the rights and obligations that accompany them, and provides for regulating use of land. Land laws set the terms for transactions in land; in so doing they help determine the efficiency of land markets, patterns of land distribution, distribution of development opportunities and incidence of poverty."[738]

In short, besides setting out provisions of smallholder land rights that are binding and directly applicable by executive land institutions in the course of administration of land relations exercise by smallholders, and enforcement by dispute resolution institutions, land laws play numerous other critical roles in the promulgation, implementation, and effectiveness of the overall land law reform, and the land policies and institutions of the land tenure system that it puts into effect and through which it operates to bring the change in the provision and implementation of productivity-raising smallholder land rights needed to help raise smallholder productivity and tackle poverty. More specifically, it is often through land laws that the overall land law reform programme is enacted, the land policy specified, given binding force, and put into action, the establishment, substantive powers, and procedural rules of land institutions determined, and the composition and operation of the land tenure system shaped. With that in mind, this Chapter briefly analyses the forms and contents of the land laws, both formal federal and regional state and non-formal customary, that embody provisions of productivity-raising smallholder land rights pertaining to enhancement of tenure security, facilitation of transfer of rights over land, and authorisation of collateralisation of land rights in force in Ethiopia.

5. 1. The Forms and Contents of Provisions of Smallholder Land Rights

Due largely to the continuation of the policy of state ownership of land that the Derg had introduced under the land law reform the EPRDF has since enacted, the forms and contents of the provisions of the bundles of productivity-raising smallholder land rights that the post-Derg land law reform programme might have brought about has been a subject of contestation. On the one hand, critics contend that the post-Derg land laws did not bring about significant change from the land laws of the Derg with respect to setting out provisions of such smallholder land rights.[739] On the other, the

738 See, for instance, Bruce, 2006a:2-3.

739 See, for instance, Kassahun, 2012:8; Dessalegn, 2009:285; Crewett and Korf, 2008:205-206; Merera, 2006:230; Hussein, 2006:147-149; Atakilte, 2004:60.

government and its supporters insist that the land laws of the post-Derg land law reform programme have brought about significant change and put in place sufficient smallholder land rights provisions.[740]

For example, Yigremew has noted that "there are no fundamental differences between the legal framework of the Derg and the present government on rural land issues."[741] Similarly, Berhanu, Berhanu, and Seyoum have observed that "There are no fundamental differences between the legal framework of the Derg and the present government on rural land issues. More has stayed the same than has changed. In practical terms, there are more similarities in land administration between the two regimes than differences."[742] On his part, Atakilte has argued that there are hardly any differences between the Derg and the EPRDF as regards the land question. Ideologically, both the Derg and the TPLF, which constitutes the backbone of the EPRDF and its government, espoused Marxism. Both governments enforced state land ownership policy and controlled power to administer and distribute land both as instrument of power and expression of their egalitarian ideology. Both gave smallholders usufruct rights over the land they cultivate, excluding rights to sale and collateralise their landholdings. Both used rural organisations to oversee land administration and distribution at grassroots level. That is, PAs were used by the Derg, the "baito"[743] by the TPLF, and kebele[744] or village-level committees by the EPRDF. What is more, both used the two strands of justice as fairness principle, namely fairness as historical justice and as egalitarianism, to justify their approach to the land question.[745]

On its part, the government continues to insist that the post-Derg land law reform programme has brought about sufficient smallholder land rights that will "enhance development". It has also argued that "it is obvious that the contestation the rent-seekers raise has no foundation whatsoever and is a misguided criticism. Likewise, except obstructing the development of our country, the alternative proposed has no substance whatsoever."[746] Similarly, based on the assumption that the programme has put in place land rights sufficient for raising smallholder productivity, Gebru Mersha and Githinji have

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740 MEDAC, 2001:9; MoI, 2001:4; MoFED, 2006; EPRDF, 2005; FDRE, 2002; MoPED, 1993; TGE/NEP, 1991;Crewett and Korf, 2008:204-205.

741 Yigremew, 2002:24.

742 Berhanu, Berhanu, and Seyoum, 2003:109.

743 "Baito", a Tigrigna word, originally meant "court", but has these days come to mean "council".

744 "Kebele" is the smallest officially recognised state administrative unit in Ethiopia, which is typically a "village" composed of a cluster of houses, and usually has its own (ostensibly legislative) council, administrative (executive) organ, and an often ad hoc "social court". A kebele is called "Tabia" in Tigray and "Ganda" in Oromiya regions.

745 Atakilte, 2004:60.

746 EPRDF, 2000:180.

argued that "Only after substantial progress has been made in both increasing farming productivity and providing sufficient off-farm employment can there then be an honest discussion of tenure reform."[747]

Logically, both the contestation and counter-contestation cannot be valid. One or both are not based on substantive data. Nonetheless, since the controversy has not been settled through empirical research, it has created confusion as to the forms and contents of smallholder land rights that have actually been provided under the post-Derg land laws. The resultant confusion has also obstructed the implementation, exercise, and enforcement of those smallholder land rights that have been provided. With that in mind, the provisions of the land laws in effect during the Derg period and of those put into effect as part of the post-Derg land law reform have been reviewed. The provisions have then been systematised and compared with respect to stipulations meant for the enhancement of tenure security, facilitation of the transfer of rights over land, and authorisation of collateralisation of land rights. The results of the analysis suggest that both the contestation and counter-contestation made by the two sides to the controversy are partly valid. That is, as contested by the critics, the post-Derg land law reform programme has made significant continuities from the Derg era in terms of the provision of the three bundles of productivity-raising land rights guaranteed for the country's smallholders. At the same time, however, as counter-contested by the proponents, the programme has brought about significant changes in the form and content of the productivity-raising land rights provided for smallholders.

5. 2. The Enhancement of Tenure Security

As regards tenure security, the enforcement of the policy of state ownership of land means that, smallholders are not owners of, and do not have title deeds for their landholdings under both the Derg-era and post-Derg land tenure systems. Instead, they had "possessory rights" under the former[748], and "holding rights" under the latter.[749] In addition, smallholders' right to get access to land and to continue to use their landholdings is conditional upon residence in the locality under both the Derg-era and post-Derg land tenure systems.[750] During the Derg period, the most important source of tenure insecurity for smallholders was the programme of redistribution carried out periodically so as to

747 Gebru Mersha and Githinji, 2005:25.

748 PMAC Proclamation, 1975: Article 19.

749 FDRE Proclamation, 2005b: Article 2(4).

750 Article 10 of the PMAC Proclamation, 1975; Articles 2(7), 5, 9, and 10 of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007; Article 6(16) of the Oromia Proclamation 2007; and Articles 12 and 14 of the Tigray Proclamation 2007.

provide every rural resident with cultivable land sufficient for family maintenance as equal in size as possible, which is no larger than 10 hectares.[751] Such state-sponsored redistribution of land remains legal during the post-Derg period, which has been provided under Article 9 of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 14 of the Oromia Proclamation 2007, and Articles 22 and 23 of the Tigray Proclamation 2007. According to Articles 8 and 10 of the PMAC Proclamation 1975, in order to secure their land use rights, smallholders were expected to comply with a number of land use rules and management obligations or risk confiscation. Similarly, Articles 10(1) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Articles 19-25 of the Oromia Proclamation 2007, and Articles 11 and 14 of the Tigray Proclamation 2007 require smallholders to "protect", "properly manage", and "conserve" their landholdings at the peril of losing their land use rights.

Moreover, the government has power to expropriate smallholders' landholdings for "public purpose" at anytime both under the Derg-era[752] and the post-Derg land tenure systems.[753] There are at least four major problems with this arrangement. First, what constitutes a "public purpose" is not provided, as in the case of the FDRE Constitution, FDRE Proclamation 2005b, SNNPRS Proclamation 2007, and Tigray Proclamation 2007; or is vaguely or broadly defined as provided under the Oromia Proclamation 2007, which states that "rural land use right shall be terminated if that land is required for *more important public uses*"[754]; or was left open-ended as was the case under the PMAC Proclamation 1975, which allowed expropriation "for public purposes such as schools, hospitals, roads, offices, military bases and agricultural projects." Second, the provisions governing compensation for expropriation are limited and nebulous. For example, during the Derg period, no compensation was given for land, forests, or tree crops; and "fair compensation" was promised only for movables and "permanent works on the land."[755] Even though "fair compensation" has been promised under the post-Derg land laws, implementation is by no means guaranteed for the simple reason that the term "fair compensation" has no legal meaning in Ethiopia. Third, smallholders cannot claim any compensation on the basis of the value of their landholdings in the event of expropriation both during the Derg and post-Derg periods simply because land is owned by the state. Fourth, given the absence, vagueness, or

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751 PMAC Proclamation, 1975: Articles 4(1) and (3), 9, and 10(1).

752 PMAC Proclamation, 1975: Articles 10(1) and (6), 17-18, and 27.

753 FDRE Constitution: Article 40(8); FDRE Proclamation 2005b: Article 7(3); SNNPRS Proclamation, 2007: Article 7(3) ; Oromia Proclamation, 2007: Article 6(10)-(12); and Tigray Proclamation, 2007: Article 21.

754 Oromia Proclamation, 2007:Article 6(10).

755 PMAC Proclamation, 1975: Articles 2(7), 3(5), and 7(2).

open-endedness of the definition of "public purpose" provided under the pertinent laws, what constitutes a "public purpose" is decided by local administrative officials, who are political appointees lacking the necessary legal and technical knowhow, often politically biased, and even corrupt.

Furthermore, smallholders do not have the right of recourse to regular courts where, for example, they are aggrieved by the decision of local administrative officials concerning confiscation, expropriation, or compensation. During the Derg period, Article 28 of the PMAC Proclamation 1975 had annulled existing land cases in "ordinary courts" and barred the courts from hearing future land disputes or suits challenging actions taken under the Proclamation. Instead of ordinary courts, the Proclamation had established "judicial councils" at various levels of administration.[756] Similarly, for the post-Derg period, Article 12 of the FDRE Proclamation 2005b has, for instance, excluded regular courts from adjudicating upon cases involving issues related to smallholder land rights. The problem with this arrangement is that the arbitrators tasked with dealing with the complaints or disputes of arising in connection with smallholder land rights under the formal land laws, including the proclamations, are often laymen with little knowledge of the applicable substantive or procedural laws.[757]

However, the post-Derg land laws contain provisions that constitute a significant improvement in tenure security for smallholders as compared to the situation under the Derg, at least on paper. For example, the measurement and registration of smallholder landholdings, as well as the issuance of certificates that would grant lifelong usufruct rights have been introduced under Article 6 of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 15 of the Oromia Proclamation 2007, and Article 5 of the Tigray Proclamation 2007. As per Article 40(4), (7), and (8) of the FDRE Constitution, the rights of smallholders to "protection against eviction from their possessions"; ownership of investments they make on their landholdings in the form of immovable properties or permanent improvements they bring about with their labour or capital, including the right to transfer, bequeath, or remove same; and to claim compensation in the event of expropriation have been recognised. In addition, compulsory membership to peasant associations and the obligation of smallholders to pool their landholdings and be entitled to an undefined share under the endowments of peasant associations to secure their land rights have been abolished. Moreover, land redistribution programmes have been generally downscaled, though not outlawed. Specifically, even if it has not

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[756] PMAC Proclamation, 1975: Articles 4(b), 10(4), 11(2) [d].

[757] Brietzke, 1976:651.

outlawed redistribution altogether, the Oromia Proclamation 2007 has declared that redistribution of smallholder landholdings "shall not be carried out in the region, except 'irrigation land'".[758]

5. 3. The Facilitation of the Transfer of Rights over Land

As for the facilitation of the transfer of rights over land, both the Derg and the post-Derg reform programmes are led by the policy of state ownership of land, which is justified based on the perceived need to ensure fairness as egalitarianism and historical justice in Ethiopia's smallholder land relations. That is, providing every smallholder to have equal access to the land resources of the country without payment, protecting smallholders from losing their landholdings, and preventing the accumulation of land in the hands of a few individuals who are capable to buy.[759] And the only way that can be achieved is by putting restriction on the transfer of smallholder land rights.

The Derg strictly adhered to this line of thinking both legally and practically. Accordingly, the transfer of smallholder land rights was prohibited, except through inheritance to members of immediate family, which includes the surviving spouse and children, upon the death of the smallholder. Article 5 of the PMAC Proclamation 1975 provided that "No person may by sale, exchange, succession, mortgage, antichresis, lease or otherwise transfer his holding to another; provided that upon the death of the holder, the wife or husband or minor children of the deceased, or, where they are not present, any child of the deceased who has attained majority shall have the right to use the land."

In contrast, although it professes to espouse the same state land ownership policy and principles of fairness as the Derg, the EPRDF has never been as strict as its predecessor in adhering to the line of thinking they share. That is due to several reasons, as well as the tendency of the EPRDF not to be bound by principles or laws out of line with the pursuit of its economic, social, and political agenda. First, the EPRDF had to accommodate the views and interests of its various pro-private land ownership internal and external economic, social, and political partners in its land law reform programme, particularly in relation to the governance of smallholder land rights.[760] Moreover, the national development policy goals and the ADLI strategy's objective of raising smallholder productivity that the EPRDF has been pursuing cannot be achieved based solely on considerations of fairness, but

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758 Oromia Proclamation, 2007: Article 14(1).

759 See, for instance, Crewett, Ayalneh, and Korf, 2008:12; MoFED 2002:56; EPRDF, 2000:175.

760 Gebru Mersha and Githinji, 2005:1.

through the provision and implementation of the three bundles of productivity-raising smallholder land rights, including the facilitation of the transfer of smallholder rights over land.[761]

Consequently, although the Derg-era prohibitions on selling and mortgaging smallholder landholdings remain in place, significant departures have been made under the post-Derg land law reform with respect to facilitation of the transfer of smallholder land rights. That is despite the fairness principles of ensuring smallholder land equality and preventing the accumulation of land in the hands of few, which the EPRDF used to justify the enforcement of its state land ownership policy. For example, the right of smallholders to transfer their landholdings through lease has been recognised under Article 8(1)-(3) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 10 of the Oromia Proclamation 2007, and Article 6 of the Tigray Proclamation 2007. The right of smallholders to transfer their landholdings through inheritance, which was previously restricted to surviving spouses and children, has been expanded to cover other dependents, including persons who permanently lived and shared their livelihoods with the deceased smallholder, under Articles 8(5), 5(2), and 2(5) of the FDRE Proclamation 2005b; Articles 8(5), 5(11), and 2(7) of the SNNPRS Proclamation 2007; Articles 5(5), 9(1), and 2(16) of the Oromia Proclamation 2007; and Articles 5(1) [d] and 17 of the Tigray Proclamation 2007. And smallholders have been allowed to give their landholdings through donation to their family members or dependents under Articles 5(2) and 2(5) of the FDRE Proclamation 2005b, Articles 5(11) and 2(7) of the SNNPRS Proclamation 2007, Articles 9(5) and 2(16) of the Oromia Proclamation 2007, and Article 5(2) and (3) of the Tigray Proclamation 2007.

5. 4. The Authorisation of Collateralisation of Land Rights

When it comes to the authorisation of collateralisation of smallholder land rights, the position taken under both the Derg and the post-Derg land law reform programmes reflect the state land ownership policy and the principles of fairness espoused by the two governments. Accordingly, any mechanism that entails the permanent transfer and loss of smallholder landholdings, with the exception of inheritance in the event of death, has been made illegal under both reform programmes. The collateralisation of smallholder land rights is one such mechanism, which, where the collateralising smallholder is in default of payment of the debt, can entail the permanent transfer and loss of

[761] Crewett and Korf, 2008:204 and 214-215.

smallholder landholding, and is, therefore, banned under both reform programmes.[762]

However, the EPRDF is once again less strict than the Derg in adhering to the line of thinking they share with regard to the issue of authorisation of collateralisation. Although it has been prohibited for smallholders, collateralisation of land rights has been authorised for investors engaged in commercial agriculture under Article 8(4) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 15 (15) of the Oromia Proclamation 2007, and Article 15(3) of the Tigray Proclamation 2007. Pursuant to the EPRDF and other proponents, this provision is designed to enable "investors" to get access to the money they need for investment and thereby increase agricultural production, whilst smallholders are prohibited from collateralising their land rights for their own sake to protect them from the risk of using their landholdings as collateral to obtain credit, default, and end up landless.[763]

Nevertheless, besides its inconsistency with the state land ownership policy and the principles of fairness espoused by the EPRDF and being discriminatory against smallholders, the implementation of this controversial provision has been problematic. After all, an "investor" acquires the land rights that he collateralises from the government through long-term lease, the payment of which is to be made in instalments over a period of several decades. That means, contrary to the proponents' claim that an "investor" collateralises the land right acquired by virtue of the lease payment, which often constitutes the first instalment and amounts to a few thousands of Birr, in view of the fact that the money an "investor" often receives by way of loan is in millions of Birr, what an "investor" actually collateralises is not his land right, but the land itself. Hence the numerous reports concerning many financial institutions, particularly the big state-owned banks that dominate the market in the country, notably the Development Bank of Ethiopia, which under government pressure have given out billions of Birr in loan to such "investors" that had furnished their "land rights" as collateral, only to find out there was really nothing to satisfy the debt with and end up with mountains of bad loan.

5. 5. The Implications of Federalism and Legal Pluralism

As mentioned earlier, the federation established by the FDRE Constitution is composed of a federal government and nine regional states, all of which were designed to have largely independent legal systems with their own legislative, executive, and judicial organs and corresponding powers that they

762 PMAC Proclamation, 1975: Article 5; FDRE Constitution: Article 40(3).

763 See, for instance, EPRDF, 2000:176-177.

exercise on matters placed under their respective jurisdictions under the Constitution.[764] The federal and regional governments have been assigned exclusive and concurrent powers on different matters depending on considerations of whether a given matter is of national or regional importance and which level of government is better positioned to handle it more appropriately. Accordingly, matters that were deemed to be of extra-regional, countrywide significance, for the handling of which the federal government was considered more befitted have been designated as a "federal matter" and placed under the jurisdiction of the federal government.[765] All powers that have not been expressly given to the federal government exclusively or concurrently have been reserved exclusively for regional states.[766]

As per Article 51 of the Constitution, which enumerates the "Powers and Functions of the Federal Government", land, including land issues pertaining to smallholders, is one of the matters designated as a "federal matter" and placed under the jurisdiction of the federal government.[767] This designation vests in the federal government legislative power over land. According to Article 55(1), "The House of Peoples' Representatives shall have power of legislation on all matters assigned by the Constitution to federal jurisdiction." The House, which is the legislative organ and "the highest authority" of the federal government[768], shall thus "enact specific laws" concerning "the utilisation of land."[769] In contrast, under Article 52 of the same Constitution, which enumerates the "Powers and Functions of States", regional states have been given power "to administer land in accordance with federal laws".[770] And Article 9 (1) provides that any law, practice, or decision of the federal or regional government will be valid only if it does not contravene the Constitution. Otherwise, it "shall be of no effect".[771]

That is how the federal and regional division of powers on smallholder land matters has been made under the Constitution. Nevertheless, as long as the formal land tenure system goes, virtually all smallholder land relations in Ethiopia are governed by land legislations that have been issued by the regional governments.[772] As mentioned previously, out of the nine regional states, the largest four, namely Amhara, Oromia, Tigray, and the SNNPRS, have issued their own land legislations by the

764 FDRE Constitution: Article 50 (1) and (2).
765 Assefa Fiseha, 2006:288-293.
766 FDRE Constitution: Article 52(1).
767 FDRE Constitution: Article 51(5).
768 FDRE Constitution: Articles 50(3) and 55(1).
769 FDRE Constitution: Article 55(2) [a].
770 FDRE Constitution: Article 52(2) [d].
771 FDRE Constitution: Article 9(1).
772 See, for instance, Imeru, 2010:2.

time this thesis was written. The issue of how smallholder land relations are governed in the remaining five regions that have not yet issued their own land legislations is unclear and, as discussed in the first section of this chapter, controversial.[773] One thing is clear, though. The land laws enacted by the federal government are applicable in Addis Ababa and Dire Dawa - two specially administered cities that are directly accountable to the federal government, where virtually no smallholders reside.[774]

The key question therefore is whether those regional land legislations by which virtually all of the country's smallholder land relations are formally governed are constitutional. The government and its proponents argue that the regions issued their own land laws based on power the federal government delegated to them. The federal government has given regions power to "enact rural land administration law, which consists of detailed provisions necessary to implement this [federal] Proclamation."[775]

Moreover, the government and its proponents argue that the federal government delegated its legislative power to the regional states as per Article 50(9) of the Constitution. The Article states that "The federal government may, when necessary, delegate to the states powers and functions granted to it by Article 51 of this Constitution." This argument stands on a shaky ground as the Article clearly authorises the federal government to delegate only its powers and functions provided under Article 51 of the Constitution, but not the power to legislate on land matters assigned to it under Article 55(2) [a].

In short, it is questionable if the delegation itself and hence the land laws that have been issued based on it by the regional states are constitutional given the following reasons. First, land was designated as a "federal matter" because in view of the vital economic, social, and political importance it has in Ethiopia, it was considered to be of extra-regional, countrywide significance. As such, the federal government was deemed to be better positioned and equipped to handle land matters uniformly throughout the country.[776] This fundamental consideration will be defeated if the federal government delegates its power to legislate on land matters to the regional states.

Second, even if it were constitutional, the delegation does not bestow upon the regional states power to legitimately issue land laws which, as we will shortly see, contain provisions that not only deal with

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773 Imeru, 2010:7; interviews with land administration experts at the MoA Agricultural Investment Support Directorate.
774 FDRE Constitution: Article 49(3); Assefa Fiseha, 2006:225.
775 FDRE Proclamation 2005b: Article 17(1).
776 Assefa Fiseha, 2006:288-293.

the three bundles of productivity-raising smallholder land rights, but also differ from each other and even from those of the federal land laws. After all, the federal land laws through which the delegation was given have made it clear that the legislative power given by delegation is valid only for enacting land administration laws that are necessary for the implementation of the pertinent federal land laws. The upshot is that the provisions of the land laws issued by each regional state must be consistent with the relevant provisions of the federal land laws and, therefore, with each other.

Third, the Constitution does not define what the "power to administer land", which it has vested in the regional states under Article 52(2) [d], constitutes. However, the conjunctive reading of the meaning of the term "land administration" provided under the two federal land proclamations through which the delegation was given does not imply that regions have been entrusted with power to promulgate their own land laws, at least not legislations regulating the bundles of productivity-raising smallholder land rights in markedly variant ways. According to Article 2(6) of the FDRE Proclamation 1997, "'land administration' means the assignment of holding rights and the execution of distribution of holdings." Whereas, pursuant to Article 2(2) of the FDRE Proclamation 2005b, it means "a process whereby rural landholding security is provided, land use planning is implemented, disputes between rural landholders are resolved and the rights and obligations of any rural landholder are enforced, and information on farm plots and grazing landholders are gathered, analyzed, and supplied to users."

In any case, five land proclamations comprise the formal land tenure system currently governing smallholder land rights in Ethiopia, which was established by the post-Derg land law reform programme within the federal arrangement that has been in effect in the country during the same period. The first is the FDRE Proclamation 2005b, which was issued by the federal government as per the legislative power to "enact specific laws" concerning "the utilisation of land" assigned to it under Article 55(2) [a] of the FDRE Constitution. The remaining four are the proclamations that were issued by the SNNPRS, Oromia, Tigray, and Amhara regional states. These regional land proclamations were presumably issued as per the power "to administer land in accordance with federal laws" given to regional governments under Article 52(2) [d] of the FDRE Constitution and the provisions of Article 17(1) of the FDRE Proclamation 2005b that authorises regions to "enact rural land administration law, which consists of detailed provisions necessary to implement this [federal] Proclamation."

Thus, provisions of the regional land proclamations concerning the three bundles of productivity-raising smallholder land rights are expected to be consistent or in harmony with the pertinent

provisions of the federal government's FDRE Proclamation 2005b. The regional proclamations cannot vary, omit, or create smallholder land right that was or was not provided under the FDRE Proclamation 2005b. That also means the regional proclamations should be in harmony with each other.

Any regional land proclamation that provides otherwise will be unconstitutional and illegal. It will be unconstitutional because it contravenes Article 52(2) [d] of the Constitution that restricts the power of regional governments to administering land in accordance with federal laws. It will be illegal because it contravenes the provisions of Article 17(1) of the FDRE Proclamation 2005b that authorises regional governments to enact land administration laws containing only provisions necessary to implement it.

That is not, however, to suggest that the provisions of the regional land proclamations should necessarily be the same. After all, Ethiopia is a big country composed of numerous, diverse regions and agro-ecological zones. As such, the farming systems in which the country's smallholders operate are marked by high variability in such aspects as land availability, size, and quality; conditions of moisture, temperature, and disease; access to modern agricultural inputs, implements, and services; and other economic, social, and political challenges and opportunities; as well as experiences related to formal and non-formal customary land tenure systems.[777] In view of that, putting in place formal land laws and institutions with various provisions pertaining to smallholder land rights across the different regions and agro-ecological zones that are tailored to the specific context, needs, and potentials of each farming system would have a significant impact in making the land law reform programme effective.

The point is without such agro-ecological considerations and constitutional and legal bases, any significant inconsistency or disharmony in the smallholder land rights provisions of the regional land proclamations with that of the federal Proclamation would be arbitrary and counterproductive. It would violate the right of smallholders to equal treatment before the law and the principle of uniformity of law. It would also work against transparency and open room for arbitrary decisions, unethical actions, and corrupt practices. In short, it would create confusion, unpredictability, and unreliability in the formal land tenure system governing smallholder land rights and thus undermine the effectiveness of the post-Derg land law reform in helping raise smallholder productivity and tackle poverty.

Moreover, an argument that justifies any such disharmony based on gaps in the provisions of the

[777] Table 1, Appendix 1; Table 2, Appendix 2. See, for example, also Chamberlin, Pender, and Yu, 2006:9-10.

FDRE Proclamation 2005b, or that justifies the variation, omission, or creation in a regional proclamation of a smallholder land right that was or was not provided in the federal Proclamation under the guise of detailing the provisions of this Proclamation is indefensible. After all, the very purpose for which land was constitutionally designated as a federal matter and placed under the jurisdiction of the federal government is to ensure the establishment of a uniform formal land tenure system that governs smallholder land rights consistently in all parts of Ethiopia. This purpose would be defeated if any such disharmony is allowed for any reason.

The forms and contents of the smallholder land rights provisions of the federal and regional proclamations have been discussed earlier. Therefore, the focus here will be on differences amongst the provisions that potentially undermine the bundles of productivity-raising smallholder land rights. It is also necessary to note that since the post-Derg land law reform is led by the policy of state land ownership[778], provisions of the federal and regional proclamations, which all prohibit any mechanism such as sale and collateralisation that may entail permanent loss of smallholder landholdings, with the exception of inheritance in the event of death, are similar and thus will not be discussed here.

To begin with the enhancement of tenure security, the biggest threats to the tenure security of Ethiopian smallholders that have been making them live under constant risk of losing their landholdings are redistribution, expropriation, and confiscation by the state. As regards redistribution, the pertinent provision of the FDRE Proclamation 2005b is Article 9, which provides that "In accordance with land administration laws of the regions, 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." This Article also declares that "Distribution may be undertaken on irrigable land in order to use irrigable land properly and equitably." Moreover, the Article states that "upon the wish and resolution of peasants farmers, semi pastoralists and pastoralists where land distribution becomes the only alternative, it shall be undertaken in such a way that it shall not be less than the minimum size of holding and in a manner that shall not result in fragmentation of land and degradation of natural resources." The Article in question not only leaves the door open for future state-sponsored land redistribution programmes, but also specifies the conditions under which land may be overtaken and be redistributed by the state. Specifically, it provides that land may be overtaken

[778] FDRE Constitution: Article 40(3).

and be redistributed by the state where its holders are deceased and have no heirs, or are gone for settlement, or have left the locality on own wish and stayed over a given period of time; or where it is irrigable. What is more, though it is the federal government that has been given power to decide on land matters under the FDRE Constitution, the Article leaves the responsibility for the implementation of land redistribution programmes to the regional states, which have adopted different approaches.

Accordingly, in contrast and in addition to the conditions for the redistribution of land provided under Article 9 of the FDRE Proclamation 2005b, including where it is privately unoccupied, has no longer a legitimate holder, or is irrigable, Article 9(4) of the SNNPRS Proclamation 2007 states that "Privately unoccupied land as well as lands under the possession of community or government which are potential for agriculture shall be re-allocated to landless youths and peasants who have less farm land." Yet, Article 14 of the Oromia Proclamation 2007 explicitly rules out future redistribution programmes, except in the case of privately unoccupied or irrigable land, which makes it the only one of the five land proclamations currently governing smallholder land rights in Ethiopia to declare redistribution an exception rather than rule. On its part, the Tigray Proclamation 2007 under Articles 22 and 23 incorporates the conditions for the redistribution of land provided under Article 9 of the FDRE Proclamation 2005b, and additionally authorises the redistribution of hilly and gully lands for use by smallholders or agro-investors "in a manner that does not lead to soil erosion and land degradation."

As far as expropriation is concerned, the state maintains power to expropriate smallholders' landholdings for "public purpose" at anytime as provided under Article 7(3) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 6(10)-(12) of the Oromia Proclamation 2007, and Article 21 of the Tigray Proclamation 2007. The first major problem with this arrangement is that what constitutes a "public purpose" is not provided, as in the case of the FDRE Proclamation 2005b, SNNPRS Proclamation 2007, and Tigray Proclamation 2007; or is vaguely or broadly defined as provided under the Oromia Proclamation 2007, which states that "rural land use right shall be terminated if that land is required for *more important public uses*."[779] The other is that the provisions governing compensation for expropriation are limited and nebulous. For example, even though "fair compensation" has been promised under all of the five land proclamations, implementation is by no means guaranteed for the simple reason that the term "fair compensation" has no legal meaning in Ethiopia. Moreover, smallholders cannot claim any compensation on the basis of the value of their

[779] Oromia Proclamation, 2007:Article 6(10).

landholdings in the event of expropriation simply because land is owned by the state. What is more, given the absence, vagueness, or open-endedness of the definition of "public purpose" provided under the proclamations, what constitutes a "public purpose" is determined by local administrative officials, who often are political appointees lacking the necessary legal and technical knowhow, biased depending on the political views or activities of the smallholder concerned, or corrupt.

Confiscation basically relates to the termination of the use right and the taking over of the landholding of a smallholder by the state. It is imposed as a penalty where a smallholder fails to meet the requirement of residency in the locality in which his landholding is located, violates the duty to use his landholding continuously, or does not comply with his land management and preservation obligations. The most problematic aspect of the provisions concerning confiscation is that the duty of land management and protection they impose on smallholders are couched in very vague terms. Specifically, Articles 10(1) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Articles 19-25 of the Oromia Proclamation 2007, and Articles 11 and 14 of the Tigray Proclamation 2007 require smallholders to "properly use and protect", "manage", and "conserve" their landholdings, and provide that "when the land *gets damaged* the user of the land shall lose his use right." These provisions lend themselves to political and administrative discretion, which potentially leads to the abuse of power and the harassment of smallholders. Stipulating clear definitions as to what exactly means to "properly use and protect" land, and as to when a land is considered to have got "damaged" is necessary to ward off such discretion and its potential repercussions. It will also help smallholders understand the meanings of those terms in advance and discharge their obligations accordingly.

When it comes to the facilitation of the transfer of smallholder rights over land, all of the of the five federal and regional land proclamations contain provisions allowing the transfer of smallholders landholdings through lease.[780] However, the provisions attach different restrictions to the transfer right. The restrictions relate to the type of smallholders who may lease out their landholdings, the identity of the lessee, the purpose for which land may be leased out, the part of the landholding that may be legitimately leased out, and the length of the period during which the lease contract may remain valid.

Specifically, Articles 8(1) of the FDRE Proclamation 2005b states that "Peasant farmers, semi-pastoralists, and pastoralists who are given holding certificates can lease to other farmers or investors

[780] Article 8(1)-(3) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 10 of the Oromia Proclamation 2007, and Article 6 of the Tigray Proclamation 2007.

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." According to this provision of the federal Proclamation, only smallholders who have been issued holding certificates may lease out their landholdings, to other farmers or investors, for the purpose of development, and part of their landholdings in a manner that shall not displace them. But the provision leaves the length of the period during which the lease contract may remain valid for regional land proclamations to determine.

Whereas, Article 8(1) [a], [b], and [c] of the SNNPRS Proclamation 2007 stipulates, like the FDRE Proclamation 2005b, that only smallholders with holding certificates may lease out their landholdings, to other farmers or investors, for the purpose of development, and part of their landholdings in a manner that shall not displace them. But unlike the federal Proclamation, this Proclamation specifies the length of the period during which the lease contract may remain valid. It provides that the lease contract may remain valid for a period of up to five, ten, and twenty five years, respectively, where the lessee is a fellow smallholder, any investor, and an investor who cultivates "perennial" crops.

In contrast, Article 10 of the Oromia Proclamation 2007 that governs the right of smallholders to transfer their landholdings through lease does not explicitly state if a smallholder needs to have a holding certificate to lease out one's landholding, although Article 15(13) requires that when a smallholder landholding is leased out, the holding certificate shall be handed over to the lessee. Moreover, this Proclamation places no direct restriction as to the identity of the lessee, and does not specify exactly the purpose for which a smallholder landholding may be leased out. Furthermore, it limits the part of the land to be leased out to a maximum of half of the size of the leasing smallholders' landholding, and restricts the length of the period during which the lease contract may remain valid to a duration of not more than three years for lessees who apply traditional farming technologies, and fifteen years for those who use mechanised farming methods.

On its part, Article 6(1) of the Tigray Proclamation 2007 stipulates like the FDRE Proclamation 2005b that only smallholders with holding certificates may lease out their landholdings, and only to other farmers or investors. However, unlike the federal Proclamation, this Proclamation does not restrict the purpose for which the smallholder landholding may be leased out. Moreover, pursuant to Article 6(3) [a] and [b] of the Proclamation, a smallholder landholding lease contract shall be valid for a period of "up to 20 years where the lessee uses technology other than the traditional method of farming, and not

more than three consecutive years where the lessee uses traditional method of farming."

Finally, it is imperative to briefly explore the implication legal pluralism might have to the provision and implementation of smallholder land rights. As discussed earlier, legal pluralism is a prominent feature of the land tenure system in Ethiopia, as the provision and implementation of smallholder land rights in the country is subject to not only the formal federal and regional state land tenure systems established through land law reform, but also the pre-existing non-formal customary ones. Notably, as mentioned earlier, although the non-formal customary land tenure systems have been repealed and replaced by, their provisions and operations are not often consistent with, or recognised under, and despite lacking a hierarchy or other form of coordination with the formal state systems, studies suggest that they govern more than 85% of land relations in the country, including smallholder land rights.

The findings of the field research carried out as part of this thesis, which included formal and informal KIIs and FGDs held with formal state officials, non-formal customary leaders, smallholders, and law and development analysts, practitioners, and funders involved in, or having knowledge of Ethiopia's past and present land law reforms at the local level, and pilot community-level observation visits made to assess of the provisions and operations of non-formal customary land tenure systems on the ground, are generally consistent with the findings of studies previously conducted on the issue. In fact, effective everyday provision and implementation of smallholder land rights is carried out under non-formal customary land tenure systems. Recourse to the formal state land tenure systems, which are commonly referred to as "government law" is made only rarely and exceptionally. Even in cases where recourse to formal state land tenure systems is made, the provision and implementation of the smallholder land rights they embody is often defeated by interpreting it in a way congruent with non-formal customary systems, or in line with what is perceived would enable to maintain social order, or help improve the reputation and support base of the ruling political party amongst smallholder masses.

Smallholders, who tend to be unaware or suspicious of the formal land policies, laws, and institutions put in place by the state, have simply continued to resort to non-formal customary land tenure systems for the provision, implementation, exercise, and enforcement of their land rights. Most officials of the local formal state executive land institutions, including at the Kebele and Woreda levels, know very little about the details of the provisions of smallholder land rights and the manner of implementation of the current formal land policies and laws, as well as their differences with the non-formal customary land tenure systems. Also neither do local traditional leaders in charge of ensuring the implementation,

exercise, and enforcement of the smallholder land rights provisions that the non-formal customary land tenure systems set out. The Kebele Land Administration Commission and the Social Courts are part of the executive organ at grassroots level, and have been assigned the function of dispute resolution in cases involving smallholder rights in the first instance. Nevertheless, neither the members of the Kebele Land Administration Commission nor the judges of the Social Courts are aware of the details of the provisions of formal land policies and laws, or how to apply them.

For example, although the enhancement of tenure security is used as the main justification for the enforcement of the policy of state land ownership under the current formal state land tenure system of the country, such tenure security does not appear to be an issue of concern for most smallholders. Thanks in particular to the provisions of the prominent non-formal customary land tenure systems, most smallholders seem to believe that their land rights are secure. For instance, most smallholders appear to consider the land registration and certification programme undertaken by the state to be useful in reducing boundary conflicts rather than in enhancing tenure security.

Similarly, despite the prohibitions and restrictions imposed under the formal state land policies and laws, smallholders conduct transactions involving selling, leasing, collateralising, and otherwise transferring land freely and widely through non-formal means. Notably, although officials of the local formal state institutions are fully aware of the conduct of such transactions, they do not attempt to intervene and stop them often because they themselves are unaware of the prohibitive and restrictive formal state provisions, or because enforcing those provisions is perceived to be politically risky and can potentially cause annoyance to the smallholder masses, and sometimes due to other factors such as corruption. When the officials intervene in such transactions, they are often involved as facilitators, negotiators, and attesters, and in many cases as paid brokers.[781]

[781] These findings are generally consistent with the findings of other studies conducted on the issue (see, for example, Hailegabriel, 2004; Deininger et al., 2003; Berhanu et al., 2003; Yigremew, 2002; EEA/EEPRI, 2002; Haile, 1998).

Chapter 6

Land Institutions and Implementation of Smallholder Land Rights in Ethiopia

6. 1. Introduction

As discussed earlier, land institutions are one of the constituents of the land tenure system that land law reform puts into effect and through which it operates to bring about the change in the provision and implementation of productivity-raising smallholder land rights that it needs to bring about in order to deliver the smallholder productivity and poverty outcomes it is hoped would help achieve. The term "land institution", defined broadly here, refers to structures that the state establishes and runs to undertake the implementation of the land law's land rights provisions in accordance with the land policy's specifications, including parts of the executive through application in the course of administering land, managing land relations, and enabling exercise by land rights holders, as well as the judiciary through interpretation, explanation, and enforcement in the course of conducting dispute resolution.[782] The critical role land institutions play in making a land law reform effective in delivering the smallholder productivity and poverty outcomes it is hoped would help achieve is well-documented.

In short, land institutions play a critical role because the effectiveness of a land law reform programme intended to help raise smallholder productivity and thereby tackle poverty is contingent on the proper implementation of the provisions of the land laws setting out productivity-raising smallholder land rights as per the specifications of the land policies, which in turn hinges on the existence of functional land institutions. As Cotula, Toulmin, and Hesse succinctly put it, "Besides developing appropriate policies and laws, it is crucial to ensure the correct implementation of these instruments. [And] the implementation of land policies and laws [will] depend upon putting in place effective and efficient land institutions."[783] Mitchell has argued in a similar vein, noting that "Although many factors contribute to the effectiveness or non-effectiveness of laws applied to influence resource management, one important factor is the capacity of state and local institutions to implement such laws."[784] Giovarelli has also observed that "Major legal changes will not be effective without a sustained effort

782 See, for example, World Bank and Deininger, 2003: xxii–xxix.

783 Cotula, Toulmin, and Hesse, 2004:31.

784 Mitchell, 2006:177.

to implement the changes".[785] Bruce has also underscored that "Stipulating the desired situation in a law is not enough. All of us who work in this area know of elegant laws that have had little impact for want of implementation."[786] Similarly, Deininger et al have emphasised the criticality of implementation and the indispensability of land institutions. They lamented that "Although many African countries have adopted innovative land laws, lack of implementation thwarts their potentially far-reaching impact on productivity [and] poverty reduction. While such legal provisions are hugely attractive in theory, progress in implementing them has lagged behind. In fact, hardly any of the countries that introduced legal reforms have succeeded in developing a system for land administration at a scale sufficiently large. This made it difficult for benefits from such legislation to materialize. More generally, failure to implement land legislation has raised doubts regarding the institutional feasibility of such reform."[787] This Chapter examines land institutions, both formal federal and regional state and non-formal customary, that carry out implementation of provisions of land laws setting out productivity-raising smallholder land rights as per the current land policy specifications.

6. 2. Federal Executive Institutions

As discussed earlier, the FDRE Constitution has designated land, including land matters pertaining to smallholders, as "federal matter" and placed under the jurisdiction of the federal government.[788] This designation confers upon the federal government not only legislative, but also executive and judicial powers over land matters.[789] According to Article 77(1) of the Constitution, the Council of Ministers, which is the highest executive organ of the federal government along with the Prime Minister[790], shall ensure "the implementation of laws and decisions adopted by the House of Peoples' Representatives."

In other words, the upshot of this designation is that as regards the issue of land, executive power is vested in the federal government.[791] The federal executive organ, which is headed by the Prime Minister and is composed of the Council of Ministers and various ministries and organs of government, is charged with the function of execution of laws, including land laws issued by the

785 Giovarelli, 2006:102.
786 Bruce, 2006a:4.
787 Deininger et al., 2007:1.
788 FDRE Constitution: Article 51(5).
789 FDRE Constitution: Articles 77(1) and 80(1).
790 FDRE Constitution: Articles 50(3) and 55(1).
791 FDRE Constitution: Article 51(5).

federal legislature. This function also includes enforcing judgments passed by the federal judiciary.[792]

The power of the executive extends to designing and establishing - upon approval by the legislature, where this is required by law - as well as to coordinating and leading the activities of the institutional arrangement necessary to perform its functions. This has been specified under several provisions of the Constitution, which stipulate that the executive shall have power to decide on the organisational structure of ministries and other organs of government responsible for performing its law enforcement functions, to establish same upon approval by the legislature where so required by law, and to coordinate their activities and provide leadership. In the context of land matters and smallholder land relations, this would mean establishing and running a federal institution tasked specifically with the function of execution of federal land laws. Indeed, one would be excused to presume the existence and operation of such a discrete federal executive institution in view of the multifaceted critical importance of land and smallholder agriculture in the political economy of the country, and given the fact that land has been constitutionally and originally placed under the competence of the federal government.[793]

Yet, by the time this thesis was written, no such federal institution existed. That doesn't, however, mean that there is no institution that handles land matters at the federal level. In fact, there are several that do, including the MoA, the Investment Agency, the Environmental Protection Authority, and the Ministry of Water Resources. Nonetheless, these institutions do not deal with issues of land pertaining to smallholders. Instead, they are interested in land allocated for large-scale commercial agriculture investment. Even in that regard, the institutions handle land matters in an isolated manner, with little or no coordination and exchange of information, and only as far as required for the purpose of their respective mandates, which appear to be conflicting, overlapping, and vague in theory and practice.[794]

Moreover, the MoA has recently established a specific department devoted to the issue of land called "Agricultural Investment Support Directorate". Yet, the Directorate does not deal with land matters pertaining to smallholders. It is tasked with administering land allocation for large-scale commercial agriculture investment, and only where the size of the land involved is more than 5000 hectares.[795]

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792 FDRE Constitution: Articles 72(1) cum 74(1), 72(1), and 77(1), (2), and (9).

793 FDRE Constitution: Articles 77(1), (2), (9), (11), (2), and (13).

794 See, for instance, Imeru, 2010:8-9.

795 KII with a land administration expert at the Agricultural Investment Support Directorate.

6. 3. Regional Executive Institutions

As discussed earlier, the FDRE Constitution has designated land as a "federal matter" and conferred upon the federal government not only legislative power to enact land laws setting out the provisions smallholder land rights, but also executive and judicial powers to undertake the implementation of those smallholder land rights provisions. However, by the time this thesis was written, the federal government has not established its own executive institution charged specifically with implementation of smallholder land rights provisions. Instead, the federal government has conferred upon the regions not only power to enact their own land laws, but also to "establish institutions at all levels that shall implement rural land administration and land use systems" under the same Proclamation.[796]

Accordingly, the regional states of Tigray, Amhara, Oromia, and the SNNPRS have set up their own executive institutions that carry out with the implementation of smallholder land rights provisions, which are generally known as "Rural Land Administration and Use Authority". In short, as it stands now, the institutional arrangement that deals with the implementation of smallholder land rights provisions in the country is made up primarily of executive institutions that have been established by regional states. Thus, as in the case of regional state land laws discussed above, those land institutions that have been established by regional states suffer from questionable constitutional and legal bases.

There are also significant variations across regional states in the function, composition, and operation of those land institutions that have been established by the four regional states. Moreover, the functions of the land institutions are blurred both in theory and practice with those of other regional state institutions tasked with performing land-related functions. These include regional states' Bureaux of Agriculture and Rural Development (BoARD), which have been renamed as the Bureaux of Agriculture (BoA) since they were re-established as such in 2010, Investment Agencies, Environmental Protection Authorities, and the Bureaux of Water Resources.

For example, the allocation and transfer of land for the purpose of investment in large-scale commercial agriculture is carried out at the level of all regional states by the respective Investment Agencies of the regional states concerned. However, theoretically, the administration and allocation of rural land in all regional states is primarily the responsibility of the Rural Land Administration and

[796] FDRE Proclamation, 2005b: Article 17(1) and (2).

Use Authorities. Similarly, theoretically other agencies such as the Bureaux of Agriculture and the Environmental Protection Authorities also have relevant primary mandates. Yet, practically, neither the Rural Land Administration and Use Authorities, nor the Bureaux of Agriculture and the Environmental Protection Authorities are consulted or involved in the allocation and transfer process.

By the same token, whilst, for instance, the environmental laws in force in all of the regional states in question require an environmental impact assessment prior to the allocation and transfer of land, investment laws do not put such assessment as a requirement. Therefore, the Investment Agencies are allocating and transferring land often without the necessary environmental impact assessment having been made. Moreover, there is no established system and often little practise pertaining to the coordination or exchange of information amongst these institutions. On the other hand, although the current federal rural land administration Proclamation was meant to serve only as framework legislation for regional states and was supposed to be followed by more detailed guidelines for implementation on the ground, such federal guidelines have not yet been issued, or not made public.

To conclude, the function, composition, and operation of the federal and regional state land institutions of the land tenure system in force in post-Derg Ethiopia that deal with the implementation of the provisions of smallholder land rights are plagued by gaps, lack of legitimate constitutional and legal bases, and conflicts. In view of the fact that these institutions are supposed to ensure the implementation of those limited provisions of smallholder land rights that have been attenuated by prohibitions and restrictions, the potential implication of the gaps, lack of legitimate constitutional and legal bases, and conflicts cannot be underestimated. In short, since land is the most important factor of production for smallholders, their possible negative effect on implementation can affect the post-Derg land law reform's effectiveness in helping raise smallholder productivity and tackle poverty.

6. 4. Dispute Resolution and the Role of the Judiciary and Non-formal Customary Institutions

There is a wealth of evidence to be drawn from law and development research and experience demonstrating the critical role the judiciary composed of the formal regular courts of the state plays in ensuring the implementation and the exercise and enforcement of provisions of productivity-raising smallholder land rights set out in land laws, and thereby making land law reform effective in delivering the smallholder productivity and poverty outcomes that it is hoped can help achieve. That is first and

foremost by way of the interpretation, explanation, and application of those land rights that the judiciary conducts in the course of performing its traditional function of dispute resolution. The judiciary is also thought can play this critical role by way of the public confidence, expectation, and reliable legal environment that the mere fact of its existence out there would create.[797]

However, examination of the law and the practice suggests that throughout the history of modern Ethiopia the judiciary has been largely excluded from performing the function of dispute resolution involving the interpretation, explanation, and application of the provisions of productivity-raising smallholder land rights set out in land laws to specific land disputes. For example, during the Derg era, this exclusion was explicitly stipulated in the land laws that were issued as part of the Derg's land law reform programme.[798] In contrast, as discussed earlier, the FDRE Constitution has vested all judicial powers in regular courts, prohibited the establishment of special or ad hoc courts that take judicial powers away from the regular courts, and designated land as a federal matter.[799] This designation confers upon the federal government judicial power over land matters. According to Articles 80 of the Constitution, federal courts shall have "judicial power over federal matters."[800]

Nonetheless, despite these Constitutional declarations, the judiciary's exclusion from performing the function of dispute resolution involving the interpretation, explanation, and application of provisions of productivity-raising smallholder land rights as set out in land laws issued as part of the EPRDF's post-Derg land law reform appears to have continued. Those Constitutional provisions that bestow upon the judiciary exclusive judicial power have been attenuated with exclusions and restrictions introduced by federal and regional land laws issued subsequently. For example, courts have been excluded from adjudicating upon rural landholding disputes, including cases arising over smallholder land rights, a function they traditionally and ideally perform, under the FDRE Proclamation 2005b - the country's second highest law governing smallholder land relations. Article 12 of this Proclamation, which is entitled "Dispute Resolution", reads "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 by agreement, it shall be decided by an arbitral body to be elected by

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797 Rolfes, 2006:142; Bruce, 2006a:4; World Bank and Deininger, 2003:7, 151-152, and 155-156; FAO, 2002a:4; USAID, 2004: ix; DFID, 2004b:9; AusAID, 2000:44; IFAD, 2008:18-19, and 2012:8.

798 PMAC Proclamation, 1975: Article 28.

799 FDRE Constitution: Articles 79(1) and 78(4).

800 FDRE Constitution: Article 80(1).

the parties or be decided in accordance with the rural land administration laws of the region."

Article 12 has two primary objectives. The first is to specify *by whom* a dispute over rural landholding right, to which one or more of the parties may by a smallholder, should be resolved. The Article provides for a three-tiered dispute resolution mechanism. Firstly, such a dispute shall be resolved by the parties through discussion and agreement. Secondly, where the dispute could not be resolved by agreement of the parties, it shall be decided by an arbitral body elected by them. Thirdly and finally, where the dispute could not also be resolved through arbitration, it shall be resolved in accordance with the rural land administration laws of the region concerned. Notably, the Article is silent as regards the role of regular courts in the resolution of such disputes. There is no indication as to whether courts have power of dispute resolution in the first instance, or even an appellate jurisdiction.

The second objective of Article 12 is to stipulate *how* such disputes should be resolved. The Article states that where a dispute could neither be resolved by the parties nor decided by an arbitral body, it shall get resolution in accordance with the rural land administration laws of the region concerned. For a careful observer, this provision begs the question whether, in the event that a dispute is resolved by the parties themselves or an arbitral body elected by them, the agreement or the arbitral award should be delivered on the basis of law or not. Moreover, it leaves it unclear whether the dispute resolution role entrusted to an arbitral body could be taken as recognition by, or incorporation into the formal state land tenure system of the non-formal customary land tenure legal and institutional arrangements.

However, as explained earlier, Ethiopia has been ruled as a federal state by the EPRDF during most of the post-Derg period. As such, laws issued by the federal government on matters that the FDRE Constitution has designated exclusively as "regional matters", or that it has made division of powers between the federal and regional governments will apply only in parts of the country that are accountable to the federal government, namely the Addis Ababa and Dire Dawa City Administrations. And land is one of those matters on which the FDRE Constitution has made division of powers between the federal and regional governments by bestowing the power to make land policy and laws upon the federal government and authorising the regional governments to administer land in accordance with federal laws. Nevertheless, the federal government has through the rural land proclamation it issued subsequently authorised the regional governments to introduce their own land laws and institutions. Accordingly, the Tigray, Oromia, SNNPRS, and Amhara regions have put into effect their own laws and institutions governing rural land relations, including smallholder land rights.

Therefore, in order to get a complete picture of the manner in which dispute resolution pertaining to smallholder land rights is dealt with throughout the country, it is imperative to explore the pertinent law and practice at the regional level. To be more specific, like Article 12 of the FDRE Proclamation 2005b, Article 28(1) of the Tigray Proclamation 2007 provides that "Where a dispute arises over rural landholding, effort shall be made to enable the disputants to discuss and resolve the dispute by agreement. However, where the parties fail to reach agreement by themselves, they may resolve the dispute through arbitration or conciliation by elders as per the local custom." Nonetheless, this same Article of the Tigray Proclamation also provides that "Where one or both of the parties are unwilling to have the dispute resolved through the mechanism set out under Sub-article (1) of this Article, the dispute shall be brought to, and resolved by the Kebele Land Administration Commission." It further provides that "A party aggrieved by the decision of the Kebele Land Administration Commission may appeal to the regular Woreda court within 15 days from the date of rendition of the decision."[801]

In contrast, the Oromia and SNNPRS Proclamations require rural landholding disputes to be directly brought to the Kebele Land Administration Commission. Although the two Proclamations recognise the possibility of dispute resolution through discussion and agreement by the parties, or through arbitration by elders the parties select, they require the Commission to lead the process. According to these Proclamations, where a rural landholding dispute is brought to it, the Commission shall ask the parties to select elders and have the dispute resolved through arbitration. The two Proclamations also allow a party aggrieved by the decision the elders rendered to appeal to the regular Woreda court.[802]

It may appear illogical for the provisions of particularly the federal and the Tigray Proclamations to require parties to a rural landholding dispute to discuss and resolve their dispute by agreement. After all, there would have been no dispute in the first place if the parties were able to discuss and resolve it by agreement. It may also appear superfluous for the provisions to restate the right of access to justice guaranteed for parties under the FDRE Constitution, as long as the dispute is about a civil case pertaining to the private proprietary interests of the disputants and not about a criminal case involving harm done to the public interest protected by the state on society's behalf. Nevertheless, the provisions are important as they emphatically underscore the freedom of alternative actions available notably for a party that is actually or potentially a plaintiff in a civil case. For example, a party to a civil case, such

801 Tigray Proclamation, 2007: Article 28(2) [b].

802 Oromia Proclamation, 2007: Article 16(1) [a] - [g]; SNNPRS Proclamation, 2007: Article 12(1) and (2).

as a smallholder alleging to have suffered the deprivation of, or interference into their land rights by another and seeking compensation for the damage sustained consequently, is free to waive their right to put up a claim altogether, or to discuss with the party alleged to be liable and resolve the dispute by agreement, or to seek the resolution of the dispute by a non-formal customary institution, or to choose to bring the case to a regular formal state court for adjudication.[803]

Studies suggest that the majority of Ethiopians prefer to resort to non-formal customary institutions for dispute resolution even where formal state institutions are known to operate. For instance, Baker has explained the reasons for this preference in what he described as "informal justice practices at the local level" as follows: "The Kebele is the lowest administrative unit. EPRDF party-appointed officials largely control administrative, social and economic activities at this level, though less so justice, which is still very much in the hands of locally recognised leaders, whether customary, religious, social or economic leaders. In practice, local communities across Ethiopia rely heavily on informal justice for dispute resolution. Whatever the merits of taking these issues to the formal Woreda courts, most people prefer to address them locally. The reasons for their preference include speedy resolution, cost and preference for mediation that ensures restoration and social harmony within the community."[804]

Once a person has decided to have their case resolved by non-formal customary institution, they have to choose which institution to take the case to. Although the non-formal customary institutions that exist in the country are invariably composed of locally recognised elders or traditional, religious, social, or economic leaders and are tasked with the function of dispute resolution, the way they are constituted and the type of dispute resolution role they perform vary across different communities. As Assefa Fiseha succinctly put it "One of the hallmarks of customary dispute resolution mechanisms (CDRMs) is that its management is almost always by elders, although the manner in which they are constituted and the roles they play may vary in different societies."[805]

Typically, non-formal customary institutions operate either as permanent or *ad hoc* mechanisms of dispute resolution. As mentioned earlier, most of the country's ethno-cultural groups have permanent customary justice systems rooted in their traditional values, norms, and structures that have transcended the formation of the modern Ethiopian state and the establishment of the formal justice

803 FDRE Constitution: Article 37.
804 Baker, 2013:205.
805 Assefa Fiseha, 2013:117.

system. As Assefa Fiseha further noted "Ethiopia is an amalgamation of numerous ethnic groups each with its own functional customary justice system [that] transcended the formation of the nation state and the introduction of the formal justice structure because [such systems] are rooted in societal values and norms and continue to be cherished through popular participation. The *Gada* system of the Oromo plays a vital role in conflict resolution. Similarly, various ethnic groups have institutions responsible for resolving conflicts. A common element of these institutions is they originated from traditions and norms of each society and remain relevant because of the continued engagement of the community."[806]

In contrast, other non-formal customary institutions of dispute resolution operate as *ad hoc* institutions established to resolve specific disputes. Such *ad hoc* institutions are often composed of elders selected by the parties in dispute. As Baker observed, "The elders used for mediation may be men chosen by the disputants. The elders mediate and negotiate when asked in a variety of disputes. These typically concern disputes within the community regarding land use. The process is one of mediation where the disputants themselves are encouraged by the elders to reach a joint decision. The elders, though they pass judgment, more often attempt to negotiate and reconcile the disputants by asking them to make compromises. Their popularity is based on the fact that they are accessible, quick and free. Their main concern is to ensure, through the restorative process, reconciliation."[807] Assefa Fiseha has made a similar observation on the formation and function of *ad hoc* non-formal customary dispute resolution institutions. He stressed that "In most cultures, based on their reputation, impartiality, familiarity with the community norms, wisdom, and rich experience, elders are elected upon the request of the parties in dispute often on an *ad hoc* basis (although some may be elected/selected several times to handle various disputes). Their primary function is to reconcile the differences that have arisen between the parties through compromise and reconciliation even though adjudication is not ruled out."[808]

Where practice is concerned, the fieldwork conducted as part of the research carried out for the thesis confirmed that neither regular courts belonging to the judiciary, nor the state generally is involved in most of the function of dispute resolution performed in relation to rural landholding cases involving disputes that arise over smallholder land rights. Instead, it is non-formal customary institutions that generally perform the function. In the few cases where the state or an institution backed by the state is involved, dispute resolution is conducted by the Kebele administration office or the so-called "social

806 Assefa Fiseha, 2013:118.
807 Baker, 2013:206.
808 Assefa Fiseha, 2013:117.

courts", although it should also be emphasised that the process often involves an interplay between the formal state and the non-formal customary institutions of dispute resolution. As Baker accurately and succinctly put it, "Land disputes, such as boundary disagreements, dispossession and rural land registration, are common across the country and their resolution frequently sees links between the formal and the informal. Land disputes first go to customary mediation which is chaired by the Kebele chairperson who is a member of the Land Administration Commission. They may also go to the Social courts. If disputants are dissatisfied with the decision, they can appeal to the Woreda courts".[809]

However, the practice observed on the ground is problematic and fraught with possible inconsistencies with provisions of the relevant law. To begin with, whether the dispute resolution function performed by the Kebele administration's Land Administration Commission and social courts is lawful or not remains contentious. Certainly, the Kebele Land Administration Commission has been assigned a dispute resolution role particularly by the regional rural land proclamations. Nonetheless, the social courts have not been explicitly or implicitly assigned any dispute resolution function by any of the federal or regional rural land proclamations, which make no mention of even the name "social courts".

As Abera H/Mariam noted, it was the Derg that first introduced social courts in 1989 as successors to the "judicial tribunals" of Kebeles and Peasant Associations it had established after assuming power. The Derg introduced social courts to have them perform the dispute resolution function of non-formal customary institutions by politically accountable permanent institutions. The major objective the Derg assigned to social courts was to enhance "direct public participation in the administration of justice with a view to promoting socialist legality". Similarly, "under the new federal arrangement almost all federal units have established social courts that administer justice in urban and rural Kebeles."[810]

On the other hand, the fieldwork carried out for the thesis found that there is a fusion of dispute resolution institutions in some areas, as the same locally recognised elders or traditional, religious, social, or economic leaders serve as officials of non-formal customary institutions, authorities of Kebele administration offices, members of Kebele Land Administration Commissions, and "judges" of social courts. However, although currently social courts have been established virtually throughout the country, their composition, jurisdiction, and relation with other dispute resolution institutions not only

809 Baker, 2013:213.
810 Abera H/Mariam, 2002:3-4.

varies across and within regions, but also deviates from the relevant provisions of the law. Social courts have three judges in some areas, but up to five in others. Social court judges are elected by the community taking into account respectability, experience in dispute resolution, familiarity with legal provisions, and availability to serve in some areas, whilst in others they are appointed by Kebele administration offices on the basis of political loyalty. The office of social court judges is not a paid one in some areas, whilst judges are paid a token in others. Social court judges are required to sit in session at least once a week in some areas, but twice in others. Social courts have jurisdiction to hear civil cases involving claims of up to 500 Birr and criminal cases involving petty offences that carry a fine of up to 300 Birr or imprisonment of up to one month in some areas, whilst in others they are empowered to entertain civil cases with claims of up to 1, 500 Birr and criminal cases involving petty offences punishable with community service. Social courts are authorised to resolve all cases involving rural landholding disputes in some areas, whilst in others only cases involving boundary disputes. Social courts are guided by the principle of seeking reconciliation between disputants in some areas, whilst in others they are more about adjudication than mediation. Social courts apply the provisions of formal state land laws in some areas, whilst in others that of non-formal customary land laws.[811]

Moreover, there is a marked discrepancy between the provisions of the law and the practice on the ground as regards the composition and the function of the Kebele Land Administration Commission. For example, the Tigray Proclamation envisaged the Kebele Land Administration Commission as a permanent institution of dispute resolution, although it left the details pertaining to the composition, operation, and remuneration of the Commission to be specified by regulations.[812] In contrast, the Oromia and SNNPRS Proclamations envisaged the Kebele Land Administration Commission as an *ad hoc* dispute resolution institution to be established to resolve specific disputes and be composed of elders selected by the parties in dispute, with the Kebele administration officials playing the role of facilitating the selection and operation of the Commission.[813]

Despite those provisions of the law, however, the field research conducted for the thesis found that in practice, in all of the study areas the Kebele Land Administration Commission is established as a

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811 These findings are generally consistent with the findings of other studies conducted on the issue (see, for example, Mitiku Haile, et al., 2005:10 and 17-22; Assefa Fiseha, 2013:118-119 and 121-122; Baker, 2013:208-209; Abera H/Mariam, 2002:3-6).

812 Tigray Proclamation, 2007: Article 28(2) [a].

813 Oromia Proclamation, 2007: Article 16(1) [a] - [e]; SNNPRS Proclamation, 2007: Article 12(1).

permanent institution of dispute resolution, composed of members appointed by the Kebele administration, and chaired by the Kebele chairperson. In short, the Kebele administration, which oversees the formation, composition, and operation of the Commission, is part of the executive organ of the state at the grassroots-level. Therefore, although it has been assigned the function of dispute resolution by law, the Commission can be considered as a veritable arm of the executive organ rather than the judiciary. In other words, in the few cases where the state is involved in the function of resolution of rural landholding disputes arising over smallholder land rights, the function is performed by grass roots-level administrative wings of the executive organ, which often operate without applying the pertinent formal state land laws and are arguably there primarily to serve political purposes.

Furthermore, the Kebele Land Administration Commission and social courts continue to be contentious as to whether they are constitutional or not, formal state or non-formal customary institutions, and part of the executive or the judiciary. First, their constitutionality is questionable because the FDRE Constitution has provided for the establishment of three layers of courts both at the federal and regional levels, including the federal first instance, high, and supreme courts, as well as the Woreda first instance, the Zonal high, and the regional supreme courts; vested all judicial powers in these regular courts at all levels; and prohibited the establishment of special or ad hoc courts that take judicial powers away from the regular courts.[814] Second, whether the Commission and the social courts are formal state or non-formal customary institutions of dispute resolution is contentious. On one hand, the fact that they are established and backed by the state would in a sense make them formal. On the other, the questionable constitutionality of their existence and lawfulness of their dispute resolution function, as well as their application of non-formal state substantive and procedural provisions in the performance of their function would make them non-formal customary institutions. Third, whether the Commission and the social courts are part of the executive or the judiciary is contentious. On one hand, the fact that the Kebele administration oversees their formation, composition, and operation would in a sense make them part of the executive. On the other, the dispute resolution function they perform would make them part of the judiciary.

What is more, the possibility of appeal to regular Woreda courts envisaged particularly by the regional proclamations appears to be impractical. In fact, none of the Kebele officials, rural land administration authorities, Woreda court judges, and smallholders that were parties to rural landholding disputes

[814] FDRE Constitution: Articles 79(1) and 78(4).

whom the researcher approached during fieldwork responded that they knew of any single case taken by appeal to a Woreda court. This finding is generally consistent with the findings of other studies conducted on the issue. For instance, according to Assefa Fiseha, since decisions rendered by *shimaghiles* (Amharic for "elders" or "customary mediators") often enjoy the support of the disputants and regular courts, they are rarely appealed by the parties and reversed by the appellate Woreda courts.[815] Similarly, Baker has found that although the law has made available the possibility of appealing to Woreda courts, disputants have rarely used it. Baker concluded that "Though it is very rare, the discontented party can appeal to the Woreda court."[816] There are several reasons for this. They include the fact that the first instance decisions are rendered by venerable elders or influential Kebele officials, who are respected or feared by the parties; lack of knowledge of law as to the possibility of appeal, or where and how to file it on the part of the mostly illiterate smallholder disputants; inaccessibility of the appellate Woreda courts, which are often located far away in Woreda administration capitals; inability of the typically poor smallholder disputants to afford the costs of transportation, accommodation, and litigation necessary for appeal; and inadequacy of the time allowed for appeal, which should be filed within days from the date of rendition of the decision.[817]

It can therefore be argued that, despite the arguably impractical appellate jurisdiction assigned particularly by regional proclamations to regular Woreda courts over decisions rendered in the first instance by the Kebele Land Administration Commission, the judiciary has been largely excluded from performing dispute resolution function as regards rural landholding cases that arise over smallholder land rights provided in land laws. It can also be argued that the exclusion of the judiciary from the administration of justice pertaining to smallholder land rights impedes the exercise and enforcement, hence the practical implementation, of even the few productivity-raising smallholder land rights that have been provided by law, which are already attenuated with restrictions and prohibitions. In turn, this impedes the effectiveness of the land law reform programme. Conversely, it hinders the judiciary from playing the important role it can have in making the land law reform programme effective.

To sum up, although it appears to be unconstitutional, the exclusion of the judiciary does not appear to

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815 Assefa Fiseha, 2013:122.

816 Baker, 2013:208.

817 For instance, the time allowed for an aggrieved party to file appeal with the Woreda court under Article 28(2) [b] of the Tigray Proclamation 2007 and Article 16(1) [f] of the Oromia Proclamation 2007 is, respectively, 15 and 30 days from the date of rendition of the first instance decision.

have been a result of innocent oversight. If that were the case, there has been enough time to rectify the exclusion. An alternative explanation is that the exclusion reflects a conscious decision made to maintain political control over land matters, including smallholder land relations, and the concomitant economic, social, and political rent. On the other hand, it is evident that the arrangements now in place allow the responsibility that comes with handling the function of rural land dispute resolution to be shifted in a manner that minimises the cost that would have been incurred to deal with the enormous caseload if regular courts were made to handle the function. At the same time, it projects an image of decentralisation of power, empowerment of ethnic groups to resolve disputes by their own with their own rules, and equitable distribution of the economic, social, and political benefits pertaining to land.

6. 5. The Exercise and Enforcement of Smallholder Land Rights by Smallholders

The discussion of the issue of land institutions and the implementation of the provision of smallholder land rights would not be complete without examination of the manner of exercise and enforcement of those provisions by the smallholders themselves. It is particularly important to explore the question why most of the country's smallholders continue to resort to the non-formal customary legal and institutional arrangements for the exercise and enforcement of their land rights rather than the formal state laws and judiciary composed of regular courts, including, for instance, the right to transfer their landholdings through lease, which is legal under both the formal state and non-formal customary land tenure systems. This Section will briefly examine the abovementioned question. In view of the purpose of the Section, the focus of the examination here will be the right of smallholders to transfer their landholdings through lease. That is because leasing is a right that requires smallholders and the judiciary to play an active role for its exercise and enforcement. It requires smallholders to conclude lease contracts, and the judiciary to adjudicate upon disputes arising in connection with such contracts.

For example, during the Derg era, smallholders used non-formal rather than formal land laws to conclude land lease contracts and did not make recourse to regular courts for the adjudication of disputes due to restrictions imposed by law. Article 5 of the PMAC Proclamation 1975 prohibited smallholders from concluding contracts for the transfer land through lease. Moreover, Article 28 of the same Proclamation barred regular courts from adjudication of disputes arising over smallholder land rights. During the post-Derg period, however, those restrictions have been lifted. Federal and regional land proclamations issued as part of the post-Derg land law reform recognise the smallholders' right to

transfer or acquire land through lease.[818] And Article 79 of the FDRE Constitution has declared that "Judicial powers, both at federal and state levels, are vested in the courts."[819]

However, provisions of those proclamations and the Constitution bestowing upon the country's smallholders the right to transfer their landholdings through lease and the judiciary exclusive judicial powers have been attenuated with restrictions and exclusions. To begin with smallholders, the exercise and enforcement of the right guaranteed for them to transfer or acquire land rights through lease validly by way of the formal legal and institutional arrangements is subject to compliance with several restrictions and preconditions. These restrictions and preconditions are attached to the identities of the lessor and the lessee, the purpose of the lease, the size of the landholding that may be legitimately leased out, and the length of the period during which the lease contract may remain valid.

First, a smallholder may lease out his landholding validly only if he has a holding certificate issued by the state as per Article 8(1) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007 and Article 6(1) of the Tigray Proclamation 2007. Although it does not explicitly state if a smallholder needs to have a holding certificate in order to lease out his landholding, the Oromia Proclamation 2007 requires under Article 15(13) that when a smallholder landholding is leased out, the holding certificate shall be handed over to the lessee. This is a difficult precondition to fulfil not least because many smallholders do not have a holding certificate as the process of certification of smallholder landholdings has not been fully carried out or started at all in many parts of the country. Second, a smallholder is allowed to lease out only part of his landholding. That is, "in a manner that shall not displace" him as per Article 8(1) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, although it is not clear what that means. Article 6(1) of the Tigray Proclamation 2007 and Article 10(1) of the Oromia Proclamation 2007 stipulate more clearly that a smallholder may lease out not more than half of his landholding. Third, a smallholder may lease out his landholding only to another smallholder or an "investor", for the purpose of "development", and for a limited period of time. Pursuant to Article 8(1) of the FDRE Proclamation 2005b, a land lease contract may be concluded "for a period of time to be determined by rural land administration laws of regions based on particular local conditions." According to Article 8(1) [a], [b], and [c] of the SNNPRS Proclamation 2007, the lease contract shall be valid for a period of up to five, ten, and 25 years where the

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818 Article 8(1)-(3) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 10 of the Oromia Proclamation 2007, and Article 6 of the Tigray Proclamation 2007.

819 FDRE Constitution: Article 79(1) and (2).

landholding is leased out by a smallholder to another smallholder, any investor, and an investor cultivating perennial crops, respectively. The period during which the lease contract may remain valid shall be "not more than three years for those who apply traditional farming, and fifteen years for mechanised farming" as per Article 10(2) of the Oromia Proclamation 2007; and "up to 20 years where the lessee uses technology other than the traditional method of farming, and not more than three consecutive years where the lessee uses traditional method of farming" pursuant to Article 6(3) [a] and [b] of the Tigray Proclamation 2007. Fourth, the land lease contract must cumulatively fulfil the strict formality and validity requirements specified for transactions pertaining to immovable properties under the Civil Code of Ethiopia. According to the Ethiopian law of obligations governing contractual undertakings, contracts relating to immovables, including smallholder land lease contracts, must be made in writing. Moreover, they must be signed by all the contracting parties and attested by at least two capable witnesses.[820] Fifth, the land lease contract may not be valid even if it has fulfilled all of the preceding strict formality and validity requirements. In addition, it must be examined, approved, and registered by the appropriate governmental authority as provided under Article 8(2) of the FDRE Proclamation 2005b and the SNNPRS Proclamation 2007, Article 10(3) of the Oromia Proclamation 2007, and Article 10 of the Tigray Proclamation 2007. In other words, the formal validity of a smallholder land lease contract hinges on an affirmative decision by a political appointee.

Clearly, those formality and validity requirements are onerous by any standards. But they are even more onerous given the practical situation of Ethiopian smallholders in terms of the so-called transaction costs, information asymmetry, financial means, and the like. Compliance with all those strict requirements cumulatively requires at least some form of basic literacy, information, knowledge of law, access to competent state institutions, money to conclude contracts, etc. None of these are at the disposal of the vast majority of the country's smallholders. Ethiopian smallholders are not also accustomed to those requirements, as they traditionally conclude contracts, including land lease contracts, orally, which are valid and enforceable under the non-formal customary arrangements.

The implication of the onerousness of those formality and validity requirements is critical. First, the requirements are vital for validity. That means, a smallholder land lease contract that has not fulfilled one of the requirements outlined above is *void ab initio* – null and void, or nonexistent in the eyes of the state and its formal legal system. Therefore, such a "contract" and any right or obligation that a

[820] Civil Code of Ethiopia, 1960: Articles 1723, 1727, 1728, 1729, and 1723(2).

smallholder might have assumed as a result will not be recognised, exercised, and enforced through a court of law for the simple reason that, legally speaking, the transaction is "no contract but a mere draft."[821] Moreover, the requirements have a critical probative importance. In the event of a dispute, the only evidence admissible to prove the terms and contents of a land lease contract involving smallholders, is the document of the contract itself. Such a contract or any statement it contains may not be proved by witnesses or presumptions, unless it is established that the document of the contract has been destroyed, stolen, or lost. Therefore, a smallholder who is party to such a contract and wishes to avail himself of this exceptional alternative way of proof should first establish three things: that the contract, which is the bone of contention, has been duly concluded in conformity with all the formality and validity requirements; that the document of the contract has been destroyed, stolen, or lost; and that the destruction, stealing, or loss was due to *force majeure* or an accident beyond his control.[822]

821 Civil Code of Ethiopia, 1960: Articles 1723, 1720(1) and (2).

822 Civil Code of Ethiopia, 1960: Articles 1723 and 2003. See, also, Planiol and Ripert 1939, Rules 1122 and 1123.

Chapter 7

Making Legal Pluralism Work through Land Law Reform in Ethiopia

7. 1. Preliminary Considerations

As discussed in the preceding Chapters, the treatment accorded to legal pluralism under the land law reform programmes enacted by successive governments of the modern Ethiopian state is informed mainly by the perception of those in state power as regards the nature and the possible implication of non-formal customary land policies, laws, and institutions to economic, social, and political development. The perception of non-formal customary land policies, laws, and institutions as tribal, religious, and traditional mores and superstructures that are backward, reactionary, and anathema to economic development, social integration, and political unity, which will eventually disappear under the pressure of education and modernisation as society progresses, led to their virtual abandonment, de-legitimisation, and abolition under the land law reforms those governments enacted in the country. For example, as Brietzke observed, "Although David, the Civil Code draftsman, recognizes 'customs' as the substance of private law, he denies them the status of law, viewing them as mores that will gradually evolve under the pressure of education. The Codes are the 'real' law, as they are to conquer Ethiopia as Roman law conquered Europe. Further, there is no place for traditional laws as such in a codification based solely on national interest".[823] As Minasse suggested, the perception that "tribalism, religion, and other parts of the superstructure will eventually disappear as society progresses"[824] generally underpinned the treatment of the non-formal customary land policies, laws, and institutions.

In contrast, only formal land policies, laws, and institutions the state introduced through land law reform were perceived as "real" laws that could lead to economic development, social integration, and political unity. Even worse, those state-sanctioned formal land policies, laws, and institutions that were supposed to be "real" laws and expected to foster overall economic development, social cohesion, and national political culture in Ethiopia were largely unmodified foreign transplantations. In short, the formal state land policies, laws, and institutions introduced through land law reforms enacted by successive governments of the modern Ethiopian state might have been designed for and evolved

[823] Brietzke, 1974:154.
[824] Minasse, 1996:43.

within the "social field" of their countries of origin, including the interplay of institutional structures, physical constraints, ideologies, traditions, values, and other factors determining the realm of individual and judicial choices.[825] But they did not reflect the challenges and opportunities of the pre-existing indigenous land tenure systems and the values, needs, and land rights of smallholders of Ethiopia. Nor did they take into account the specific economic, social, and political conditions and potentials of the country. It would not therefore be surprising that those land law reforms have yielded "little law and less development".[826] Neither the modern, national formal land tenure system, agricultural growth, and poverty alleviation envisaged, nor the other economic, social, and political development objectives set by successive governments have been achieved. As mentioned earlier, despite having been theoretically repealed, de-legitimised, and replaced by the formal state land policies, laws, and institutions, the non-formal customary ones have continued to exist, operate, and be used by society to govern around 85% of land relations in Ethiopia. Moreover, Ethiopia had amongst the world's lowest smallholder productivity - averaging around 1.0 ton/hectare, and worst poverty by many standards - ranking 174th out of 187 countries in the UNDP Human Development Index, in 2011.

However, with the failure of the previous Law and Development Movements that sought the transplantation of Western-styled legal systems, institution building, and rule of law promotion in order to spur economic development in developing countries, and the emergence of globalisation, decentralisation, and community empowerment as top international development agenda, the role of legal pluralism and non-formal customary land tenure systems have received increasing attention from law and development analysts, practitioners, and funders in recent years.[827] They have also become the focus of the relevant literature. There has also been a slight shift in policy on the national front. Perhaps recognising that both legal pluralism and non-formal customary land tenure systems are a fact of life, to better advance its ethnic-based agenda related to land and smallholder agriculture, and acknowledging the risk of subjecting disputes over land to the jurisdiction of the understaffed, underfunded, overloaded, inept, and often corrupt lower tiers of the regular formal state courts, the current government has made a slight shift in policy towards incorporating non-formal customary land institutions as regards dispute resolution. As Baker succinctly put it, due to these set of challenges, "the government has had to evaluate what it wants and what it can achieve from formal and informal justice

825 Seidman, 1972:311.
826 Brietzke, 2001:1.
827 See, for instance, Assefa Fiseha, 2013:115.

and to establish a pragmatic middle way. In practice it has led to the government reassessing its attitude to informal justice as part of a nationwide justice sector review since 2009. It has developed new policies and programmes which aim to enhance community security and justice, not only to crime and violence, but also to community-level conflicts and peace building."[828] Specifically, the current federal land proclamation contains a provision, which has been validated under the regional state land proclamations, requiring that "Where dispute arises over rural landholding right, effort shall be made to resolve [it] 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".[829]

Nonetheless, there are several problems with this approach. First, it is not clear whether those arbitral tribunals should be guided by the provisions of the formal state or non-formal customary land policies and laws in the course of performing the function of dispute resolution they have been assigned. Second, the constitutionality of provisions of the federal and regional land proclamations that entrusted dispute resolution role to non-formal customary institutions is questionable. Besides conferring all judicial powers upon the judiciary, the FDRE Constitution has made it clear that "Special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established."[830] Third, no clear hierarchy, or other form of formal coordination or relation between the formal state and the non-formal customary dispute resolution institutions has been put in place.

With that in mind, this Chapter will briefly explore the scope and mechanisms available for intervention through land law reform to treat the legal pluralism and the non-formal customary land policies, laws, and institutions in the land tenure system in a manner that would enable to avoid the abovementioned problems, help improve the provision and implementation of productivity-raising smallholder land rights, and make the land law reform effective in helping raise smallholder productivity and tackle poverty in Ethiopia. The Chapter will first consider the advantages and disadvantages of the non-formal customary land policies, laws, and institutions. It will then highlight the alternative models developed in established law and development research and experience for the formal treatment of the non-formal customary arrangements using land law reform, along with the forms and contents, potential benefits and possible drawbacks, and practical examples of each model.

828 Baker, 2013:204.
829 FDRE Proclamation, 2005b: Article 12.
830 FDRE Constitution: Articles 78(4) and 79(1).

7. 2. The Advantages of Non-formal Customary Land Tenure Systems

As mentioned earlier, non-formal customary land tenure systems have a number of advantages to offer in terms of the provision and implementation of productivity-raising smallholder land rights. It is probably because of those advantages that despite having been theoretically repealed, de-legitimised, and replaced by the formal state systems they have practically continued to be more popular and important in the governance of smallholder land relations particularly in sub-Saharan African countries like Ethiopia. This Section will briefly highlight the advantages that the non-formal customary land tenure systems are perceived to have over their formal state counterparts in this regard.

Generally, non-formal customary land tenure systems are often more accessible and affordable, provide service in the absence of the formal state ones, and their non-state nature allows participation and spurs trust in society, particularly where the state is seen as a remote or suspicious entity as in most of rural sub-Saharan Africa. Specifically, since non-formal customary land policies and laws are products of local values, norms, and practices, they enjoy a degree of belongingness, familiarity, and legitimacy, which their formal counterparts often lack. Non-formal customary land institutions are also more accessible and affordable even to the remotest and poorest people. They also depend on social pressure, cooperation, and participation to induce compliance, provide service in local languages, and have relatively more familiar and informal procedures. Moreover, since the justice non-formal dispute resolution institutions render is often conciliatory and aimed at restoring social harmony, justice, and peace, rather than enforcing abstract legislation, it would be a more appropriate solution, particularly when the infraction is relatively minor, as parties would have to continue to coexist and cooperate closely.[831] Those advantages seem to explain why, as DFID estimated, "in many developing countries, customary legal systems account for 80% of total cases", which is significant as a large proportion of the people who use such legal systems often happen to live in rural areas and be smallholders.[832]

The other advantage of the non-formal customary land tenure systems is their negotiability, flexibility, and adaptability to changing circumstances. Although earlier approaches emphasised the continuity and rigidity of "customs" and "traditions" that underpin non-formal customary land tenure systems,

831 See, for example, Penal Reform International, 2000:113 and 124-126.

832 DFID, 2000:7.

more recent studies have identified the dynamism inherent in such systems. As Cotula, Toulmin, and Hesse succinctly put it, "These systems are not static, but continually evolving as a result of diverse factors like cultural interactions, socio-economic change and political processes. In this context, "traditions" are continuously reinvented".[833] Crook et al have also argued that "local community-based and 'customary' forms of land rights are constantly being reinvented in response to changing circumstances and changing power relations".[834] Similarly, Cotula has observed that "the central role played by negotiation in those systems enables flexibility and adaptability".[835]

Moreover, non-formal customary land tenure systems are cheaper in terms of the infrastructural, financial, and personnel resources necessary to establish and run them. Being mostly products of the values, practices, experiences of society, non-formal customary systems are often already in place, in contrast to formal state systems introduced through land law reform, which require considerable infrastructural, financial, and personnel resources to establish, staff, equip, and operate. As Connolly noted in reference to non-formal dispute resolution institutions, "the fact that traditional mechanisms may already be in place allows disposition to begin without first having to rebuild institutions."[836]

Non-formal customary land tenure systems are often viewed as less efficient with respect to the land use rights they put in place. However, there are aspects that would make non-formal customary systems more advantageous in this regard. For example, such systems often allow a given piece of land to be used by multiple resource users for various purposes. As Cotula succinctly put it, "For a given piece of land, customary systems may cater for multiple resource uses (e.g. pastoralism, farming, fishing) and users (farmers, residents and non-resident herders, agro-pastoralists; women and men; migrants and autochthones; etc), which may succeed one another over different seasons."[837]

Furthermore, most formal land tenure systems introduced through land law reform employ a one-size-fits-all approach to land rights-related issues and establish state control over land. In contrast, since non-formal customary systems are mostly products of the values, practices, experiences of particular communities, they provide more localised, context-based solutions and affirm the control of local

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833 Cotula, Toulmin, and Hesse, 2004:2.
834 Crook et al., 2007:22.
835 Cotula, 2007:6.
836 Connolly, 2005:6.
837 Cotula, 2007:11.

communities over land. As UNSO suggested, non-formal systems play a critical role in "Affirming the rights of local populations to control resources takes power away from the state administration and allocates this power to a particular group of rural producers, which tends to be sedentary farmers."[838]

What is more, contrary to the dominant and stereotypical view, not all non-formal customary land tenure systems discriminate against, marginalise, or exploit "vulnerable" groups, such as women and children, or those with weaker bargaining power, such as the elderly, the disabled, and the "minority" members or "non-members" of the community. In fact, though not all, many such systems across sub-Saharan Africa, including Ethiopia, have mechanisms through which they not only guarantee and protect the land rights of, but also assist in the ploughing, weeding, and harvesting tasks of particularly such groups as widowed women, orphaned children, the elderly, the disabled, non-member "guests" of the community. Moreover, particularly in communities with matrilineal systems of administration, such as the Afar and several other ethnic groups in Ethiopia, since land rights devolve through the mother's line and are generally held in women's name, though controlled and cultivated by men, women tend to have greater land rights, and thus enjoy higher economic and social status than men.[839]

7. 3. The Disadvantages of Non-formal Customary Land Tenure Systems

The advantages that the non-formal customary land tenure systems are perceived to have over their formal state counterparts have been briefly discussed in the preceding Section. However, non-formal customary land tenure systems also have inherent disadvantages. And due to those disadvantages, they cannot serve as replacement for the formal ones, or by themselves provide adequate framework for the establishment of a land tenure system that would enable to promote the provision and implementation of productivity-raising smallholder land rights and thereby help raise smallholder productivity and tackle poverty. This Section will briefly highlight the disadvantages of non-formal customary systems.

The first disadvantage of non-formal customary systems is to do with their nature. Since non-formal policy, legal, and institutional provisions are not often based on unwritten rules, proof of their existence, composition, and operation often depends largely on the memory, knowledge, and experience of a few traditional leaders, elders, and experts of particular communities. As such, the

838 UNSO, 1994:13.

839 See, for example, Lastarria-Cornhiel, 1997.

very definition of "custom", or what constitutes a given non-formal customary land tenure system may be a subject of contestation even amongst members of the same community. Moreover, although the negotiability, flexibility, and dynamism inherent in non-formal customary land tenure systems could be considered as an advantage, it also constitutes a disadvantage for several reasons. First, since they lack regularised, systematised amendment procedures, it would be difficult to shape the land tenure system towards the direction of improving the provision and implementation of productivity-raising smallholder land rights and thereby helping achieve the objectives of raising smallholder productivity and tackling poverty. As Brietzke noted in reference to such systems, "The regularized amendment procedures necessary for the adaptation of law [to] change are lacking."[840] Second, because "customs" and "traditions" underpinning non-formal customary land tenure systems are often specific to particular communities, numerous, and diverse, the negotiability, flexibility, and dynamism inherent in such systems can be used in a way that is quite contrary to helping promote smallholders' tenure security, transfer of rights over land, and collateralisation of land rights. As Cotula, Toulmin, and Hesse suggested, "'traditions' [could be] continuously reinvented to back conflicting claims of different social groups."[841] Third, since non-formal policy, legal, and institutional provisions are not often based on unwritten rules, but dependent on the knowledge of the traditional leaders of particular communities, their negotiability, flexibility, and dynamism can open way for manipulation. As Cotula suggested, "Far from being the idealised, 'community-based' systems described by some, customary land tenure regimes (and elite manipulation thereof) provide backdrop for exploitation and exclusion. While negotiation enables flexibility and adaptability, it can also lead to marginalisation of those with weaker bargaining power. And, while the position of women under customary tenure varies considerably, many such systems contain norms and practices that are gender discriminatory".[842]

Moreover, since the origin, provision, and operation of non-formal customary land tenure systems is often inextricably tied to the goal of protecting the interest and fostering the interdependence of particular families, neighbours, and communities, such systems do not provide a suitable framework to promote smallholder tenure security, transfer of rights over land, and collateralisation of land rights in a wide-scaled, interactive way that can enable to raise smallholder productivity and tackle poverty in unrestricted, broad-based manner. Such systems can also hinder the reduction of reliance on families,

840 Brietzke, 1975:47.
841 Cotula, Toulmin, and Hesse, 2004:2.
842 Cotula, 2007:6.

neighbours, and communities and the expansion of wide-scaled face-to-face relationships necessary to foster broad-based local, regional, and national economic, social, political integration and development. As Wilson and Wilson observed, broad-based integration and development requires a wide-scaled society. And in the context of land relations, a wide-scaled society requires a land tenure system that promotes increase in broad-based face-to-face interaction and dependence, and decrease in interrelation and reliance confined to immediate families, neighbours, and communities.[843]

In short, non-formal customary land policies, laws, and institutions are inherently disadvantageous because they reflect and reinforce the patriarchal, feudal, and subsistence framework Ethiopia's smallholder-based rural way of life, emphasise traditional structures, values, and beliefs, and focus on upholding past relationships and maintaining the relative status quo. Therefore, they not only favour men and "influential" members of the community and often discriminate against women and other "vulnerable" groups, such as children, the elderly, the disabled, the low caste and the "minority" members or "non-members" of the community, but also prevent the increase in social scale, including the expansion of face-to-face socio-economic relationships and the reduction of dependence on family, neighbours, and "the community", necessary to foster local, regional, and national economic development. Moreover, since they lack regularised amendment procedures required for adaptation to change, they render the disengagement of the rural political economy from traditional social structures difficult, and hinder the transformation of smallholder agriculture from ensuring subsistence towards serving as an engine for fostering poverty alleviation and overall economic development. Specifically, because non-formal customary land policies and laws are unwritten, vague, diverse, and diffuse, which often depend on the knowledge and prerogative of particular traditional leaders, and the land institutions have through time become weakened, depleted, and corrupted, which often rely on social pressure and voluntary cooperation to induce compliance, they cannot offer an adequate framework for the provision and implementation of productivity-raising smallholder land rights with the degree of breadth, duration, and assurance required for the enhancement of tenure security, the facilitation of the transfer of rights over land, and the authorisation of the collateralisation of land rights. To use the words of Brietzke, "By definition, the traditional laws of a given community cannot move ahead of prevailing traditional - not necessarily contemporary - structures, values, and beliefs. The regularised amendment procedures necessary for adaptation during periods of change are lacking. Traditional law places relatively greater emphasis on past relationships and relative status of the parties to a dispute,

[843] Wilson and Wilson, 1965:24, 88, 108, and 162.

rendering the disengagement of the rural economy from traditional structures more difficult."[844]

To sum up, the decentralised, vague, and diverse nature of Ethiopian customary legal and institutional arrangements, as well as the fact that the social pressures inducing compliance with them are too diffuse, makes them ill-adapted to foster development. Different ethnic, cultural, religious, and land tenure groups have different rules, impairing the efficiency of centralised rural development administration. Unwritten custom, as applied to a particular dispute, is vague, since it depends upon the knowledge and origin of particular judges or jurors. People cannot predict the consequences of their actions with the degree of certainty required for development. Transactions and relations between persons with differing traditional laws are made more difficult by the diversity of rules. A codification of traditional laws, such as was attempted in Kenya, could only result in a lowest common denominator type of law, which would not only mean little to a person of a particular cultural group, but also be ill-adapted to advance development.[845] Other disadvantages of the non-formal customary land tenure systems include the lack formal legality and accountability, the backing of the state and its more effective enforcement machinery, clearly defined and widely known substantive and procedural rules, unpredictability and inconsistency, impediment and obstruction of the penetration of the formal state land policies, laws, and institutions introduced through land law reform, and deprivation of the state its exclusive sovereignty, monopoly over legislative, executive, and judicial powers, and considerable revenues it could have earned by way of transaction taxes and administration fees.[846]

7. 4. Models for the Treatment of Non-formal Customary Tenure Systems

As discussed in the preceding Sections, although non-formal customary land tenure systems have numerous advantages over their formal state counterparts, since they also have as many inherent disadvantages, they cannot provide an adequate development framework that enables to use the land tenure system in a way that helps promote the provision and implementation of productivity-raising smallholder land rights, thereby raise smallholder productivity, and tackle poverty. As things stand now particularly in countries like Ethiopia, the same holds true also for formal state land tenure systems. Moreover, as the failure of past attempts demonstrates, efforts aimed at substituting one

844 Brietzke, 1975:47.
845 Marein, 1955:250.
846 See, for instance, Connolly, 2005:4-5.

system by another and eliminating legal pluralism would likely be unfeasible, if not unsuccessful, in the foreseeable future. However, though not serve as a replacement, the two systems can complement one another. The key question therefore is what scope and mechanisms are available to use land law reform to recognise legal pluralism, treat non-formal customary land policies, laws, and institutions in a way that enables to take the advantages and avoid the disadvantages they have, and establish a land tenure system that helps promote the provision and implementation of productivity-raising smallholder land rights, thereby raise smallholder productivity, and tackle poverty in the short-run; as well as to possibly bring about the gradual evolution, extinction, or absorption of non-formal systems into the formal system and the end of legal pluralism in the long-run. As Rolfes observed, "Eventually, land rights will come under the umbrella of formal law in places where customary or informal practices currently predominate. Though this may take decades, it is inevitable. Thus, the question is how to make the transition to formal law in a manner that causes minimum disruption, respects rights created by customary or informal practices, preserves practices that work well, protects poor people, and delivers a formal legal regime that people will accept as legitimate and useful."[847]

This Section briefly explores models developed in established research and experience that offer alternative ways for intervention through land law reform to make legal pluralism in the land tenure system work in a way that combines the advantages of non-formal customary land policies, laws, and institutions, such as societal legitimacy, economy of time and money, familiarity and informality of rules, and accessibility and affordability of institutions, with the advantages of the formal state ones, such uniformity, impartiality, legality, and enforceability. It should, however, be emphasised at the outset that the Section will not attempt to develop a "general theory" for the treatment of legal pluralism. It will only attempt to consider the possible alternative models that the state may adopt under land law reform towards the treatment of non-formal customary land tenure systems, as well as to highlight the potential benefits and problems and the practical examples of those models. As Benda-Beckmann observed, "any generalisation as to the relationship between national legal systems and indigenous systems is likely to be problematic: much must depend on the nature of a particular indigenous system and how members of the society concerned exploit it."[848] Nonetheless, this does not mean analysis of the possible mechanisms for the treatment of non-formal customary land tenure systems should not be attempted. However, since this Section only attempts to establish a basic

847 Rolfes, 2006:140.

848 Benda-Beckmann, 1981:166.

framework for that analysis, and neither the list of the models examined, nor the discussion made here is exhaustive, more research is necessary to develop the numerous variations within each model and to consider the many practical examples of each variation to more precisely determine their implications.

7. 4. 1. The Total Abolition Model

The first possible model for the treatment of non-formal land tenure systems under land law reform is the total abolition model. This model involves repealing and replacing all non-formal customary land policies, laws, and institutions by formal state ones put into effect through land law reform. As Morse suggested, the model is driven by the perception that non-formal customary land tenure systems are primitive, tribal superstructures that are reactionary to progress, which therefore need to be abolished and replaced in their entirety in order to foster overall economic, social, and political development.[849]

This model was taken up by successive governments in Ethiopia. It was also attempted by the Spanish and Portuguese colonial administrations in Latin America, which tried to eradicate and replace the pre-existing customary land tenure systems by formal states ones that they imported and transplanted from their home countries.[850] This model had also been more recently adopted by many sub-Saharan African states that gained independence in the 1960s and 1970s, which sought to replace the pre-existing indigenous African customary land tenure systems with a "modern" formal state system mostly based on the Western concepts of property rights involving the privatisation and registration of land rights.[851] As Cotula noted, "African governments have sought to replace customary land tenure systems with a 'modern' system based on state legislation, European concepts of ownership and land titling and registration. This is partly because customary land tenure was held not to provide adequate tenure security, thereby discouraging investment and negatively affecting agricultural productivity. African states took on regulating land relations - either directly, through nationalisation, or through registration aimed at creating private ownership rights. This was to promote agricultural development on the one hand, and to control a valuable asset and source of political power on the other."[852]

The "advantage" of this model is that it is perceived to be cheap and short-cut. As Brietzke succinctly

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849 Morse, 1983:385-387.
850 Connolly, 2005:6.
851 See, for instance, Cotula, Toulmin, and Hesse, 2004:3.
852 Cotula, 2007:5-6.

put it, "this is the cheapest law reform in the short-run."[853] For example, according to David, the chief draftsman of the Civil Code that mostly embodied Ethiopia's first comprehensive and systematised land law reform enacted under Haile Sellassie I, the wholesale replacement of the indigenous non-formal customary land tenure systems by the French-modelled formal state ones was necessary because the country "cannot wait 300 or 500 years to construct in an empirical fashion a system of law, as was done in two different historical eras by the Romans and the English." David further asserted that "The development and modernization of Ethiopia necessitate the adoption of a 'ready-made' system; development and modernization force the reception of a foreign system of law".[854]

However, research and experience demonstrate that this model, which views all indigenous customary land tenure systems as anathema to a modern system of law and national development, whilst it perceives all the foreign-modelled formal state ones in line with the thinking that "good law in one place is good law any place else", has generally been a failure, as it produced neither law nor development. On one hand, the states in the countries where the land law reform programmes based on this model were enacted lacked the legal resources necessary to formulate provisions of the received formal land policies and laws in a way that is adapted to the specific social fields of their countries, or that offers a viable alternative to the pre-existing non-formal customary arrangements. They also lacked the administrative capacity, particularly the institutional means to carry out proper implementation, as well as the financial, human, and infrastructural resources needed to allow popular participation in the formulation and implementation process; and to communicate, propagandise, and familiarise the substantive rights and obligations, the procedural forms and contents, and the overall operation and implication of the programmes. Moreover, the states lacked the political capital required to induce voluntary compliance with its newly-introduced formal arrangements, or to use coercion to force the abandonment of the non-formal customary ones partly because that can entail a vacuum in the absence of viable alternative, or even risk political backlash as it would mean complete disruption of arrangements most valued by society at large; and partly because once utilised to meet the enormous demands of internal and external security, the state would be left with few coercive resources to push the programme.[855] As Bruce accurately observed, "In many developing countries that came to independence in the 1960s and 1970s - Africa provides many examples - the

853 Brietzke, 2001:21.

854 David, 1963:187-188.

855 See, for example, Beckstrom, 1973:570-571; Kritzer, 2002:402.

independence government's succession to the State's 'monopoly of law' was a heady experience that inspired a generation of land laws that were never implemented. Most often, those governments aspired to take over control of land allocation from traditional authorities, a task well beyond their financial and staff resources."[856] On its part, society simply ignored, subverted, and even developed contempt and disrespect towards law and state, as the newly-introduced formal state land policies, laws, and institutions did not reflect its values, needs, and potentials; are relatively unfamiliar, inaccessible, and unaffordable; and happen to be mostly facilitative rather than coercive in nature, as, for example, smallholders would not be bound by their provision and implementation unless they opt to, for instance, conclude land lease contracts as per their requirements. And as Cotula concisely summarised it, "in rural Africa, lack of financial resources and of institutional capacity in government agencies, lack of legal awareness and, often, lack of perceived legitimacy of official rules and institutions have all contributed to limit the outreach of state interventions. Where land registration has been pursued, this has proved slow, expensive, difficult to keep up-to-date and hard for poor people to access. As a result, very little land has been registered (across the continent formal tenure covers only between 2 and 10 percent of the land), and customary land tenure systems continue to be applied."[857]

According to Connolly, "the abolition model has not been a popular approach, perhaps largely because of its impracticability."[858] In addition, due to the failure of the formal state land tenure systems to take roots and provide a viable alternative to the pre-existing non-formal customary ones, let alone to produce the hoped-for vibrant, systematised law and development, as well as the change in the perception of non-formal customary systems, there has been a shift in thinking. As a result, the model of total abolition of non-formal customary systems has been increasingly sidelined in recent years.

7. 4. 2. The Full Non-Interference Model

The second possible model for the formal treatment of legal pluralism and non-formal customary land policies, laws, and institutions is the full non-interference model. This model allows the non-formal customary and formal state land tenure systems to coexist within the same country or territory. However, there will be no interrelation between the two land tenure systems.

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856 Bruce, 2006b:60.
857 Cotula, 2007:6.
858 Connolly, 2005:6.

As with Native American tribes in the United States, the state may constitutionally or through treaty or legislation create an autonomous, self-governing territory wherein an isolated, independent indigenous population claiming to have endured illegitimate domination and the suppression of its "societal cultures" could exercise jurisdiction over certain matters, including power to interpret, apply, and change its own customary legal norms. But this approach entails embracing the customary arrangements with all their challenges and shortcomings. It is also impractical and undesirable because of the state's reluctance to surrender self-government that effectively amounts to ceding full sovereignty within its territory, the possible human rights violations resulting from the bias inherent in most customary arrangements toward less powerful segments of those groups, including women, children, the elderly, and the disabled, and the lack of protection that could be suffered by dissenting individuals within the groups. As Post explained, "From the perspective of minorities, any disparity between what is normal in the nation and what is normal within the smaller jurisdiction carries the potential for tension and dissonance. In the United States, significant sovereignty has been devolved to Indian reservations, with the consequence that women have been deprived of rights they would enjoy in national jurisdictions. Indian women in reservations must thus face two distinct understandings of the entailments of their citizenship. The disparity generates structural instability. To the extent they are disadvantaged, minorities have reason to pressure the nation to restrict devolution of sovereignty."[859]

Another variation of this model allows the non-formal customary land tenure arrangements to exist, operate, and be used by society despite not being consistent with, or recognised under the formal state ones. However, the lack of clear hierarchy or other form of coordination between the formal state and non-formal customary land policies, laws, and institutions can create confusion in the land tenure system and adversely affect the provision and implementation of smallholder land rights. For example, parties to disputes over smallholder land rights may invoke different land laws to support competing claims, or may choose different institutions that they feel would likely be favourable to their cause.[860]

7. 4. 3. The Complete Incorporation Model

The third possible model for the formal treatment of legal pluralism and non-formal customary land policies, laws, and institutions is the complete or full incorporation or recognition model. Although it allows a number of variations, this model often involves the full incorporation or recognition of

859 Post, 2000: Part I.

860 See, for example, Cotula, Toulmin, and Hesse, 2004:2.

customary land tenure arrangements in the formal land tenure system of the state. For example, the state may pass legislation that directly incorporates or makes reference to the provisions of customary land laws, thereby rendering them formally applicable in the relevant cases. Institutionally, the customary arrangements may be made to comprise one section of the lowest tier of courts within the entire formal legal system. Alternatively, specialised formal courts may be established to hear only those disputes arising under the customary land laws. Parties before those courts may then be able to appeal to higher courts within the ordinary or specialised formal court system.[861]

One advantage of this model is that it will help address the challenges associated with the customary land tenure arrangements, including problems related to bias and the lack of legality, accountability, and effective enforcement machinery. Complete incorporation gives the substantive and procedural provisions of the customary legal arrangements legitimacy within the formal legal system, whilst in a way also increasing the legitimacy of the formal laws in the eyes of society.[862] The incorporation of the customary institutions in the formal court system will enable to preserve the fundamental identity of the customary institutions and the local nature of dispute resolution, ensure that issues of bias or denial of a fair trial have the opportunity to be heard within the formal system, and bring to bear the enforcement machinery of the state on customary decisions that may otherwise be less effective.[863]

Nevertheless, the complete incorporation of non-formal customary laws and institutions in the formal state land laws and institutions can undermine advantages that the non-formal customary land tenure systems have to offer, and can eventually lead to the failure of the model. The full formalisation of their provisions may freeze the evolutionary process of the customary legal arrangements, whose flexibility and dynamism are often among their central characteristics and advantages. The voluntary participation that characterises the customary institutional arrangements would be compromised by the coerciveness of state enforcement, procedural requirements become much more important as a result, and the flexibility of the customary institutions may be lost owing to the setting of their structure in line with the formal state hierarchy.[864] In short, complete incorporation would make the non-formal customary land tenure systems part and parcel of the formal state system. This would thus bring to an end the non-state nature that makes the non-formal customary land tenure systems advantageous.

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861 Ranheim, 2003:22-23.

862 Hohe and Nixon, 2003:68.

863 Kludze, 1983:85.

864 See, for example, Ranheim, 2003:20; Penal Reform International, 2000:136.

7. 5. The Model of Selective Incorporation of the Non-formal Customary Systems

The other possible model for the formal treatment of legal pluralism and non-formal customary land policies, laws, and institutions is the selective incorporation or recognition model. Specifically, this model allows the non-formal customary land institutions to exist independently of the formal state ones, whilst embedding them in low-level surveillance and accountability mechanisms and allowing for cross-referrals. For example, under this model, non-formal customary dispute resolution institutions may be made to have limited jurisdiction over smallholder land rights-related cases arising in specified areas relating to the communities in which they operate. On their part, the formal state institutions, particularly regular courts, may be made to retain general jurisdiction, which may include, for example, granting formal state courts appellate jurisdiction over decisions rendered by the customary institutions - thereby enabling the state to exercise surveillance over the latter.[865]

This model may also enable non-formal customary systems to maintain their fundamental nature and legitimacy, as well as to gain increased autonomy. It will also enable the state to pursue its economic, social, and political objectives more effectively without having to surrender its sovereignty and forfeit its ability to ensure the observance of the human rights. As Levy observed, using this approach, "the state recognises the survival of law based on customary rules and usages of the indigenous community, without conceding sovereignty to that community."[866] Above all, the model can enable to selectively accommodate non-formal customary land tenure systems within the framework of the formal state land tenure system in a manner that enables to capitalise on the opportunities they offer and address the challenges they pose. That is, "to combine the virtues of traditional legal institutions (accessibility, informality, economy of time and money, and familiarity of legal norms) with those of the state legal system (impartiality, uniformity of law and procedures and [state] legitimacy)."[867]

On the other hand, selective incorporation can enable the government to use non-formal customary land tenure systems not only to better advance its ethnic-based economic, social, and political agenda related to land and smallholder agriculture and reap the advantages they offer, but also to more successfully formulate and implement a land law reform programme that can be effective in helping

865 Connolly, 2005:5-6.
866 Levy, 2000:300.
867 Penal Reform International, 2000:129.

raise smallholder productivity and tackle poverty in the short-run, and leading to the gradual evolution, extinction, or absorption of the non-formal customary land tenure systems into the formal ones and thus the end of legal pluralism in the long-run. Selective incorporation of non-formal customary systems can enable the government to introduce land law reform measures that respect diversity and reflect contextual needs and potentials, promote local ownership and community participation, allow decentralisation and at the same time advance regional and national integration, appease potential opposition and win voluntary cooperation, provide room for pre-existing non-formal customary systems to project a sense of continuity, stability, and predictability and for the newly introduced systems to move towards the set objectives, and offer opportunity to theoretically communicate, and practically demonstrate the advantages of formal state systems and the disadvantages of non-formal customary ones. Moreover, since efforts aimed at ending legal pluralism and establishing a uniform, functional formal state land tenure system should be the culmination of a long process of self-criticism, analysis, and well-informed, deliberate choice, selective incorporation of non-formal customary systems would provide the government with opportunity and capacity to pilot and study the strengths and shortcomings of, and identify formal state and non-formal customary systems to be embodied in possible future land law reform initiatives that would be undertaken to progressively establish local, regional, and national formal state land tenure systems and thereby end legal pluralism.

In view of its relative advantages, notable law and development analysts, practitioners, and funders now generally agree that the model of selective incorporation is the most appropriate model for the treatment of the non-formal customary land tenure systems. For example, Deininger and Binswanger have concisely captured the nature and advantages of this model, noting that "Clarification and formalization of informal property rights in a process that increases the accountability of local leaders, establishes a transparent and implementable legal basis, and provides for adjudication of boundary disputes across communities must precede any effort to award formal titles. Adopting a flexible institutional structure that gives communities freedom of choice in accomplishing these goals is therefore of great importance."[868] Similarly, Cotula has noted that "It is now generally recognized that land policies and laws must build on local concepts and practice, rather than importing one-size-fits-all models. This entails, among other things, legally recognizing local land rights, which are the

[868] Deininger and Binswanger, 1999:259.

entitlements through which most people gain access to rural land."[869]

Finally, it should be emphasised that since non-formal customary policy, legal, and institutional provisions are unwritten, numerous, and diverse, and the needs and potentials for their accommodation varies across countries, regions, and even localities, the particular treatment that is most appropriate in a given case will largely depend on the historical and cultural background and context, as well as the interaction and interrelationship between the state and the society concerned. The brief examination here only attempted to establish a basic framework for that analysis. However, since neither the list of the models examined, nor the discussion made is exhaustive, more research is necessary to develop the numerous variations within each model and to consider the many practical examples of each variation and their implications, as well as to more precisely determine the treatment of legal pluralism and non-formal customary land tenure systems that may be appropriate in a particular context.

[869] Cotula, 2007:6.

Chapter 8

Conclusions and Recommendations

8. 1. Summary and Evaluation

This thesis sought to explore the challenges of land law reform, smallholder productivity, and poverty in Ethiopia, an issue which has been at the top of the national development agenda under successive governments, a major preoccupation of local and international law and development analysts, practitioners, and funders, and a subject of examination and contestation in the law and development literature since Emperor Menelik II founded the modern Ethiopian state parallel to the colonial scramble for Africa at the end of the 19th century and introduced the 1908 land law reform. Ethiopia has since experimented with land law reforms linked to agriculture-led national development strategies and proclaimed to have been designed to help raise productivity in its smallholder-based agriculture, thereby tackle poverty, and foster overall economic development under Emperor Haile Sellassie I, who was crowned in 1930 after a period of power struggle that followed the end of Menelik II's in 1913, the Derg military junta, which assumed power in the 1974 Revolution that deposed Haile Sellassie I, and the incumbent EPRDF, which is composed of ethnic-based liberation movements that fought, helped overthrow, and succeeded the Derg in May 1991. Yet, Ethiopia had amongst the world's lowest smallholder productivity averaging just around 1.0 ton/hectare, and remained one of the poorest by many standards, ranking 174th out of 187 countries in the UNDP Human Development Index in 2011.

The goal this thesis was set to accomplish is to synthesise, analyse, and contribute to the debate that this disappointing outcome has inevitably drawn about the challenges of land law reform, smallholder productivity, and poverty in Ethiopia, specifically concerning the issues why land law reform might have failed in the past and whether and how it can be used to help raise smallholder productivity and tackle poverty in the future. The core hypothesis the thesis sought to examine was the proposition that the most important challenge of land law reform, smallholder productivity, and poverty in Ethiopia is the effect that the way land law reform treats the legal pluralism it gave rise to in the country's land tenure system, which comprises both state-introduced "formal state" land policies, laws, and institutions and pre-existing "non-formal customary" arrangements that govern land relations, including who may acquire, use, and transfer land, for how long, and under what conditions, has on the provision and implementation of smallholder land rights with a bearing on their productivity. And the

central argument of the thesis is that recognising legal pluralism in the short-run is the most effective way to make use of legal pluralism in the medium-run and possibly end legal pluralism in the long-run.

In other words, by analysing evidence drawn from the relevant research and experience established in the law and development literature in general, and in Ethiopia in particular, in the light of the specific contexts, needs, and potentials of the country, the study has arrived at the following three overall conclusions. First, the thesis argued that land law reform can be used to help raise smallholder productivity if designed to change the land tenure system's land policies, laws, and institutions to improve the provision and implementation of bundles of productivity-raising smallholder land rights leading to the enhancement of tenure security, facilitation of transfer of rights over land, and authorisation of collateralisation of land rights, and is accompanied by agrarian reform measures addressing technical problems related to access to modern agricultural inputs, such as improved seeds, fertilisers, and pesticides, advanced ploughing, weeding, and harvesting implements, and credit, research, communication, and marketing services. The thesis also argued that since Ethiopia is a country where smallholder agriculture is the primary source of livelihood and the mainstay of the economy, land law reform can help tackle poverty, as growth in smallholder productivity it would help achieve can enable smallholders and the rural and urban poor to have access to cheaper and more food, raise their real and disposable incomes, and increase their expenditure on nutrition, health, education, and other goods and services, which would improve their life expectancy, literacy, standard of living, and even productivity. Furthermore, the thesis considered that land law reform can even help foster overall economic development, because as smallholder agriculture continues to modernise and supply cheap food, release labour, provide raw materials, expand market, and boost demand for nascent manufacturing and service industries, the growth in smallholder productivity it would help achieve can lead to the transformation of the economy from one that is largely agricultural to one more extensively based on manufacturing and service industries. As to why land law reform failed to help raise smallholder productivity and tackle poverty in the past, the thesis argued that it was because land law reform has not been designed to change the land tenure system's land policies, laws, and institutions in a way that brings about improvement in the provision and implementation of productivity-raising smallholder land rights. Instead, successive governments sought to use land law reform to abruptly eliminate legal pluralism through blanket abolition of home-grown non-formal customary arrangements and wholesale transplantation of foreign-modelled formal state land policies, laws, and institutions that they perceived would help not only establish a national, functional formal land tenure system, but also achieve overall economic, social, and political development by fostering

economically, smallholder-driven agricultural growth and poverty alleviation, socially, cultural cohesion and integration; and politically, nation-building and unity. However, such land law reform produced neither the law nor development it was intended to. Quite contrary to abruptly eliminating it, land law reform perpetuated legal pluralism and exacerbated its effect on the provision and implementation of smallholder land rights. Instead of a nationwide functional formal land tenure system, land law reform established a disorganised, dysfunctional land tenure system that comprises state-sanctioned formal land policies, laws, and institutions, which, though theoretically legal, are practically ineffectual, as well as the pre-existing non-formal customary arrangements, which, though have been theoretically illegalised, repealed, and replaced by the state, continue to be considered legitimate and used by society to govern more than 85% of land relations in the country. Basically, since the challenges of land law reform, smallholder productivity, and poverty are factors to do with the specific economic, social, and political background and the geographical, demographical, ecological, and historical setting of a given country, an effective land law reform programme requires formulation and implementation involving a contextualised, particularistic approach that adequately takes into account the conditions, needs, and potentials of the country concerned. The land law reforms that successive governments introduced in Ethiopia, which involved wholesale transplantation of foreign-modelled formal state land policies, laws, and institutions that might have been originally designed with the conditions, interests, and aspirations of their countries of origin in mind, failed because their formulation and implementation was not based on a contextualised, particularistic approach that adequately took into account the country-specific challenges they were expected to help resolve, exceeded the limited legal resource, administrative capacity, and political capital of the state, and did not reflect the values, needs, and potentials of the people they were supposed to govern. The state lacked the legal resource necessary to carry out an effective land law reform programme in a way that reflects the precise content of the Ethiopian social field, including the possible economic, social, and political reasons for compliance with, deviance from, or failure to follow the formal state land policies, laws, and institutions; or that offers viable alternative to the pre-existing non-formal customary arrangements. Similarly, it lacked the administrative capacity, particularly the institutional means to carry out proper implementation, as well as the financial, human, and infrastructural resources needed to allow popular participation in the formulation and implementation process; and to communicate, propagandise, and familiarise the substantive rights and obligations, the procedural forms and contents, and the overall operation and implication of the programme. The state also lacked the political capital required to induce voluntary compliance with its newly-introduced formal

arrangements, or to use coercion to force the abandonment of the non-formal customary ones partly because that can entail a vacuum in the absence of viable alternative, or even risk political backlash as it would mean complete disruption of arrangements most valued by society at large; and partly because once utilised to meet the enormous demands of internal and external security, the state would be left with few coercive resources to push the programme. On its part, society simply ignored, subverted, and even developed contempt and disrespect towards law and state, as the newly-introduced formal state land policies, laws, and institutions would not reflect its values, needs, and potentials; are relatively unfamiliar, inaccessible, and unaffordable; and happen to be mostly facilitative rather than coercive in nature, as, for example, smallholders would not be bound by their provision and implementation unless they opt to, for instance, conclude land lease contracts as per their requirements.

Furthermore, the thesis argued that land law reform can be used to help raise smallholder productivity through recognition of legal pluralism involving selective incorporation of non-formal customary land policies, laws, and institutions that do not constrain the provision and implementation of smallholder land rights, which can enable to not only make the legal pluralism work, reap benefits the non-formal customary arrangements offer, and undertake effective land law reform in the short-run, but also lead to gradual evolution, extinction, or absorption of non-formal customary systems into the formal state system and the end of legal pluralism in the long-run. As to how land law reform might be used to help raise smallholder productivity by changing the land tenure system's land policies, laws, and institutions to improve the provision and implementation of productivity-raising smallholder land rights, the thesis highlighted the possibility of employing land law reform to adopt hybrid state-private-customary land policy that within the framework of the current policy of state land ownership introduces state, private, and communal landholdings and combines the advantages of the state land ownership policy that the government enforces, private ownership that critics mostly favour, and non-formal customary land tenure systems that society frequently uses. It also outlined how within this hybrid state-private-customary land policy land law reform may be used to issue land laws boosting the provision of productivity-raising smallholder land rights that enhance tenure security by specifying the definition and relationship of state, private, and communal landholdings, requiring the registration and certification of lifelong usufructuary land rights, stipulating stricter eviction and confiscation procedures, and setting out clearer expropriation and compensation mechanisms; facilitate the transfer of rights over land by easing lease, donation, and succession restrictions; and authorise the collateralisation of land rights conditionally. It then demonstrated how land law reform may be used to establish land institutions that improve the implementation of the specifications of the hybrid state-

private-customary land policy and the smallholder land rights provisions of the land laws by selectively incorporating customary land institutions, establishing a federal executive institution, clarifying the mandates of the regional institutions, and assigning the judiciary dispute resolution role.

8. 2. Lessons Learned and Suggested Ways Forward

This Section highlights the major lessons learned in the course of the study on whether land law reform can be used to help raise smallholder productivity and tackle poverty, as well as why, how, and to what extent legal pluralism in the land tenure system might influence land law reform's outcomes regarding the provision and implementation of smallholder land rights and the conditions of smallholder productivity and poverty in Ethiopia. On the basis of those lessons, the Section also offers suggested ways forward on how the country may effectively use land law reform to improve the provision and implementation of productivity-raising smallholder land rights, thereby help raise smallholder productivity, and tackle poverty in the future. It specifically outlines the scope and mechanisms available to use land law reform to make the legal pluralism work to contribute towards the improvement of the provision and implementation of productivity-raising smallholder land rights and the effectiveness of land law reform in the short-run, and possibly towards ending the legal pluralism itself in the long-run. Though the Section in particular, and the thesis in general deal mainly with the case of Ethiopia, they can be used to draw lessons for further research and possible action in sub-Saharan African and other developing countries in roughly comparable position with Ethiopia.

8. 2. 1. Land Law Reform's Role and Potential regarding Smallholder Productivity and Poverty

The first major lesson learned in the course of the study is that land law reform can be used to help raise smallholder productivity and tackle poverty, particularly in countries with smallholder-based economies at early stage of development like Ethiopia. However, the challenges of land law reform, smallholder productivity, and poverty are factors to do with the specific economic, social, and political background, as well as the geographical, demographical, ecological, and historical setting of the country concerned, which would therefore require a contextualised, particularistic approach. As such there are no standardised, universalistic suggested ways forward for the formulation and implementation of a land law reform that can help raise smallholder productivity and tackle poverty.

The second major lesson learned is that land law reform can be effective in helping raise smallholder

productivity and tackle poverty only if using a contextualised, particularistic approach that adequately takes into account the specific economic, social, and political background and geographical, demographical, ecological, and historical setting of the country concerned, it is designed to change the land tenure system's land policies, laws, and institutions to bring improvement in the provision and implementation of bundles of productivity-raising smallholder land rights enhancing tenure security, facilitating transfer of rights over land, and authorising collateralisation of land rights. Moreover, in order to be effective, land law reform should be accompanied by other measures. For example, it is necessary to take agrarian reform measures aimed at addressing technical problems of the smallholder sector related to the lack of access to modern agricultural inputs, implements, and services, which is considered the second major contributing towards low smallholder productivity in countries like Ethiopia besides structural problems of the land tenure system. Other measures that are critical for success include ensuring provision of credit, research and extension, and transportation and marketing services, as well as building the capacity of smallholders by raising their knowledge about the newly introduced land policies, laws, and institutions, the rights they offer, and the obligations they impose.

The third major lesson learned is that a land law reform that does not involve a contextualised, particularistic approach, or that exceeds the limited legal resources, administrative capacity, and popular receptivity available, or that is not designed to change the land tenure system's land policies, laws, and institutions in a way that brings about improvement in the provision and implementation of productivity-raising smallholder land rights should not be attempted. A land law reform that does not adequately take into account the country-specific problems it is expected to help resolve, or that does not reflect the values, needs, and potentials of the people it is supposed to govern, or that exceeds the legal resources, administrative capacity, and popular receptivity available cannot be expected to be effective. Quite to the contrary, it could be ignored, subverted, and even yield disrespect for law and the state. Similarly, the payoff from a land law reform introducing land policies, laws, and institutions that are not designed to bring improvement in the provision and implementation of the bundles of productivity-raising smallholder land rights could only be adding a new layer of legal, but ineffectual land policies, laws, and institutions that would make the pre-existing land tenure system dysfunctional and constrain tenure security, the transfer of rights over land, and the collateralisation of land rights.

Conversely, to make land law reform effective, it is particularly necessary to recognise legal pluralism in the land tenure system at least in the short-run and change only those formal state or non-formal customary land policies, laws, and institutions that most constrain the provision and implementation of

productivity-raising smallholder land rights. This can make the land law reform one that takes into account the specific contexts of the country concerned, reflects the values, needs, and potentials of the people it governs, concentrates the limited legal resources, administrative capacity, and popular receptivity upon the problems it seeks to resolve, and establish land policies, laws, and institutions that would be effective in bringing improvement in the provision and implementation of productivity smallholder land rights and, through that, in helping raise smallholder productivity and tackle poverty.

To sum up, since the challenges of land law reform, smallholder productivity, and poverty are factors to do with the specific economic, social, and political background, as well as the geographical, demographical, ecological, and historical setting of the country concerned, the formulation and implementation of an effective land law reform programme requires a contextualised, particularistic approach that involves the collaboration of all disciplines that matter. The collaboration should particularly focus on scientifically determining such issues as what the available needs and potentials are in terms of raising smallholder productivity and tackling poverty; what changes are necessary to achieve those outcomes; which land policies, laws, and institutions of the land tenure system must be changed; which values, practices, and interests need to change in order to change the stakeholders; whether those changes can be embodied in, and achieved through land law reform, and how success or failure can be evaluated and the necessary adjustments be made. For example, economists should produce empirical research demonstrating the optimal contribution that land law reform can make in terms of raising smallholder productivity and tackling poverty. Sociologists should study how a land law reform can establish the best means of social control with respect to the formal state and non-formal customary land policies, laws, and institutions that constitute the land tenure system. Political scientists should provide empirical research outlining the possible positive or negative implications that a land law reform can have politically so as to enable politicians to make an informed, sound policy choice. On their part, geographers, demographers, ecologists, and historians should come up with studies elaborating the past experiences, analysing the present conditions, and predicting the future evolutions of the country as regards issues falling within the scope of their respective expertise that are to do with the challenges of land law reform, smallholder productivity, and poverty in Ethiopia. Once that has been secured, lawyers can then be able to formulate a land law reform with formal state and non-formal customary land policies, laws, and institutions comprising a land tenure system that would enable to improve the provision and implementation of productivity-raising smallholder land rights and, through that, help raise smallholder productivity and tackle poverty. Throughout this process, the role of law, which is an action- and decision-oriented discipline, would be

to articulate the criteria for choice, and to expose them to reasoning, deliberation and, ultimately, the test of use. Law can also secure effective implementation of the overall land law reform programme.

8. 2. 2. Land Policies and the Choice of Land Ownership Policy Promoting Smallholder Land Rights

This thesis argued that it is possible and preferable for Ethiopia to adopt a hybrid state-private-customary land policy that would enable to combine the advantages and avoid the disadvantages of each of the formal state and private land ownership policies and non-formal customary land tenure systems through a process that involves an initial stage starting with enforcement of the current policy of state land ownership, passes through a transitional period during which land would be categorised, administered, and used as state, private, and communal landholdings, and culminates in the installation of the policy of private land ownership. Accordingly, the land law reform proposed here should begin with the formulation and adoption of the hybrid state-private-customary land policy in question within the framework of the current policy of state land ownership. This is in consideration of the fact that the argument of each side to the debate emphasising the advantages of the land ownership policy that it supports and stressing the disadvantages of the policy that it opposes has not been proved based on substantive empirical data does not necessarily imply that it has been disproved. However, the policy of state land ownership has significant disadvantages in terms of enhancing tenure security, facilitating the transfer of rights over land, and authorising the collateralisation of land rights. Moreover, the current approach whereby the state uses sizable proportion of the country's scarce resources to ensure allocation of the ever dwindling land to every adult citizen in need free of charge, oversee the provision and implementation of land rights, and control and administer land relations is neither sustainable nor favourable to effectively use land law reform to help raise smallholder productivity and tackle poverty. Likewise, selective incorporation of non-formal customary land tenure systems would enable to reap the advantages they offer in terms of the provision and implementation of smallholder land rights and to formulate and implement land law reform that can be effective in helping raise smallholder productivity and tackle poverty in the short-run, as well as to possibly bring about the gradual evolution, extinction, or absorption of the non-formal customary land tenure systems into the formal ones and thus the end of legal pluralism in the long-run. Yet, non-formal customary systems are disadvantageous because they reflect the patriarchal, feudal, and subsistence framework Ethiopia's smallholder-based rural life, discriminate against women and other "vulnerable" groups, lack regularised amendment procedures necessary to adapt to change, and are unwritten, vague, and diverse.

In contrast, although its implementation may be costly and entail difficulty particularly at the initial stage, the policy of private land ownership has a proven record of superior performance as regards promoting productivity-raising smallholder land rights and thereby helping raise smallholder productivity, tackle poverty, and even foster overall economic development. This has been practically demonstrated in the "more developed" Western countries, where the policy has long been enforced, as compared to the "less developed" countries in parts of Africa, Asia, and Eastern Europe, where it has been recently put into effect or not at all. Privatisation may be evil given the problems that it can entail, such as inequality, unemployment, inflation, corruption, and social exclusion, as well as the periodic global crisis like the one currently going on in the capitalist world. Nonetheless, it is a lesser evil as compared to living without it in what seems to be a perpetual state of low smallholder productivity, pervasive poverty, and lack of overall economic development, as has been the case in Ethiopia for close to half a century now since the introduction of the policy of state ownership of land.

The proposed land law reform should also introduce three types of landholdings, namely state, private, and communal, as per the hybrid state-private-customary land policy adopted. Private landholding would be one that is claimed and recognised as an individual landholding. Whereas, a communal landholding would be one that is jointly controlled, administered, and used in accordance with the pertinent non-formal customary land tenure systems. In contrast, all land that has not been claimed and recognised as private or communal would fall under state landholding to be administered by the state.

8. 2. 3. Land Laws and the Provision of Smallholder Land Rights

Although the formulation of the hybrid state-private-customary land ownership policy to be adopted is a necessary first step, it is not a sufficient condition to make the land law reform proposed here effective in helping raise smallholder productivity and tackle poverty in Ethiopia. In order to be effective, the proposed land law reform must also involve the issuance of land laws, through which the land ownership policy will be explained, given binding treatment, and translated into action. Based on the lessons learned in the course of the study, the suggested ways forward concerning the formulation of the forms and contents of the land laws necessary to make the proposed land law reform effective, which would improve the provisions of the three bundles of productivity-raising smallholder land rights, including the enhancement of tenure security, the facilitation of the transfer of rights over land, and the authorisation of the collateralisation of land rights for smallholders, have been outlined below.

Addressing Questions regarding the Constitutionality and Legality of Regional State Land Laws

The FDRE Constitution, which has been in force in Ethiopia as the supreme law of the land during most of the post-Derg period, conferred upon the federal government power to make land laws, whilst it gave regional states power "To administer land in accordance with Federal laws". The Constitution did not authorise the federal government to delegate its power to make land laws to the regional states, define what the power "to administer land" that it gave to the regional states constitutes, or suggest if that would include power to make land laws. Nonetheless, since the federal government has in the land law it issued given the regional states power to "enact rural land administration law" and the regional states of Tigray, Amhara, Oromia, and the SNNPRS have accordingly promulgated their own land laws, the provision of smallholder land rights in post-Derg Ethiopia has been subject to five different land laws. However, the constitutionality and legality of the land laws issued by the regional state is questionable. Even if it is claimed that the regional state land laws were issued based on the lawmaking power the federal government delegated to the regional states, the constitutionality of the delegation itself is questionable, as the Constitution designated land a federal matter in view of its vital economic, social, and political importance and because the federal government was deemed better positioned to handle land matters uniformly throughout the country. Moreover, even if the delegation is considered constitutional, provisions of the regional state land laws that set out productivity-raising smallholder land rights are significantly different from each other and from those of the federal land law.

In view of that, although the FDRE Constitution is so rigid that the amendment of its provisions is close to impossible, since it has designated land as a federal matter and entrusted power to enact land laws to the federal government, the land law reform proposed here should include the issuance of a federal land law that unequivocally clarifies the division of federal and regional powers on smallholder land matters, defines what the power "to administer land" given to regional states constitutes, and makes regional state land laws subordinate to federal land laws in the hierarchy of laws of Ethiopia. The federal land law to be issued should also require the harmonisation of provisions of the regional state land laws setting out productivity-raising smallholder land rights with each other and with those of the federal land law, and render null and void provisions of regional state land laws that do not comply with the requirement. In addition, the federal land law to be issued should require periodic follow-up and monitoring by the federal government to see to it that all federal land policies and laws concerning smallholder land rights are appropriately, uniformly, and consistently applied throughout the country. This would enable to address lingering questions about the constitutionality and legality of

regional state land laws, avoid the unconstitutionally unequal, differential treatment given to smallholders in Ethiopia under land laws governing the provision of productivity-raising smallholder land rights, ensure the uniform and consistent application of federal land laws as per the Constitution, and more generally prevent the uncertainty, unpredictability, and arbitrariness of laws and practices.

The Enhancement of Tenure Security

Defining State, Private, and Communal Landholdings:

Although the federal and regional state land laws currently in force in the country recognise state, private, and communal landholdings, they do not clearly define the constituents of those landholdings. Similarly, although the land rights of pastoralists, which is communal in nature, has been recognised under the federal and regional constitutions, the regional states where most of the country' pastoralists live have not yet promulgated their own land laws, and the land laws now in force do not define the constituents of pastoralist landholdings. The absence of such definition has created confusion as to what constitutes state, private, and communal landholdings, and the enforcement of the current policy of state land ownership has led to widespread perception, particularly on the part of state authorities, that all land falls under state landholding. Moreover, the land laws now in force leave the conversion of landholdings into state or other forms of landholding largely to the discretion of the federal and regional governments. This, coupled with the current push to transfer swathes of land for large-scale commercial agriculture, has opened way for state authorities to expropriate and give away land as they deem fit, often without consenting and paying compensation to possible private and communal landholders. Therefore, in order to enhance tenure security particularly for private and communal landholders, the federal and regional land laws to be issued under the land law reform proposed here should have provisions clearly defining the constituents of state, private, and communal landholdings.

Developing a Rural Land Use Master Plan and Information System:

The current land laws had envisaged the development of a guiding rural land use master plan that shows the types, boundaries, and uses of rural landholdings, outlines the identities, rights, and obligations of the landholders, and describes the holders of adjacent landholdings, as well as of a land information system, whereby rural land-related information is gathered, analysed, and distributed to users in all parts of the country. However, neither the land use master plan nor the information system has been developed in any region. This has created tenure insecurity, as, for example, all types of rural

landholdings are being transferred for commercial agriculture investment in the name of state landholding, and arbitrary confiscation of smallholder landholdings is taking place under the guise of non-compliance with use restrictions. Thus, to bring about the enhancement of tenure security, the land laws to be issued under the land law reform proposed should have provisions that require development of the land use master plan and information system and put in place stringent mechanisms for its implementation. These may include specifying the establishment of an institution composed of representatives of the state, traditional leaders, and ordinary citizens to oversee the development process, as well as assigning resources and stipulating a reasonable, strict timeframe for the process.

Completing the Process of Rural Land Measurement, Registration, and Certification:

The land laws issued by the federal government and the four regional states have envisaged the measurement, registration, and certification of rural landholdings, particularly private and communal landholdings. Accordingly, the process of measuring, registering, and certifying rural landholdings has been started in those four regional states, and research and experience show that the process has produced encouraging results in terms of the enhancement of tenure security and the benefits thought would flow from it. However, the process has not yet been completed in the four regional states and not even started in the regional states that have not promulgated their own land laws, where the transfer of land for large-scale commercial agriculture investment is mostly taking place. This undermines tenure security, as those smallholder landholdings that have not been measured, registered, and certified are relatively more vulnerable to arbitrary eviction and confiscation, and hinders the transfer of smallholder land rights, as even those land transitions that are formally lawful, such as lease, are conditional upon having certificates. Therefore, to bring about enhancement of tenure security, the land laws to be issued under the proposed land law reform should contain provisions that stringently require the completion of the process of measurement, registration, and certification of private and communal landholdings in all parts of the country, and that assign institutions, resources, and timetables for it.

Clarifying the Conditions and Procedures for the Conversion of Rural Landholdings:

Although the current land laws recognise state, private, and communal landholdings, they do not clearly define the constituents of those landholdings and specify the conditions for the conversion of landholdings from one form into another. This, coupled with the absence of a rural land use master plan and information system, has unduly widened the discretion of state authorities concerning the

conversion of landholdings and thus undermined smallholder tenure security. Thus, to bring about the enhancement of tenure security, the land laws to be issued under the proposed land law reform should contain provisions that clarify the conditions necessary particularly for the conversion of private and communal landholdings into state landholding, including specifying who may decide the conversion, the procedures how, and under what circumstances. The provisions should also stipulate ways in which outstanding claims that may arise in relation to conversion will be dealt with, including institutional, substantive, and procedural mechanisms that will enable smallholders to be heard and seek remedy.

Establishing Land Bank for the Administration, Distribution, and Utilisation of State Landholding:

The land laws to be issued under the land law reform proposed here should contain provisions that require the establishment of a land bank for the administration, distribution, and utilisation of state landholding, wherein all rural land that has not been claimed as private or communal landholding would be designated and administered as state landholding, and information concerning state landholding, including size, type of use, level of fertility, and borders, would be gathered, analysed, and disseminated. The provisions should also specify that only one-half of state landholding may be transferred for large-scale commercial agriculture, and require that the remaining half be distributed amongst smallholders who are in need and entitled. This can lead to the enhancement of tenure security, as it would entail at least tentative delimitation of state, private, and communal landholdings and reduce the necessity of carrying out redistribution to meet the demands of the growing population.

Specifying Clearer Expropriation and Compensation Mechanisms:

The current federal and regional constitutions and land laws contain provisions that authorise the government to expropriate smallholder landholdings for "public purpose" against payment of "fair compensation". However, these provisions have become a major source of tenure insecurity because what constitutes "public purpose" or "fair compensation", how, and by whom it is decided has not been specified, smallholders may claim and be paid "compensation" only for the value of the improvement or investment they might have made on their landholdings, but not for the expropriated landholding simply because all land is owned by the state, and procedures enabling smallholders to be heard and seek judicial remedy have not been put in place. Therefore, to bring about the enhancement of tenure security, the land laws to be issued under the land law reform proposed here should have provisions that clearly define what constitutes, how, and who decides "public purpose" and "fair

compensation" for the expropriation of smallholder landholding and the payment of compensation for improvements and investments made, require the provision of a substitute for the expropriated landholding, and establish procedures that enable smallholders to be heard and seek judicial remedy.

Establishing Stricter Confiscation Procedures:

The current land laws make the land rights of smallholders conditional upon compliance with several land management and protection obligations. Those laws also authorise confiscation by the state where smallholders leave their landholdings unused for two consecutive years, or "when the land gets damaged". These obligations are presumably intended to bring about efficient and sustainable land use. However, they tend to create tenure insecurity because the provisions are implemented inconsistently, the details of on what basis, when, and by whom if a smallholder landholding has been "damaged" is decided and confiscation imposed has not been provided, and procedures enabling smallholders to be heard and seek judicial remedy have not been put in place. Therefore, in order to motivate smallholders to use their landholdings efficiently and sustainably and enhance their tenure security, the land laws to be issued under the land law reform proposed here should have provisions that clearly define smallholders' land management and protection obligations, require consistent implementation of those provisions, and establish procedures that enable smallholders to be heard and seek judicial remedy.

Amending the Residency Requirement:

The current land laws make the land rights of smallholders subject to residency in the area where their landholdings are situated, presumably to give people a means of living in the areas of their residence, prevent the concentration of land in the hands of absentee landlords, and reduce rural-urban migration. Those laws also authorise the state to deprive land rights to smallholders who do not fulfil the residency requirement or have left their localities on own wish and "stayed over a given period of time". However, this residency requirement is discriminatory against smallholders because it does not apply to large-scale commercial farmers who are mostly foreign investors and absentee landlords. It also undermines smallholder tenure security, as it is implemented inconsistently largely because the details of what constitutes, how, and by whom staying "over a given period of time" is determined has not been provided. Moreover, it constrains the transfer of smallholder land rights, ties smallholders to their landholdings and prevents them from switching or diversifying their livelihoods, and restricts the constitutional right of smallholders to freely choose their residence and means of living. Therefore, in

order to bring about the enhancement of tenure security, the land laws to be issued under the land law reform proposed here should have provisions that amend the residency requirement in such a way that authorises the state to take over landholdings only where it is proved that smallholders have left their landholdings for good at their own initiative without administrators during the period of their absence.

Intensifying Resettlement Programmes:

Although Ethiopia is generally thought to have enormous land suitable for agriculture, the resource is not evenly distributed across the country. Consequently, whilst some areas have abundant agricultural land waiting to be exploited, others suffer from severe scarcity. In view of that, the current land laws had envisaged the possibility of voluntary resettlement programmes. Accordingly, programmes involving resettlement of smallholders to areas where land scarcity is less severe have been attempted and produced encouraging results. However, such resettlement programmes have been stalled partly because the country's administrative units within the current federal system were formed mainly along ethnic lines, and partly due to the lack of commitment on the part of the government. This adversely affects tenure security because, given the ever dwindling supply of land, it increases the likelihood of large-scale state-sponsored smallholder landholding redistribution programmes to meet the demands of the growing population for agricultural land, which, though downscaled, have not been outlawed altogether. Therefore, to bring about the enhancement of tenure security, the land laws to be issued under the proposed land law reform should contain provisions that require the government to intensify voluntary resettlement of smallholders at least within the same ethnic-based administrative units, and assign institutions, resources, and timetables necessary for the implementation of such programmes.

Outlawing Large-scale State-sponsored Smallholder Landholding Redistribution Programmes:

Although large-scale state-sponsored smallholder landholding redistribution programmes have been generally downscaled under the current land laws as compared to the Derg era, they have not been outlawed altogether. Such redistribution programmes are widely believed to be the primary cause of smallholder tenure insecurity during the Derg era. However, though downscaled, the possibility of large-scale state-sponsored smallholder landholding redistribution programmes continues to be a major source of smallholder tenure insecurity, particularly given the ever scarcer supply of land, growing population, and expanding large-scale commercial agriculture. Therefore, to enhance tenure security, the land laws to be issued under the land law reform proposed here should have provisions completely

outlawing future large-scale state-sponsored smallholder landholding redistribution programmes.

The Facilitation of the Transfer of Rights over Land

Allowing the Transfer of Private and Communal Landholdings through Sell Conditionally:

Although in line with the current policy of state land ownership the land laws now in force in the country prohibit the selling of land, research and experience show that despite the prohibition imposed, the transfer of smallholder landholdings through sell is freely and widely carried out through "informal" means. This, amongst other things, undermines the sense of legality, jeopardises the sovereign power of the state to regulate and control land relations, deprives the state of the revenues it could have collected by way of transaction tax and administrative fees, and inhibits the growth of smallholder land prices and markets. Therefore, in order to bring about the facilitation of the transfer of rights over land, the land laws to be issued under the land law reform proposed here should contain provisions that allow the transfer of private and communal smallholder landholdings on which significant land improvement and investment activities have been conducted through sell conditionally. The conditions should include that the sell price is equivalent to the current market price of the value of the improvement and investment activities carried out on the land, the seller proves securing another permanent means of living for oneself and family dependants, the buyer demonstrates that the land would be used for agriculture or other development activity beneficial to the local community and compatible with the surrounding ecology, and that the fulfilment of the above conditions having been verified, the sell transaction is approved, registered, and certified by the competent formal state land institutions. Moreover, in the case of a communal smallholder landholding, the conditions should also include that the right of pre-emption is reserved for other members of the community who can buy with the current market price of the land, and that the fulfilment of the above conditions having been verified, the sell transaction is approved by the pertinent non-formal customary land institutions. This would not only enhance tenure security, encourage land improvement and investment practices, and facilitate the transfer of land rights, but also lead to the replacement of the current policy of state land ownership by the policy of private ownership across the country through a gradual, controlled process.

Lifting the Restrictions Placed on the Transfer of Smallholder Landholdings through Lease:

Although the current land laws had guaranteed smallholders the right to transfer their landholdings through lease, the exercise and enforcement of this right has been in jeopardy due to the restrictions

imposed by law. The transfer of smallholder landholdings through lease is particularly important in bringing about the facilitation of transfer of rights over land and the benefits thought would flow from it in Ethiopia because it is in line with the policy of state land ownership and the provisions of land laws now in force in the country. Moreover, it would not require payment of a large sum of money by the lessee and entail permanent loss of livelihood by the lessor. Therefore, to enable smallholders to exercise and enforce their right to transfer landholdings through lease, the land laws to be issued under the proposed land law reform should have provisions that lift the restrictions placed on it. Specifically, the provisions should make the right to transfer one's landholding through lease conditional only on proof that the lessor has secured another reliable means of living for oneself and family dependants for the duration of the lease contract, and lift all other restrictions, such as possessing holding certificate, leasing only part of one's landholding to another smallholder or "investor" for the purpose of "development", and concluding the lease contract for a limited period. They should also make the form and proof required for smallholder land lease transactions the same as that usually required for other contracts at the place where the lease transaction is concluded, and thus abolish the existing formality, validity, and probative requirements that a lease contract be made in writing, signed by all parties, attested by two capable witnesses, and approved and registered by the competent state institutions.

Relaxing Restrictions Imposed on the Transfer of Landholdings through Donation and Succession:

Although the current land laws provide smallholders with rights to transfer their landholdings through donation and succession, the exercise and enforcement of these rights has been in jeopardy due to the restrictions imposed by law. Therefore, to enable smallholders to exercise and enforce those rights, the land laws to be issued under the proposed land law reform should have provisions relaxing the restrictions. Specifically, the provisions should make the right to transfer one's landholding through donation or succession conditional only on proof that the transferor has secured a comparable, reliable means of living for oneself and family dependants for the foreseeable future, and that the transfer has been approved by the transferor's spouse, children, dependents, creditors, and other parties of interest, such as other members of the community where the transfer involves a communal landholding. They should also make the form and proof required for the transfer the same as that usually required for other contracts at the place where the transfer is carried out, and thus abolish the existing formality, validity, and probative requirements that such a transfer be made in writing, signed by all parties, attested by two capable witnesses, and approved and registered by the competent state institutions.

The Authorisation of the Collateralisation of Land Rights

Although land laws issued as part of the post-Derg land law reform have authorised collateralisation of land rights by "investors" engaged in commercial agriculture, they left the blanket prohibition that the Derg's land law reform had imposed on smallholders intact. This not only discriminates against smallholders, but also continues the legacy of restriction of land rights, fragmentation and degradation of landholdings, and deterioration of smallholder productivity and poverty conditions. The prohibition would prevent smallholders from obtaining the means they need to acquire more land, undertake better land management and improvement practices, invest in modern agricultural inputs, implements, and services, diversify or switch their livelihoods, and get insurance for the loss of land or sustenance.

Therefore, the land law reform proposed here should include the issuance of land laws that bring about the authorisation of the collateralisation of land rights for smallholders within the framework of the hybrid state-private-customary land ownership policy to be adopted. The land laws to be issued should contain provisions that conditionally authorise the use by smallholders with private or communal landholdings of their land rights as collateral to obtain credit in cash or in kind in the form of modern agricultural inputs, implements, and services from institutions or individuals that would take smallholder landholdings as collateral, accept repayment in cash or in kind in the form of agricultural products or labour, and be allowed to cultivate or lease the collateralised landholding for a period sufficient to satisfy the debt in the event of non-payment before restoring it to the debtor. This can help achieve more efficient and sustainable land use, raise smallholder productivity, and tackle poverty, as it would enable smallholders to obtain the means they need to acquire more land, undertake better land management and improvement practices, invest in modern agricultural inputs, implements, and services, diversify or switch their livelihoods, and get insurance for the loss of land or sustenance.

To ensure implementation, the conditions that the land laws to be issued would require for the collateralisation of land rights by smallholders should only include proof that the credit to be obtained using one's land rights as collateral will be utilised to advance, diversify, or switch one's agricultural livelihood, commitment to repay the debt as per the terms of the contract, and demonstration that the debtor has a means of living roughly comparable with the present for oneself and family dependants for the period during which the collateralised landholding may be taken over to satisfy the debt in the event of non-payment. The land laws should also contain provisions that encourage the involvement of the private sector, as well as require the establishment, and specify the substantive and procedural

powers of cooperative and state-owned rural land credit institutions, that would take smallholder landholdings as collateral to provide credit in cash or in kind, accept repayment in cash or in kind in the form of agricultural products or labour, and be allowed to cultivate or lease the collateralised landholding for a period sufficient to satisfy the debt in the event of non-payment before restoring it to the debtor. Issuing land laws with provisions that authorise the collateralisation of smallholder land rights alone will not guarantee success, as research and experience suggest that existing financial institutions, such as banks, are reluctant to accept smallholder landholdings as collateral and provide smallholders with credit in countries like Ethiopia, where land is owned by the state, banking tradition is yet to develop, and smallholders can be unwilling or unable to repay the credit they might take.

Moreover, the land laws to be issued should contain provisions that abolish the existing formality requirement pertaining to the conclusion of contracts concerning immovable properties, which requires that in order to be valid, such contracts as those relating to the collateralisation of land rights must be made in writing, signed by all contracting parties, attested by at least two capable witnesses, and approved and registered by the competent state institution. Unless this formality requirement, which is onerous for anyone by any standards, is abolished, the issuance of land laws with provisions that authorise the collateralisation of smallholder land rights will be meaningless, as most Ethiopian smallholders lack the basic literacy, information, legal knowledge, financial means, and access to competent state institutions that they need in order to exercise and enforce this right. Instead, the provisions of the land laws to be issued should declare as valid contracts involving the collateralisation of smallholder land rights that are made in the form the parties choose by agreement, or that are concluded orally, in writing, or in any other form normally used for conclusion of contracts in the area.

Furthermore, the land laws to be issued should set out provisions that abolish the existing rules governing proof of the existence and contents of contracts that the law requires to be made in writing, including contracts concerning immovable properties, such those relating to the collateralisation of smallholder land rights. In order to prove the existence and contents of such contracts, the existing rules make admissible as evidence only the document issued by the state institution that has approved and registered the transaction, which is onerous by any standards and would therefore jeopardise exercise and enforcement by smallholders even if the right to use one's landholding as collateral is allowed for smallholders. Therefore, the provisions of the land laws to be issued should make admissible as evidence for contracts involving the collateralisation of smallholder land rights proof that may be adduced in the form of writings, witnesses, presumptions, a party's admission or oath, or in

any other form normally used as evidence to prove the existence and contents of contracts in the area.

8. 2. 4. Land Institutions and the Implementation of Smallholder Land Rights Provisions

Although the formulation of the hybrid state-private-customary land ownership policy to be adopted, and the issuance of land laws designed to improve the provisions of the three bundles of productivity-raising smallholder land rights are necessary first and second steps, they are not sufficient conditions to make the land law reform proposed here effective in helping raise smallholder productivity and tackle poverty in Ethiopia. The effectiveness of the proposed land law reform is contingent upon the implementation of the specifications of the land policy and the provisions of the land laws. The issue of implementation is an equally significant problem as the provision of smallholder land rights particularly in Ethiopia. Research and experience suggest that the effectiveness of past land law reforms intended to help raise smallholder productivity and tackle poverty in the country was limited not only because of the prohibition and restriction of the provisions of smallholder land rights set out in land laws, but also due to the lack of implementation of even those provisions. In short, to make the proposed land law reform effective, the land policy specifications and the land law provisions must be implemented. And to ensure implementation, there must be land institutions. Based on the lessons learned in the course of the study, the suggested ways forward about the establishment, composition, and operation of the land institutions necessary for implementation have therefore been outlined below.

Establishing a Federal Institution for the Implementation of Smallholder Land Rights Provisions

The FDRE Constitution designated land as a federal matter. This designation confers upon the federal government not only legislative, but also executive power over matters of land, including smallholder land rights. According to the Constitution, the Council of Ministers, which is the executive organ of the federal government headed by the Prime Minister, shall ensure "the implementation of laws and decisions adopted by the House of Peoples' Representatives", which is the legislative organ of the federal government. However, by the time this thesis was written, the federal government has not established an executive land institution that specifically deals with the implementation of smallholder land rights provisions that have been set out in federal land laws. Yet, the federal government has in the land law it issued conferred upon region states power to "establish institutions at all levels that shall implement rural land administration and land use systems." Accordingly, the regional states of Tigray, Amhara, Oromia, and SNNPRS have put into effect their own executive land institutions

dealing with the implementation of smallholder land rights provisions. But just like the land laws, the executive land institutions that have been put into effect by the four regional states to deal with the implementation of smallholder land rights provisions suffer from questionable constitutionality and legality. Nonetheless, the federal government has not even set up an institution that would follow-up and monitor to ensure the proper, uniform, and consistent implementation of federal land policies and laws pertaining to the provision of smallholder land rights by all regional states throughout the country.

In view of that, the land laws to be issued as part of the land law reform proposed here should contain provisions that require the establishment of a federal land institution dealing with the implementation of smallholder land rights provisions set out in federal land laws. These provisions should also entrust to this same federal institution the function of following-up and monitoring the proper, uniform, and consistent implementation of federal land policies and laws pertaining to the provision of smallholder land rights by regional states throughout Ethiopia, and make the regional land institutions accountable to it. This will enable to address lingering questions about the constitutionality and legality of regional land institutions, ensure the proper, uniform, and consistent application of federal land policies and laws governing the provision of smallholder land rights in line with the Constitution, limit the unduly wide discretion of regional land institutions, avoid unethical and corrupt practices, as well as ethnic, religious, and political favouritism in the administration and allocation of smallholder land rights.

Clarifying the Mandates and Improving the Coordination amongst Regional Land Institutions

Besides suffering from questionable constitutionality and legality, the mandates of the regional land institutions that have been established by the four regional states to deal with the implementation of smallholder land rights provisions are blurred both in theory and in practice with those of other regional institutions that are charged with such matters as agriculture, investment, environment, and water. Moreover, there is inadequate link and coordination amongst those regional institutions that are involved in the implementation of smallholder land rights provisions both horizontally and vertically. This, coupled with the absence of a federal institution tasked with implementing and following-up and monitoring the proper, uniform, and consistent implementation of federal land policies and laws concerning the provision of smallholder land rights, has unduly extended the discretion of regional land institutions, worked against transparency and opened way for unethical and corrupt practices and ethnic, religious, and political favouritism in the administration and allocation of smallholder land rights. Therefore, the land laws to be issued as part of the land law reform proposed here should contain provisions that clarify the mandates and improve the coordination amongst the regional

institutions carrying out the implementation of smallholder land rights provisions. These provisions should particularly subordinate the powers and functions, and entrust the coordination of the regional institutions involved in the implementation of smallholder land rights provisions to the regional land institution that has been established to specifically deal with smallholder land rights. They should also require that mechanisms enhancing transparency and accountability be put in place at each of the regional institutions that undertake the administration and allocation of smallholder land rights.

Addressing the Legal and Practical Impediments that may Prevent Exercise and Enforcement

As discussed earlier, despite the existence and operation of formal land policies, laws, and institutions backed by the state, smallholders in Ethiopia resort to the non-formal customary land policies, laws, and institutions far more frequently than they do to the formal state ones to claim, exercise, and enforce their land rights. This is largely because of the advantages that the non-formal customary land tenure arrangements offer in terms of simplicity and familiarity of land policies and laws, accessibility and informality of institutions, as well as economy of time and money. However, it is also partly due to the existence of numerous legal and practical impediments that prevent smallholders from resorting to the formal state land policies, laws, and institutions to claim, exercise, and enforce their land rights. In any case, the situation undermines the implementation of formal land policies and laws, the relevance of formal land institutions, and the effectiveness of the overall land law reform sanctioned by the state.

In order to deal with this situation, the land laws to be issued as part of the land law reform proposed here should contain provisions that authorise selective recognition or incorporation of the non-formal customary land policies, laws, and institutions under, or into the formal state ones, and that require measures designed to alleviate the legal and practical impediments that can prevent the country's smallholders from resorting to formal state land policies, laws, and institutions to claim, exercise, and enforce their land rights to be taken. Specifically, these provisions should require selective formal recognition of non-formal customary land policies and laws pertaining to the acquisition, transfer, and collateralisation of smallholder land rights that are advantageous in terms of simplicity and familiarity; as well as selective formal incorporation of non-formal customary land institutions that are advantageous in terms of accessibility and informality and economy of time and money, which would involve the establishment, staffing, and equipment at least at a Kebele level of such institutions to take part in the administration and allocation of smallholder land rights and management of related transactions. To address the legal impediments, most of which are to do with requirements of formality and proof associated with contracts involving the transfer or collateralisation of smallholder land

rights, the provisions should require the measures that were discussed above in relation to the formulation and issuance of land laws improving the provision of productivity-raising smallholder land rights to be taken. And to alleviate the practical impediments, which relate to the smallholders' lack of basic literacy, legal knowledge, information, financial means, and access to, familiarity with, or favourable attitude towards formal state land institutions, those provisions should require that basic literacy, legal training, and awareness-raising sessions be organised for smallholders and community leaders, and that taxes imposed on, or administrative fees charged for services provided through the formal means in connection with such matters as transactions involving the transfer or collateralisation of smallholder land rights be abolished, lowered, or waived, as much as is possible and necessary.

Dispute Resolution: Legalising, Strengthening, and Linking Non-formal Customary Institutions and Assigning the Judiciary Greater Role

Basically, a rural landholding dispute often involves a civil case pertaining to the private proprietary interests of the disputants, in which a smallholder alleges to have suffered the deprivation of, or interference into their land rights by another and seeks compensation for the damage sustained consequently. Therefore, the mechanisms in place for the resolution of such a dispute should be made to reflect the nature of the case involved and the freedom of alternative actions available particularly for the plaintiff smallholder, which include waiving their right to put up a claim altogether, or discussing with the party alleged to be liable and resolving the dispute by agreement, or seeking the resolution of the dispute by a non-formal customary institution, or choosing to bring the case to a regular formal state court for adjudication.

However, in practice, most disputes arising over the land rights of smallholders who decide to put up a claim and are unwilling or unable to discuss with the party alleged to be liable and settle the dispute by agreement are currently resolved by non-formal customary institutions, which operate either as permanent institutions embodied in the traditional values, norms, and structures of most of the country's ethno-cultural groups, or as *ad hoc* institutions established to resolve specific disputes by elders that the parties in dispute select. It appears the non-formal customary institutions are preferred because of the advantages they offer, which include accessibility, timeliness, affordability, legitimacy and appropriateness, restorative capacity, participatory proceedings, predictable processes and outcomes, community-backed enforceability of decisions, avoidance of coercive measures, and building community cohesion. Yet, they have several disadvantages, which include being biased

against such groups as women, children, and minorities, ignorance of the provisions of the pertinent substantive and procedural laws, non-compliance with human rights standards, undermining individual rights by treating disputes as communal rather than individual, and lack of consistency in their decisions. They also suffer from serious legal and practical limitations, including blurred local and material jurisdictions, unclear relation particularly with formal state dispute resolution institutions, and questionable constitutionality, as the FDRE Constitution bestows all judicial powers upon regular courts and restricts the power of non-formal customary institutions just to family and personal matters.

In cases where a state institution is involved, disputes over smallholder land rights are resolved by the Kebele Land Administration Commission or social court. However, the Kebele Land Administration Commission and social courts are contentious as to whether the dispute resolution function they perform is lawful or not, and if the institutions are constitutional or not, formal state or non-formal customary institutions, and part of the executive or the judiciary. Moreover, although the possibility of appeal to regular Woreda courts has been envisaged particularly by regional proclamations, it appears to be impractical, as decisions are rarely appealed by the parties or reversed by the appellate courts.

Therefore, in view their pervasive existence, critical importance, and multiple advantages, it is recommended that the dispute resolution function of the non-formal customary institutions be legalised by relaxing the constitutional restriction placed on their jurisdiction to include disputes involving smallholder land rights. The land laws to be issued as part of the land law reform proposed here should also be made to contain provisions that assign them exclusive power to decide in the first instance relatively minor and more prevalent cases involving smallholder land rights, such as boundary disputes, and that clearly define their local and material jurisdictions. These provisions should legalise only those non-formal customary institutions that can be reformed in terms of the equal treatment of such vulnerable groups as women, children, and minorities, application of the pertinent substantive and procedural laws, compliance with human rights standards, upholding of the individual rights of disputants by treating disputes as individual rather than communal, and rendition of consistent decisions as much as possible. The provisions should thus require the strengthening of such institutions through the provision of training concerning the abovementioned issues on which they need to be reformed, financial support to cover costs of operation and personnel remuneration, office premises and equipment, and media coverage to promote their operations and publicise their decisions. What is more, the provisions should require measures designed to establish stronger link between those non-formal customary institutions and formal state institutions, particularly the Woreda

courts in regions and first instance courts in administrations accountable to the federal government.

The measures should specifically involve formally abolishing the Kebele Land Administration Commission and "social courts", which unconstitutionally and unlawfully perform the function of dispute resolution, and outlining clearer division of jurisdiction in which non-formal customary institutions assume power to decide in the first instance relatively minor and more prevalent cases, whilst regional Woreda and federal first instance courts assume appellate jurisdiction, as well as power to decide in the first instance relatively major and less prevalent cases, such as claims of title over smallholder landholdings. This would not only allow the judiciary to exercise oversight on the activities of the non-formal customary institutions, but also ease court congestion and enable the formal state courts to concentrate on more serious cases. The measures should also include requiring formal state courts to execute decisions rendered by non-formal customary institutions, which will make the enforceability of their decisions backed by the state, and assigning the non-formal customary institutions role in facilitating the execution of decisions rendered by the formal state courts, which will relieve the workload of courts. Furthermore, the measures should include requiring the regional Woreda and federal first instance courts to set up rotating panels at the Kebele level so as to exercise their first instance and appellate jurisdictions. This would make the formal regular courts and the non-formal customary institutions accessible and affordable, as well as legitimate and acceptable in the eyes of both the state and society. It would also enable to make feasible the currently impractical possibility of appeal to Woreda courts envisaged particularly by regional proclamations, allow the establishment of a system of dispute resolution that combines the virtues of formal regular courts and non-formal customary institutions, and address lingering issues of unconstitutionality by restoring judicial power to the judiciary in line with the Constitution. Above all, it would enable the judiciary to play the appropriate role in ensuring the implementation of smallholder land rights provisions and making land law reform effective in helping raise smallholder productivity and tackle poverty.

8. 2. 5. Making Legal Pluralism Work through Land Law Reform

This thesis proposes the recognition of legal pluralism because recognising legal pluralism in the short-run is the most effective way to make use of, and possibly to end legal pluralism in the long-run. In other words, the recognition of legal pluralism is proposed not as an end in itself, but as a means to use and then end legal pluralism itself. The recognition of legal pluralism is necessary for several reasons. First, established law and development research and experience demonstrates that past land law reform

initiatives intended to help raise smallholder productivity and thereby tackle poverty that involved attempts to totally abolish and replace non-formal customary land policies, laws, and institutions with formal state ones in Ethiopia and other sub-Saharan African countries have brought about neither law nor development, as they resulted in pluralised, disorganised, and dysfunctional land tenure systems that constrained the provision and implementation of productivity-raising smallholder land rights, and adversely affected the conditions of smallholder productivity and poverty. Moreover, the recognition of legal pluralism can help make the land law reform proposed here effective in helping raise smallholder productivity and tackle poverty in Ethiopia, as it would enable to reap the advantages and avoid the disadvantages that the non-formal customary land policies, laws, and institutions have as regards the provision and implementation of productivity-raising smallholder land rights, and allow the state to concentrate scarce resources needed for the formulation, implementation, and evaluation of the proposed land law reform upon changing only the most constraining formal or non-formal land policies, laws, and institutions of the pre-existing land tenure system. Furthermore, the recognition of legal pluralism would enable the pre-existing non-formal customary land policies, laws, and institutions to continue to operate alongside the newly introduced formal state ones and contribute to a stable, predictable legal environment acutely needed during the period of transition, and provide room for the gradual evolution, extinction, or absorption of non-formal customary land tenure arrangements into the formal state land tenure system – thereby leading to the end of legal pluralism in the long-run.

What then does the recognition of legal pluralism involve and how is it carried out? The recognition of legal pluralism should involve the identification and selective incorporation into the formal state land tenure system of those non-formal customary land policies, laws, and institutions that do not constrain the provision and implementation of the three bundles of productivity-raising smallholder land rights pertaining to the enhancement of tenure security, the facilitation of the transfer of rights over land, and the authorisation of the collateralisation of land rights. Specifically, the identification process should involve accepting as non-formal customary land policies, laws, and institutions those land tenure arrangements other than the formal state ones that are considered, operated, and used as such by social actors or members of the community concerned. The identification process should not involve or require the documentation or codification of the non-formal customary policies, laws, and institutions to be incorporated for the following reasons. First, it is unnecessary because the whole purpose here is not to elevate, promote, or eternalise, but to make use of in the short-run, and then to bring about the gradual evolution, extinction, or absorption into the formal state land tenure system of the non-formal customary land policies, laws, and institutions in the long-run. Second, because there are non-formal

customary land tenure arrangements that are as numerous and diverse as ethnic, cultural, and religious groups that exist in the country, the task will be too costly, if not impossible. Third, besides their unwritten, vague, and decentralised nature, since proof of the existence, composition, and operation of the non-formal customary land tenure arrangements often depends largely on the memory, knowledge, and experience of a few traditional leaders, elders, and experts in the community, documentation or codification would be an exercise in futility, as it will more likely involve the non-formal customary arrangements as maintained or understood by the more influential groups or members of the same community, which will thus be as alien and meaningless as the formal state ones to others.

But why should the recognition of legal pluralism involve selective rather than complete incorporation of non-formal customary land tenure systems? Complete incorporation entails the full absorption of the non-formal customary land tenure systems into the formal state land tenure ones, which means the rejection of legal pluralism and the forfeiture of the benefits that would have been possible to gain from the non-formal customary land tenure systems only if they were allowed to stay as they are: non-formal. In contrast, selective incorporation will allow taking up those non-formal customary land policies, laws, and institutions that are more likely to promote or not to constrain the provision and implementation of productivity-raising smallholder land rights and dropping those that are not – thereby enabling to reap the advantages and avoid the disadvantages of the non-formal customary land tenure systems. Basically, non-formal customary land policies, laws, and institutions are disadvantageous because they reflect and reinforce the patriarchal, feudal, and subsistence framework Ethiopia's smallholder-based rural way of life, emphasise traditional structures, values, and beliefs, and focus on upholding past relationships and maintaining the relative status quo. Therefore, they not only favour men and "influential" members of the community and often discriminate against women and other "vulnerable" groups, such as children, the elderly, the disabled, the low caste and the "minority" members or "non-members" of the community, but also prevent the increase in social scale, including the expansion of face-to-face socio-economic relationships and the reduction of dependence on family, neighbours, and "the community", necessary to foster local, regional, and national economic development. Moreover, since they lack regularised amendment procedures required for adaptation to change, they render the disengagement of the rural political economy from traditional social structures difficult, and hinder the transformation of smallholder agriculture from ensuring subsistence towards serving as an engine for fostering poverty alleviation and overall economic development. Specifically, because non-formal customary land policies and laws are unwritten, vague, diverse, and diffuse, which often depend on the knowledge and prerogative of particular traditional leaders, and the land

institutions have through time become weakened, depleted, and corrupted, which often rely on social pressure and voluntary cooperation to induce compliance, they cannot offer an adequate framework for the provision and implementation of productivity-raising smallholder land rights with the degree of breadth, duration, and assurance required for the enhancement of tenure security, the facilitation of the transfer of rights over land, and the authorisation of the collateralisation of land rights.

On the other hand, selective incorporation can enable the government to use non-formal customary land tenure systems not only to better advance its ethnic-based economic, social, and political agenda related to land and smallholder agriculture and reap the advantages they offer, but also to more successfully formulate and implement a land law reform programme that can be effective in helping raise smallholder productivity and tackle poverty in the short-run, and leading to the gradual evolution, extinction, or absorption of the non-formal customary land tenure systems into the formal ones and thus the end of legal pluralism in the long-run. Selective incorporation of non-formal customary systems can enable the government to introduce land law reform measures that respect diversity and reflect contextual needs and potentials, promote local ownership and community participation, allow decentralisation and at the same time advance regional and national integration, appease potential opposition and win voluntary cooperation, provide room for pre-existing non-formal customary systems to project a sense of continuity, stability, and predictability and for the newly introduced systems to move towards the set objectives, and offer opportunity to theoretically communicate, and practically demonstrate the advantages of formal state systems and the disadvantages of non-formal customary ones. Moreover, since efforts aimed at ending legal pluralism and establishing a uniform, functional formal state land tenure system should be the culmination of a long process of self-criticism, analysis, and well-informed, deliberate choice, selective incorporation of non-formal customary systems would provide the government with opportunity and capacity to pilot and study the strengths and shortcomings of, and identify formal state and non-formal customary systems to be embodied in possible future land law reform initiatives that would be undertaken to progressively establish local, regional, and national formal state land tenure systems and thereby end legal pluralism.

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Appendices

Appendix 1: Table 1 - Total Smallholder Land Area Cultivated in Ethiopia by Farm Size and Agro-ecology (2008)

Farm Size (in ha)	Moisture Reliable Cereal	Moisture Reliable Enset	Humid Lowland	Drought Prone	Pastoralist	Total
	(in Thousand Hectares)					
0.0 - 0.25	111.7	133.2	6.5	76.9	6.8	335.1
0.25 - 0.52	364.3	298.7	17.1	271.2	22.1	973.4
0.52 - 0.90	884	355.7	31	474.3	39.4	1784.4
0.90 - 1.52	1739.5	330	47	824.8	70.5	3011.8
1.52 - 25.20	4153.2	272.4	94.4	1617.8	140.3	6278.1
Total	7252.7	1390	196	3265	279.1	12382.8
	Percentage of National Total (in %)					
0.0 - 0.25	0.9	1.1	0.1	0.6	0.1	2.7
0.25 - 0.52	2.9	2.4	0.1	2.2	0.2	7.9
0.52 - 0.90	7.1	2.9	0.3	3.8	0.3	14.4
0.90 - 1.52	14.0	2.7	0.4	6.7	0.6	24.3
1.52 - 25.20	33.5	2.2	0.8	13.1	1.1	50.7
Total	58.6	11.2	1.6	26.4	2.3	100.0

Source: **Computation by Alemayehu, Dorosh, and Sinafikeh, (Alemayehu, Dorosh, and Sinafikeh, 2011:4) based on data from CSA's Agricultural Sample Survey 2007/2008, (CSA, June 2008).**

Note: **Each farm size interval (quintile) contains 20 percent of Ethiopia's smallholder household farms, approximately 2.57 million smallholder household farms.**

Appendix 2: Table 2 - Farm Size, Percentage of Smallholders, and Average Landholding Size in Hectare in Ethiopia (2008)

Farm Size (in hectares)	Percentage of Smallholders (in %)	Average Landholding Size (in hectares)
Under 0.10	4.95	0.04
0.10-0.50	26.36	0.24
0.51-1.0	25.34	0.6
1.01-2.0	26.58	1.16
2.01-5.00	15.48	2.24
5.01-10.00	1.22	4.36
Over 10.0	0.07	8.22

Source: **CSA, June 2008:13.**

Note: **Total number of smallholder households = 13,254,840.**

Average landholding size of each smallholder household (in ha) = 0.93.

Appendix 3: Table 3 - Number of Smallholders, Size of Cultivated Land, and Type and Amount of Crops Produced in Ethiopia during the Main Meher Production Season (2004/05-2007/08 Average)

Type of Crop	Number of Smallholder Households	Size of Cultivated Land		Amount of Crop Produced	
		Size (in hectares)	Share in Total Area Cultivated (in %)	Amount (in quintals)	Share in Total Production (in %)
Grain	11,519,148	10,382,365	92.7	140,902,733	79.8
Cereals	11,156,837	8,230,211	73.4	120,629,724	68.3
Teff	5,462,782	2,337,850	20.9	24,079,480	13.6
Barley	3,842,462	1,024,390	9.1	13,264,217	7.5
Wheat	4,118,164	1,439,098	12.8	22,933,077	13.0
Maize	7,287,931	1,595,238	14.2	33,142,865	18.8
Sorghum	4,253,534	1,429,886	12.8	22,161,808	12.5
Pulses	6,377,027	1,384,499	12.4	14,955,466	8.5
Oilseeds	3,127,131	767,655	6.9	5,317,543	3.0
Vegetables	4,936,741	106,585	1.0	4,248,252	2.4
Root Crops	4,757,733	174,826	1.6	14,732,919	8.3
Fruit Crops	2,658,415	51,078	0.5	4,034,590	2.3
Chat	2,068,262	141,881	1.3	1,264,269	0.7
Coffee	3,049,120	305,940	2.7	2,106,711	1.2
Hops	1,685,422	23,457	0.2	263,111	0.1

Source: Computation by Alemayehu, Dorosh, and Sinafikeh (Alemayehu, Dorosh, and Sinafikeh, 2011:2).

Appendix 4: Table 4 - Smallholder Productivity, Cultivated Land Area, and Output Decade Averages and Growth Rates of Cereals in Ethiopia since the 1960s

Decade	FAO			CSA		
	Productivity (tons/ha)	Cultivated Land Area (in mn has)	Output (in mn tons)	Productivity (tons/ha)	Area (in mn has)	Output (in mn tons)
1961/62-1969/70	0.73	6.23	4.53	N/A	N/A*	N/A
1970/71-1979/80	0.90	5.25	4.63	N/A	N/A	N/A
1980/81-1989/90	1.15	4.89	5.63	1.14	4.30	4.89
1990/91-1999/00	1.18	5.87	6.88	1.20	5.60	6.67
2000/01-2008/09	1.30	8.24	10.68	1.41	7.72	10.94
	Average Growth Rates (from logarithmic regressions)					
1961/62-1969/70	0.8%	1.1%	1.9%	N/A	N/A	N/A
1970/71-1979/80	3.7%	-4.9%	-1.4%	N/A	N/A	N/A
1980/81-1989/90	-0.8%	0.5%	-0.3%	-1.7%	2.4%	0.6%
1990/91-1999/00	-0.7%	5.9%	5.1%	-0.5%	5.8%	5.2%
2000/01-2008/09	3.6%	2.7%	6.5%	3.5%	3.1%	7.0%

Source: Computation by Alemayehu, Dorosh, and Sinafikeh, (Alemayehu, Dorosh, and Sinafikeh, 2011:11) based on data from FAO for 2000/01 to 2007/08 and from CSA for 1980/81 to 1989/90.

Note: N/A stands for *not available;* CSA data is not available for decades marked N/A because the CSA was established in 1981/82; CSA data is for smallholder Meher season only and the levels and growth rates are based on interpolated data (constant logarithmic growth rates); FAO refers to 2007/08 as 2007.

Appendix 5: Table 5 - Gross Domestic Product by Sector in Ethiopia from 1960-2004 (at 1980/81 constant factor cost)

Political System	GDP (in millions of Birr)					Growth Rate of Per Capita GDP (in %)			
	Year	Agriculture	Industry	Service	Total	Agriculture	Industry	Service	Total
The Imperial Government under Emperor Haile Sellassie I	1960	3,884.68	357.52	883.09	5,125.29				
	1961	3,953.02	392.00	971.97	5,316.99	0.00	0.07	0.08	0.01
	1962	4,069.44	417.16	1,032.92	5,519.53	0.01	0.04	0.04	0.02
	1963	4,164.69	461.21	1,133.54	5,759.44	0.00	0.08	0.07	0.02
	1964	4,320.41	508.49	1,292.41	6,121.30	0.01	0.08	0.12	0.04
	1965	4,356.64	573.46	1,395.48	6,325.59	-0.01	0.10	0.06	0.01
	1966	4,504.46	637.07	1,441.02	6,582.55	0.01	0.09	0.01	0.02
	1967	4,551.99	671.86	1,578.80	6,802.65	-0.01	0.03	0.07	0.01
	1968	4,651.84	710.38	1,690.69	7,052.91	0.00	0.03	0.05	0.01
	1969	4,762.85	723.54	1,808.83	7,295.23	0.00	0.00	0.05	0.01
	1970	4,860.38	789.03	1,918.46	7,567.87	0.00	0.07	0.04	0.01
	1971	4,936.88	823.87	2,044.02	7,804.77	-0.01	0.02	0.04	0.01
	1972	5,007.90	849.22	2,158.41	8,015.53	-0.01	0.01	0.03	0.00
	1973	5,059.09	846.46	2,289.25	8,194.80	-0.02	-0.03	0.03	0.00
The Derg Government	1974	5,083.63	833.21	2,370.44	8,287.28	-0.02	-0.04	0.01	-0.01
	1975	5,124.68	781.31	2,437.42	8,343.42	-0.02	-0.08	0.00	-0.02
	1976	5,144.83	803.92	2,480.00	8,428.75	-0.02	0.00	-0.01	-0.02
	1977	5,162.65	778.81	2,439.72	8,381.18	-0.02	-0.06	-0.04	-0.03
	1978	5,208.72	892.07	2,682.24	8,783.04	-0.02	0.12	0.07	0.02
	1979	5,449.15	978.70	2,781.06	9,208.91	0.02	0.07	0.01	0.02
	1980	5,384.81	1,011.80	2,927.94	9,324.55	-0.01	0.03	0.05	0.01
	1981	5,189.69	1,097.57	3,028.10	9,315.36	-0.04	0.08	0.03	0.00
	1982	5,895.30	1,162.25	3,196.25	10,253.80	0.10	0.03	0.03	0.07
	1983	5,155.85	1,231.76	3,220.58	9,608.19	-0.15	0.03	-0.02	-0.09
	1984	4,079.02	1,284.79	3,313.10	8,676.91	-0.23	0.01	0.00	-0.12
	1985	4,732.64	1,369.17	3,434.21	9,536.02	0.12	0.03	0.00	0.06
	1986	5,620.43	1,478.61	3,775.72	10,874.76	0.15	0.05	0.06	0.10
	1987	5,465.02	1,422.50	3,981.46	10,868.98	-0.06	-0.07	0.02	-0.03
	1988	5,521.26	1,327.81	4,056.99	10,906.06	-0.02	-0.09	-0.01	-0.03
	1989	5,814.40	1,265.29	4,269.89	11,349.58	0.02	-0.08	0.02	0.01
	1990	6,114.89	1,024.13	3,799.22	10,938.24	0.02	-0.22	-0.14	-0.07
The Current Government under the EPRDF	1991	5,947.60	951.28	3,635.73	10,534.61	-0.06	-0.10	-0.07	-0.07
	1992	6,308.32	1,221.90	4,268.57	11,798.79	0.03	0.24	0.14	0.08
	1993	6,078.00	1,307.05	4,614.20	11,999.25	-0.06	0.05	0.06	0.00
	1994	6,284.00	1,412.54	4,947.81	12,644.35	0.01	0.06	0.05	0.03
	1995	7,206.20	1,488.87	5,292.01	13,987.08	0.11	0.02	0.04	0.07
	1996	7,453.90	1,530.57	5,655.80	14,640.27	0.00	0.00	0.04	0.02
	1997	6,620.60	1,566.60	6,241.90	14,429.10	-0.14	-0.01	0.07	-0.04
	1998	6,873.50	1,700.90	6,719.70	15,294.10	0.01	0.05	0.05	0.03
	1999	7,024.70	1,731.30	7,356.34	16,112.34	-0.01	-0.01	0.06	0.02
	2000	7,831.10	1,821.40	7,705.20	17,357.70	0.08	0.02	0.02	0.05
	2001	7,651.00	1,864.00	8,057.80	17,572.80	-0.05	0.00	0.02	-0.02
	2002	6,687.00	1,943.40	8,252.70	16,883.10	-0.15	0.01	0.00	-0.07
	2003	7,953.80	2,080.60	8,783.80	18,818.20	0.16	0.04	0.03	0.08
	2004	9,154.80	2,228.60	9,349.30	20,732.70	0.12	0.04	0.04	0.07

Source: **Computation by Rashid, Meron, and Gezahegn based on data from the National Bank of Ethiopia (Rashid, Meron, and Gezahegn, 2007:37).**

Appendix 6: Table 6 - Population, Food Production, and Landholding in Ethiopia (1960-1990)

Year	Population	Landholding per capita	Food Output per capita
1960/61	23,550,000	0.28 ha	240.2 kg
1969/70	28,784,400	0.25 ha	242.7 kg
1979/80	36,663,300	0.13 ha	204.4 kg
1989/90	48,648,800	0.10 ha	141.7 kg

Source: **Befekadu and Berhanu (Befekadu and Berhanu, 2000:85).**

Appendix 7: Table 7 - Economic Growth and Structural Change in Ethiopia (1960/61-2004/05)

Item/Sector	Political System					
	The Imperial Government under Haile Sellassie I		The Derg Regime		The Current Government under the EPRDF	
	Growth Rates*	Shares in Total GDP	Growth Rates	Shares in Total GDP	Growth Rates	Shares in Total GDP
Total GDP	3.7	100.0	2.0	100.0	4.6	100.0
Agriculture	2.0	68.0	0.6	55.6	2.3	47.3
Industry	7.0	9.4	3.6	11.4	5.3	11.0
Services	7.3	23.1	3.8	33.0	6.9	42.0

Source: **Computation by Rashid, Meron, and Gezahegn based on data from the National Bank of Ethiopia (Rashid, Meron, and Gezahegn, 2007:28).**

Note: **Growth rates were calculated by fitting a log-linear trend.**

Appendix 8: Table 8 - Sectoral and Overall Economic Growth Patterns in Ethiopia from 1960-2002 (in percent)

	1960-1973	1974-1991	1992-2002	Average (1960-2002)
Real GDP at constant factor cost	3.71%	1.84%	4.18%	2.60%
Agriculture	2.10%	0.70%	1.53%	1.35%
Industry	7.04%	2.81%	7.74%	3.35%
Services	7.33%	3.44%	6.97%	4.70%

Source: **Computation by Mulat, Fantu, and Tadele based on data from the EEA/EEPRI database (Mulat, Fantu, and Tadele, 2006:4).**

Appendix 9: Table 9 - Sectoral and Overall GDP Growth Patterns in Ethiopia from 2003/04-2009/10 (in percent)

Year	GDP Growth Rates at Constant Basic Price			
	Agriculture	Industry	Services	Overall GDP
2003/04	16.9%	11.6%	6.3%	11.8 %
2004/05	13.5%	9.4%	12.8%	12.7 %
2005/06	10.9%	10.2%	13.3%	11.8 %
2006/07	9.4%	9.5%	15.3%	11.8%
2007/08	7.5%	10.1%	16.0%	11.4%
2008/09	6.4%	9.7%	14.0%	10.1%
2009/2010	7.6%	10.6%	13.0%	10.4%

Source: **Computation by Kassahun based on data from MoFED (Kassahun, 2012:7).**

Appendix 10: Table 10 - Proportion of Cereal Crops Used for Own Consumption and Market Sale in Ethiopia in 2010

Type of Crop	Total Production (in quintals)	Amount Used for Own Consumption (in %)	Amount Used for Market Sale (in %)
Total Cereals	155,342,280	65.9	16.4
Teff	31,793,743	53.4	27.4
Barley	17,504,436	62.9	13.4
Wheat	30,756,436	58.5	19.5
Maize	38,971,631	75.0	11.6
Sorghum	29,712,655	72.9	12.1
Finger Millet	5,241,911	70.2	14.2
Pulses	18,980,473	61.8	20.6
Vegetables	5,573,568	79.7	17.4
Root Crops	18,063,778	71.5	16.5

Source: **Computation by Lavers (Lavers, 2011:4) based on data from CSA (CSA, 2010a).**

Appendix 11: Table 11 - Agricultural Growth Linkages: International Evidence from Asia, Africa, and Latin America

Region	Additional Income Growth				Source of Linkages (%)	
	Initial Agricultural Income Growth	Other Agriculture	Non-farm Activities	Total	Consumption	Production
Asia	1.00	0.06	0.58	0.64	81.00	19.00
Africa	1.00	0.17	0.30	0.47	87.00	13.00
Latin America	1.00	0.05	0.21	0.26	42.00	58.00

Source: **Diao (Diao, 2010:22), citing computations by Haggblade and Hazell (Haggblade and Hazell, 1989).**

Appendix 12: The FDRE Constitution

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ

ፌዴራል ነጋሪት ጋዜጣ

FEDERAL NEGARIT GAZETA

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

አንደኛ ዓመት ቁጥር ፩
አዲስ አበባ — ነሐሴ ፲፭ ቀን ፲፱፻፹፯ ዓ.ም

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የሕዝብ ተወካዮች ምክር ቤት ጠባቂነት የወጣ

1st Year No. 1
ADDIS ABABA – 21st August, 1995

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የኢትዮጵያ ብሔሮች ፣ ብሔረሰቦችና ሕዝቦች መርጠው በላኳቸው ተወካዮቻቸው አማካይነት ጎልር ሸቀ ቀን ፲፱፻፹፯ ዓ.ም. የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ መንግሥትን ያጸደቁ በመሆኑ የሚከተለው ታውጇል ።

1. አጭር ርዕስ
ይህ አዋጅ "የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ መንግሥት አዋጅ ቁጥር ፩/፲፱፻፹፯" ተብሎ ሊጠቀስ ይችላል ።

2. ሕገ መንግሥቱ በሥራ ላይ ስለመዋሉ
የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ መንግሥት ከነሐሴ ፲፭ ቀን ፲፱፻፹፯ ዓ.ም. ጀምሮ ሙሉ በሙሉ በሥራ ላይ ውሏል ።

3. አዋጁ የሚጸናበት ጊዜ
ይህ አዋጅ ከነሐሴ ፲፭ ቀን ፲፱፻፹፯ ዓ.ም. ጀምሮ የጸና ይሆናል።

አዲስ አበባ ነሐሴ ፲፭ ቀን ፲፱፻፹፯ ዓ.ም.

ዶ/ር ነጋሶ ጊዳዳ
የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
ፕሬዚዳንት

PROCLAMATION NO. 1/1995

A PROCLAMATION TO PRONOUNCE THE COMING INTO EFFECT OF THE CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

WHEREAS, the Nations, Nationalities and Peoples of Ethiopia have, through their elected Representatives, ratified the Constitution of the Federal Democratic Republic of Ethiopia, on the 8th day of December, 1994; it is hereby proclaimed as follows:

1. *Short Title*
This Proclamation may be cited as the "Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995".

2. *Coming into Effect of the Constitution*
The Constitution of the Federal Democratic Republic of Ethiopia has come into full force and effect as of the 21st day of August, 1995.

3. *Effective Date*
This Proclamation shall enter into force as of the 21st day of August, 1995.

Done at Addis Ababa, this 21st day of August, 1995.

NEGASO GIDADA (DR.)

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

ያንዱ ዋጋ Unit Price 9.80

ፌዴራል ነጋሪት ጋዜጣ ፖ.ሣ.ቁ. ፹ሺ፩
Federal Negarit G.P.O.Box 80,001

መግቢያ

እኛ የኢትዮጵያ ብሔሮች ፣ ብሔረሰቦች ፣ ሕዝቦች ፦

በሀገራችን ኢትዮጵያ ውስጥ ዘላቂ ሰላም ፣ ዋስትና ያለው ዴሞክራሲ እንዲሰፍን ፣ ኢኮኖሚያዊና ማኅበራዊ እድገታችን እንዲፋጠን ፣ የራሳችንን ዕድል በራሳችን የመወሰን መብታችንን ተጠቅመን ፣ በነፃ ፍላጎታችን ፣ በሕግ የበላይነት እና በራሳችን ፈቃድ ላይ የተመሰረተ አንድ የፖለቲካ ማኅበረሰብ በጋራ ለመገንባት ቆርጠን በመነሳት ፤

ይህን ዓላማ ከግብ ለማድረስ ፣ የግለሰብና የብሔር/ብሔረሰብ መሰረታዊ መብቶች መከበራቸው ፣ የዎታ እኩልነት መረጋገጡ ፣ ባሕሎችና ሃይማኖቶች ካለአንዳች ልዩነት እንዲራመዱ የማድረጉ አስፈላጊነት ጽኑ እምነታችን በመሆኑ ፤

ኢትዮጵያ ሀገራችን የየራሳችን አኩሪ ባሕል ያለን ፣ የየራሳችን መልክዓ ምድር አሰፋፈር የነበረንና ያለን ፣ ብሔር ብሔረሰቦችና ሕዝቦች በተለያዩ መስኮችና የግንኙነት ደረጃዎች ተሳስረን አብረን የኖርንባትና የምንኖርባት ሀገር በመሆንዋ ፤ ያፈራነው የጋራ ጥቅምና አመለካከት አለን ብለን ስለምናምን ፤

መጪው የጋራ ዕድላችን መመሰረት ያለበት ከታሪካችን የወረስነውን የተዛባ ግንኙነት በማረምና የጋራ ጥቅማችንን በማሳደግ ላይ መሆኑን በመቀበል ፤

ጥቅማችንን ፣ መብታችንና ነፃነታችንን በጋራ እና በተደጋጋፊነት ለማሳደግ እንድ የኢኮኖሚ ማኅበረሰብ የመገን ባቱን አስፈላጊነት በማመን ፤

በትግላችንና በከፈልነው መስዋዕትነት የተገኘውን ዴሞክራሲና ሰላም ዘላቂነቱን ለማረጋገጥ ፤

ይህ ሕገ መንግሥት ከዚህ በላይ ለገለጽናቸው ዓላማ ዎችና እምነቶች ማሰሪያ እንዲሆነን እንዲመከሰን መርጠን በላክናቸው ተወካዮቻችን አማካይነት በሕገ መንግሥት ጉባዔ ዛሬ ኅዳር ፳፱ ቀን ፲፱፻፹፯ አጽድቀነዋል ።

PREAMBLE

We, the Nations, Nationalities and Peoples of Ethiopia:

Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development;

Firmly convinced that the fulfilment of this objective requires full respect of individual and people's fundamental freedoms and rights, to live together on the basis of equality and without any sexual, religious or cultural discrimination;

Further convinced that by continuing to live with our rich and proud cultural legacies in territories we have long inhabited, have, through continuous interaction on various levels and forms of life, built up common interests and have also contributed to the emergence of a common outlook;

Fully cognizant that our common destiny can best be served by rectifing historically unjust reltionships and by further promoting our shared interests;

Convinced that to live as one economic community is necessary in order to create sustainable and mutually supportive conditions for ensuring respect for our rights and freedoms and for the collective promotion of our interests;

Determined to consolidate, as a lasting legacy, the peace and the prospect of a democratic order which our struggles and sacrifices have brought about;

Have therefore adopted, on 8 December 1994 this Constitution through representatives we have duly elected for this purpose as an instrument that binds us in a mutual commitment to fulfill the objectives and the principles set forth above.

ምዕራፍ አንድ
ጠቅላላ ድንጋጌዎች

አንቀጽ ፩
የኢትዮጵያ መንግሥት ስያሜ

ይህ ሕገ መንግሥት ፌዴራላዊና ዲሞክራሲያዊ የመንግሥት አወቃቀር ይደነግጋል ። በዚህ መሰረት የኢትዮጵያ መንግሥት የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ በሚል ስም ይጠራል ።

አንቀጽ ፪
የኢትዮጵያ የግዛት ወሰን

የኢትዮጵያ የግዛት ወሰን የፈዴራሉን አባሎች ወሰን የሚያጠቃልል ሆኖ በዓለም አቀፍ ስምምነቶች መሰረት የተወሰነው ነው።

አንቀጽ ፫
የኢትዮጵያ ሰንደቅ ዓላማ

፩· የኢትዮጵያ ሰንደቅ ዓላማ ከላይ አረንጓዴ ፡ ከመሐል ቢጫ ፡ ከታች ቀይ ሆኖ በመሐሉ ብሔራዊ ዓርማ ይኖረዋል ። ሦስቱም ቀለማት እኩል ሆነው በአግድም ይቀመጣሉ ።

፪· ከሰንደቅ ዓላማው ላይ የሚተመጠው ብሔራዊ ዓርማ የኢትዮጵያ ብሔሮች ፡ ብሔረሰቦች ፡ ሕዝቦች እና ሃይማኖቶች በእኩልነትና በአንድነት ለመኖር ያላቸውን ተስፋ የሚያንጸባርቅ ይሆናል ።

፫· የፈዴራሉ አባሎች የየራሳቸው ሰንደቅ ዓላማና ዓርማ ሊኖራቸው ይችላል ። ዝርዝሩን በየራሳቸው ምክር ቤት ይወስናሉ።

አንቀጽ ፬
የኢትዮጵያ ብሔራዊ መዝሙር

የኢትዮጵያ ብሔራዊ መዝሙር የሕገ መንግሥቱን ዓላማዎችና የኢትዮጵያ ሕዝቦች በዲሞክራሲ ሥርዓት አብረው ለመኖር ያላቸውን እምነት ፡ እንዲሁም የወደፊት የጋራ ዕድላቸውን የሚያንጸባርቅ ሆኖ በሕግ ይወሰናል ።

አንቀጽ ፭
ስለ ቋንቋ

፩· ማናቸውም የኢትዮጵያ ቋንቋዎች በእኩልነት የመንግሥት እውቅና ይኖራቸዋል ።

፪· አማርኛ የፈዴራሉ መንግሥት የሥራ ቋንቋ ይሆናል ።

፫· የፈዴሬሽኑ አባሎች የየራሳቸውን የሥራ ቋንቋ በሕግ ይወስናሉ ።

አንቀጽ ፮
ስለ ዜግነት

፩· ወላጆቹ/ወላጇ ወይም ከወላጆቹ/ከወላጇ አንደኛቸው ኢትዮጵያዊ/ኢትዮጵያዊት የሆነ/የሆነች የኢትዮጵያ ዜጋ ነው/ናት ።

፪· የውጭ ሀገር ዜጎች የኢትዮጵያ ዜግነት ሊያገኙ ይችላሉ ።

፫· ዜግነትን በሚመለከት ዝርዝሩ በሕግ ይወሰናል ።

CHAPTER ONE
GENERAL PROVISIONS

Article 1
Nomenclature of the State

This Constitution establishes a Federal and Democratic State structure. Accordingly, the Ethiopian state shall be known as *The Federal Democratic Republic of Ethiopia.*

Article 2
Ethiopian Territorial Jurisdiction

The territorial jurisdiction of Ethiopia shall comprise the territory of the members of the Federation and its boundaries shall be as determined by international agreements.

Article 3
The Ethiopian Flag

1. The Ethiopian flag shall consist of green at the top, yellow in the middle and red at the bottom, and shall have a national emblem at the centre. The three colours shall be set horizontally in equal dimension.
2. The national emblem on the flag shall reflect the hope of the Nations, Nationalities, Peoples as well as religious communities of Ethiopia to live together in equality and unity.
3. Members of the Federation may have their respective flags and emblems and shall determine the details thereof through their respective legislatures.

Article 4
National Anthem of Ethiopia

The national anthem of Ethiopia, to be determined by law, shall reflect the ideals of the Constitution, the commitment of the Peoples of Ethiopia to live together in a democratic order and of their common destiny.

Article 5
Languages

1. All Ethiopian languages shall enjoy equal state recognition.
2. Amharic shall be the working language of the Federal Government.
3. Members of the Federation may by law determine their respective working languages.

Article 6
Nationality

1. Any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian.
2. Foreign nationals may acquire Ethiopian nationality.
3. Particulars relating to nationality shall be determined by law.

አንቀጽ ፯
የያታ አገላለጽ

በዚህ ሕገ መንግሥት ውስጥ በወንድ ያታ የተደነገገው የሴትንም ያታ ያካትታል ።

ምዕራፍ ሁለት
የሕገ መንግሥቱ መሰረታዊ መርሆዎች

አንቀጽ ፰
የሕዝብ ሉዓላዊነት

፩· የኢትዮጵያ ብሔሮች ፡ ብሔረሰቦች ፡ ሕዝቦች የኢትዮጵያ ሉዓላዊ ሥልጣን ባለቤቶች ናቸው ።

፪· ይህ ሕገ መንግሥት የሉዓላዊነታቸው መግለጫ ነው ።

፫· ሉዓላዊነታቸውም የሚገለጸው በዚህ ሕገ መንግሥት መሰረት በሚመርጧቸው ተወካዮቻቸውና በቀጥታ በሚያደርጉት ዴሞክራሲያዊ ተሳትፎ አማካይነት ይሆናል ።

አንቀጽ ፱
የሕገ መንግሥት የበላይነት

፩· ሕገ መንግሥቱ የሀገሪቱ የበላይ ሕግ ነው ። ማንኛውም ሕግ ፡ ልማዳዊ አሠራር ፡ እንዲሁም የመንግሥት አካል ወይም ባለሥልጣን ውሳኔ ከዚህ ሕገ መንግሥት ጋር የሚቃረን ከሆነ ተፈጻሚነት አይኖረውም ።

፪· ማንኛውም ዜጋ ፡ የመንግሥት አካላት ፡ የፖለቲካ ድርጅቶች፡ ሌሎች ማኅበራት እንዲሁም ባለሥልጣኖቻቸው ፡ ሕገ መንግሥቱን የማስከበርና ለሕገ መንግሥቱ ተገዢ የመሆን ኃላፊነት አለባቸው ።

፫· በዚህ ሕገ መንግሥት ከተደነገገው ውጭ በማናቸውም አኳኋን የመንግሥት ሥልጣን መያዝ የተከለከለ ነው ።

፬· ኢትዮጵያ ያጸደቀቻቸው ዓለም አቀፍ ስምምነቶች የሀገሪቱ ሕግ አካል ናቸው ።

አንቀጽ ፲
ሰብዓዊና ዴሞክራሲያዊ መብቶች

፩· ሰብዓዊ መብቶችና ነፃነቶች ከሰው ልጅ ተፈጥሮ የሚመነጩ፡ የማይጣሱና የማይገፈፉ ናቸው ።

፪· የዜጎች እና የሕዝቦች ሰብዓዊና ዴሞክራሲያዊ መብቶች ይከበራሉ ።

አንቀጽ ፲፩
የመንግሥትና የሃይማኖት መለያየት

፩· መንግሥትና ሃይማኖት የተለያዩ ናቸው ።

፪· መንግሥታዊ ሃይማኖት አይኖርም ።

፫· መንግሥት በሃይማኖት ጉዳይ ጣልቃ አይገባም ። ሃይማኖትም በመንግሥት ጉዳይ ጣልቃ አይገባም ።

Article 7
Gender Reference

Provisions of this Constitution set out in the masculine gender shall also apply to the feminine gender.

CHAPTER TWO
FUNDAMENTAL PRINCIPLES OF THE CONSTITUTION

Article 8
Sovereignty of the People

1. All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.
2. This Constitution is an expression of their sovereignty.
3. Their sovereignty shall be expressed through their representatives elected in accordance with this Constituion and through their direct democratic participation.

Article 9
Supremacy of the Constitution

1. 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.
2. All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.
3. It is prohibited to assume state power in any manner other than that provided under the Constitution.
4. All intenational agreements ratified by Ethiopia are an integral part of the law of the land.

Article 10
Human and Democratic Rights

1. Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable.
2. Human and democratic rights of citizens and peoples shall be respected.

Article 11
Separation of State and Religion

1. State and religion are separate.
2. There shall be no state religion.
3. The state shall not interfere in religious matters and religion shall not interfere in state affairs.

አንቀጽ ፲፪
የመንግሥት አሠራርና ተጠያቂነት

፩· የመንግሥት አሠራር ለሕዝብ ግልጽ በሆነ መንገድ መከናወን አለበት ።

፪· ማንኛውም ኃላፊና የሕዝብ ተመራጭ ኃላፊነቱን ሲያጓድል ተጠያቂ ይሆናል ።

፫· ሕዝብ በመረጠው ተወካይ ላይ እምነት ባጣ ጊዜ ከቦታው ለማንሳት ይችላል ። ዝርዝሩ በሕግ ይወሰናል ።

ምዕራፍ ሦስት
መሰረታዊ መብቶችና ነፃነቶች

አንቀጽ ፲፫
ተፈጻሚነትና አተረጓጎም

፩· በማንኛውም ደረጃ የሚገኙ የፌዴራል መንግሥትና የክልል ሕግ አውጪ ፡ ሕግ አስፈጻሚ እና የዳኝነት አካሎች በዚህ ምዕራፍ የተካተቱትን ድንጋጌዎች የማክበርና የማስከበር ኃላፊነትና ግዴታ አለባቸው ።

፪· በዚህ ምዕራፍ የተዘረዘሩት መሰረታዊ የመብቶችና የነፃነቶች ድንጋጌዎች ኢትዮጵያ ከተቀበለቻቸው ዓለም አቀፍ የሰብዓዊ መብቶች ሕግጋት ፡ ዓለም አቀፍ የሰብዓዊ መብቶች ስምምነቶችና ዓለም አቀፍ ሠነዶች መርሆዎች ጋር በተጣጣመ መንገድ ይተረጎማሉ ።

ክፍል አንድ
ሰብዓዊ መብቶች

አንቀጽ ፲፬
የሕይወት ፡ የአካል ደህንነትና የነፃነት መብት

ማንኛውም ሰው ሰብዓዊ በመሆኑ የማይደፈርና የማይገሰስ በሕይወት የመኖር ፡ የአካል ደህንነትና ፡ የነፃነት መብት አለው ።

አንቀጽ ፲፭
የሕይወት መብት

ማንኛውም ሰው በሕይወት የመኖር መብት አለው ። ማንኛውም ሰው በሕግ በተደነገገ ከባድ የወንጀል ቅጣት ካልሆነ በስተቀር ሕይወቱን አያጣም ።

አንቀጽ ፲፮
የአካል ደህንነት መብት

ማንኛውም ሰው በአካሉ ላይ ጉዳት እንዳይደርስበት የመጠበቅ መብት አለው ።

አንቀጽ ፲፯
የነፃነት መብት

፩· በሕግ ከተደነገገው ሥርዓት ውጭ ማንኛውም ሰው ወንድም ሆነ ሴት ነፃነቱን/ቷን አያጣም/አታጣም ።

፪· ማንኛውም ሰው በሕግ ከተደነገገው ሥርዓት ውጭ ሊያዝ ፡ ክስ ሳይቀርብበት ወይም ሳይፈረድበት ሊታሰር አይችልም ።

Article 12

Conduct and Accountability of Government

1. The conduct of affairs of government shall be transparent.
2. Any public official or an elected representative is accountable for any failure in official duties.
3. In case of loss of confidence, the people may recall an elected representative. The particulars of recall shall be determined by law.

CHAPTER THREE
FUNDAMENTAL RIGHTS AND FREEDOMS

Article 13

Scope of Application and Interpretation

1. All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter.
2. The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.

PART ONE
HUMAN RIGHTS

Article 14

Rights to life, the Security of Person and Liberty

Every person has the inviolable and inalienable right to life, the security of person and liberty.

Article 15

Right to Life

Every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law.

Article 16

The Right of the Security of Person

Every one has the right to protection against bodily harm.

Article 17

Right to Liberty

1. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.
2. No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him.

አንቀጽ ፲፰
ኢሰብዓዊ አያያዝ ስለመከልከሉ

፩. ማንኛውም ሰው ጭካኔ ከተሞላበት ፣ ኢሰብዓዊ ከሆነ ወይም ክብሩን ከሚያዋርድ አያያዝ ወይም ቅጣት የመጠበቅ መብት አለው ።

፪. ማንኛውም ሰው በባርነት ወይም በግዴታ አገልጋይነት ሊያዝ አይችልም ። ለማንኛውም ዓላማ በሰው የመነገድ ተግባር የተከለከለ ነው ።

፫. ማንኛውም ሰው በኃይል ተገዶ ወይም ግዴታን ለማሟላት ማንኛውንም ሥራ እንዲሠራ ማድረግ የተከለከለ ነው ።

፬. በዚህ አንቀጽ ንዑስ አንቀጽ ፫ "በኃይል ተገዶ ወይም ግዴታን ለማሟላት" የሚለው ሐረግ የሚከተሉትን ሁኔታዎች አያካትትም ፡

ሀ) ማንኛውም እስረኛ በእስራት ላይ ባለበት ጊዜ በሕግ መሰረት እንዲሠራ የተወሰነውን ወይም በገደብ ከእስር በተለቀቀበት ጊዜ የሚሠራውን ማንኛውም ሥራ ፡

ለ) ማንኛውም ወታደራዊ አገልግሎት ለመስጠት ሕሊናው የማይፈቅድለት ሰው በምትክ የሚሰጠውን አገልግሎት ፡

ሐ) የማኅበረሰቡን ሕይወት ወይም ደህንነት የሚያሰጋ የአስቸኳይ ጊዜ ሁኔታ ወይም አደጋ በሚያጋጥምበት ጊዜ የሚሰጥ ማንኛውንም አገልግሎት ፡

መ) በሚመለከተው ሕዝብ ፈቃድ በአካባቢው የሚፈጸመውን ማንኛውም ኢኮኖሚያዊና ማኅበራዊ የልማት ሥራ ።

አንቀጽ ፲፱
የተያዙ ሰዎች መብት

፩. ወንጀል ፈጽመዋል በመባል የተያዙ ሰዎች የቀረበባቸው ክስና ምክንያቶቹ በዝርዝር ወዲያውኑ በሚገባቸው ቋንቋ እንዲነገራቸው መብት አላቸው ።

፪. የተያዙ ሰዎች ላለመናገር መብት አላቸው ፣ የሚሰጡት ማንኛውም ቃል ፍርድ ቤት በማስረጃነት ሊቀርብባቸው እንደሚችል መረዳት በሚችሉት ቋንቋ እንደተያዙ ወዲያውኑ ማስገንዘቢያ እንዲሰጣቸው መብት አላቸው ።

፫. የተያዙ ሰዎች በአርባ ስምንት ሰዓታት ውስጥ ፍርድ ቤት የመቅረብ መብት አላቸው ። ይህም ጊዜ ሰዎቹ ከተያዙበት ቦታ ወደ ፍርድ ቤት ለመምጣት አግባብ ባለው ግምት የሚጠይቀውን ጊዜ አይጨምርም ። ወዲያውኑ ፍርድ ቤት እንደቀረቡ በተጠረጠሩበት ወንጀል ለመታሰር የሚያበቃ ምክንያት ያለ መሆኑ ተለይቶ እንዲገለጽላቸው መብት አላቸው።

፬. የያዛቸው የፖሊስ መኮንን ወይም የሕግ አስከባሪ በጊዜው ገደብ ፍርድ ቤት በማቅረብ የተያዙበትን ምክንያት ካላስረዳ፣ ፍርድ ቤቱ የአካል ነፃነታቸውን እንዲያስከብርላቸው የመጠየቅ ሊጣስ የማይችል መብት አላቸው ። ሆኖም ፍትሕ እንዳይጓደል ሁኔታው የሚጠይቅ ከሆነ ፍርድ ቤቱ የተያዘው ሰው በጥበቃ ስር እንዲቆይ ለማዘዝ ወይም ምርመራ ለማካሄድ ተጨማሪ ጊዜ ሊጠየቅ አስፈላጊ በሆነ መጠን ብቻ ሊፈቅድ ይችላል ። የሚያስፈልገውን ተጨማሪ የምርመራ ጊዜ ፍርድ ቤቱ ሲወስን ኃላፊ የሆኑት የሕግ አስከባሪ ባለሥልጣኖች ምርመራውን አጣርተው የተያዘው ሰው በተቻለ ፍጥነት ፍርድ ቤት እንዲቀርብ ያለውን መብት የሚያስከብር መሆን አለበት ።

Article 18
Prohibition against Inhuman Treatment

1. Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.
2. No one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited.
3. No one shall be required to perform forced or compulsory labour.
4. For the purpose of sub-Article 3 of this Article the phrase "forced or compulsory labour" shall not include:
   (a) Any work or service normally required of a person who is under detention in consequence of a lawful order, or of a person during conditional release from such detention;
   (b) In the case of conscientious objectors, any service exacted in *lieu* of compulsory military service;
   (c) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
   (d) Any economic and social development activity voluntarily performed by a community within its locality.

Article 19
Right of Persons Arrested

1. Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them.
2. Persons arrested have the right to remain silent. Upon arrest, they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court.
3. Persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from the place of arrest to the court. On appearing before a court, they have the right to be given prompt and specific explanaltion of the reasons for their arrest due to the alleged crime committed.
4. All persons have an inalienable right to petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the prescribed time and to provide reasons for their arrest. Where the interest of justice requires, the court may order the arrested person to remain in custody or, when requested, remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecing the arrested person's right to a speedy trial.

፫· የተያዙ ሰዎች በራሳቸው ላይ በማስረጃነት ሊቀርብ የሚችል የእምነት ቃል እንዲሰጡ ወይም ማናቸውንም ማስረጃ እንዲ ያምኑ አይገደዱም ። በማስገደድ የተገኘ ማስረጃ ተቀባይነት አይኖረውም ።

፮· የተያዙ ሰዎች በዋስ የመፈታት መብት አላቸው ። ሆኖም በሕግ በተደነገጉ ልዩ ሁኔታዎች ፍርድ ቤት ዋስትና ላለመቀበል ወይም በገደብ መፍታትን ጨምሮ በቂ የሆነ የዋስትና ማረጋገጫ እንዲቀርብ ለማዘዝ ይችላል ።

አንቀጽ ፳
የተከሰሱ ሰዎች መብት

፩· የተከሰሱ ሰዎች ክስ ከቀረበባቸው በኋላ ተገቢ በሆነ አጭር ጊዜ ውስጥ በመደበኛ ፍርድ ቤት ለሕዝብ ግልጽ በሆነ ችሎት የመሰማት መብት አላቸው ። ሆኖም የተከራካሪዎቹን የግል ሕይወት ፣ የሕዝብን የሞራል ሁኔታና የሀገሪቱን ደህንነት ለመጠበቅ ሲባል ብቻ ክርክሩ በዝግ ችሎት ሊሰማ ይችላል ።

፪· ክሱ በቂ በሆነ ዝርዝር እንዲነገራቸው እና ክሱን በጽሑፍ የማግኘት መብት አላቸው ።

፫· በፍርድ ሂደት ባሉበት ጊዜ በተከሰሱበት ወንጀል እንደ ጥፋተኛ ያለመቆጠር ፣ በምስክርነት እንዲቀርቡም ያለመገደድ መብት አላቸው ።

፬· የቀረበባቸውን ማናቸውንም ማስረጃ የመመልከት ፣ የቀረቡባቸውን ምስክሮች የመጠየቅ ፣ ለመከላከል የሚያስችላቸውን ማስረጃ የማቅረብ ወይም የማስቀረብ እንዲሁም ምስክሮቻቸው ቀርበው እንዲሰሙላቸው የመጠየቅ መብት አላቸው ።

፭· በመረጡት የሕግ ጠበቃ የመወከል ወይም ጠበቃ ለማቆም አቅም በማጣታቸው ፍትሕ ሊጓደል የሚችልበት ሁኔታ ሲያጋጥም ከመንግሥት ጠበቃ የማግኘት መብት አላቸው ።

፮· ክርክሩ በሚታይበት ፍርድ ቤት በተሰጠባቸው ትእዛዝ ወይም ፍርድ ላይ ሥልጣን ላለው ፍርድ ቤት ይግባኝ የማቅረብ መብት አላቸው ።

፯· የፍርዱ ሂደት በማይገባቸው ቋንቋ በሚካሄድበት ሁኔታ በመንግሥት ወጪ ክርክሩ እንዲተረጎምላቸው የመጠየቅ መብት አላቸው ።

አንቀጽ ፳፩
በጥበቃ ስር ያሉና በፍርድ የታሰሩ ሰዎች መብት

፩· በጥበቃ ስር ያሉና በፍርድ የታሰሩ ሰዎች ሰብዓዊ ክብራቸውን በሚጠብቁ ሁኔታዎች የመያዝ መብት አላቸው ።

፪· ከትዳር ጓደኞቻቸው ፣ ከቅርብ ዘመዶቻቸው ፣ ከጓደኞቻቸው ፣ ከሃይማኖት አማካሪዎቻቸው ፣ ከሐኪሞቻቸው እና ከሕግ አማካሪዎቻቸው ጋር ለመገናኘትና እንዲጎበኟቸውም ዕድል የማግኘት መብት አላቸው ።

አንቀጽ ፳፪
የወንጀል ሕግ ወደኋላ ተመልሶ የማይሠራ ስለ መሆኑ

፩· ማንኛውም ሰው የወንጀል ክስ ሲቀርብበት የተከሰሰበት ድርጊት በተፈጸመበት ጊዜ ድርጊቱን መፈጸሙ ወይም አለመፈጸሙ ወንጀል መሆኑ በሕግ የተደነገገ ካልሆነ በስተቀር ሊቀጣ አይችልም ። እንዲሁም ወንጀሉን በፈጸመበት ጊዜ ለወንጀሉ ተፈጻሚ ከነበረው የቅጣት ጣሪያ በላይ የከበደ ቅጣት በማንኛውም ሰው ላይ አይወሰንም ።

5. Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.

6. Persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.

Article 20
Rights of Persons Accused

1. Accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged. The court may hear cases in a closed session only with a view to protecting the right to privacy of the parties concerned, public morals and national security.

2. Accused persons have the right to be informed with sufficient particulars of the charge brought against them and to be given the charge in writing.

3. During proceedings accused persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves.

4. Accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defence, and to obtain the attendance of and examination of witnesses on their behalf before the court.

5. Accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.

6. All persons have the right of appeal to the competent court against an order or a judgement of the court which first heard the case.

7. They have the right to request for the assistance of an interpreter at state expense where the court proceedings are conducted in a language they do not understand.

Article 21
The Rights of Persons Held in Custody and Convicted Prisoners

1. All persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity.

2. All persons shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councillors, medical doctors and their legal counsel.

Article 22
Non-retroactivity of Criminal Law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier penalty be imposed on any person than the one that was applicable at the time when the criminal offence was committed.

፪· የዚህ አንቀጽ ንዑስ አንቀጽ ፩ ቢኖርም ፡ ድርጊቱ ከተፈጸመ በኋላ የወጣ ሕግ ለተከሳሹ ወይም ለተቀጣው ሰው ጠቃሚ ሆኖ ከተገኘ ከድርጊቱ በኋላ የወጣው ሕግ ተፈጻሚነት ይኖረዋል ።

አንቀጽ ፳፫
በአንድ ወንጀል ድጋሚ ቅጣት ስለመከልከሉ

ማንኛውም ሰው በወንጀል ሕግና ሥነ ሥርዓት መሰረት ተከሶ የመጨረሻ በሆነ ውሳኔ ጥፋተኛነቱ በተረጋገጠበት ወይም በነፃ በተለቀቀበት ወንጀል እንደገና አይከሰስም ወይም አይቀጣም ።

አንቀጽ ፳፬
የክብርና የመልካም ስም መብት

፩· ማንኛውም ሰው ሰብዓዊ ክብሩና መልካም ስሙ የመከበር መብት አለው ።

፪· ማንኛውም ሰው የራሱን ስብዕና ከሌሎች ዜጎች መብቶች ጋር በተጣጣመ ሁኔታ በነፃ የማሳደግ መብት አለው ።

፫· ማንኛውም ሰው በማንኛውም ስፍራ በሰብዓዊነቱ እውቅና የማግኘት መብት አለው ።

አንቀጽ ፳፭
የእኩልነት መብት

ሁሉም ሰዎች በሕግ ፊት እኩል ናቸው ፡ በመካከላቸውም ማንኛውም ዓይነት ልዩነት ሳይደረግ በሕግ እኩል ጥበቃ ይደረግላቸዋል ። በዚህ ረገድ በዘር ፡ በብሔር ፡ ብሔረሰብ ፡ በቀለም ፡ በፆታ፡ በቋንቋ ፡ በሃይማኖት ፡ በፖለቲካ ፡ በማኅበራዊ አመጣጥ ፡ በሀብት ፡ በትውልድ ወይም በሌላ አቋም ምክንያት ልዩነት ሳይደረግ ሰዎች ሁሉ እኩልና ተጨባጭ የሕግ ዋስትና የማግኘት መብት አላቸው ።

አንቀጽ ፳፮
የግል ሕይወት የመከበርና የመጠበቅ መብት

፩· ማንኛውም ሰው የግል ሕይወቱ ፡ ግላዊነቱ ፡ የመከበር መብት አለው ። ይህ መብት መኖሪያ ቤቱ ፡ ሰውነቱና ንብረቱ ከመመርመር እንዲሁም በግል ይዞታው ያለ ንብረት ከመያዝ የመጠበቅ መብትን ያካትታል ።

፪· ማንኛውም ሰው በግል የሚጽፋቸውና የሚጻጻፋቸው ፡ በፖስታ የሚልካቸው ደብዳቤዎች ፡ እንዲሁም በቴሌፎን ፡ በቴሌኮሙኒኬሽንና በኤሌክትሮኒክ መሣሪያዎች የሚያደርጋቸው ግንኙነቶች አይደፈሩም ።

፫· የመንግሥት ባለሥልጣኖች እነዚህን መብቶች የማክበርና የማስከበር ግዴታ አለባቸው ። አስገዳጅ ሁኔታዎች ሲፈጠሩና ብሔራዊ ደህንነትን ፡ የሕዝብን ሰላም ፡ ወንጀልን በመከላከል፡ ጤናንና የሕዝብን የሞራል ሁኔታ በመጠበቅ ወይም የሌሎችን መብትና ነፃነት በማስከበር ዓላማዎች ላይ በተመሰረቱ ዝርዝር ሕጎች መሰረት ካልሆነ በስተቀር የእነዚህ መብቶች አጠቃቀም ሊገደብ አይችልም ።

አንቀጽ ፳፯
የሃይማኖት ፡ የእምነትና የአመለካከት ነፃነት

፩· ማንኛውም ሰው የማሰብ ፡ የሕሊና እና የሃይማኖት ነፃነት አለው። ይህ መብት ማንኛውም ሰው የመረጠውን ሃይማኖት ወይም እምነት የመያዝ ወይም የመቀበል ፡ ሃይማኖቱንና

2. Notwithstanding the provisions of sub-Article 1 of this Article, a law promulgated subsequent to the commission of the offence shall apply if it is advantageous to the accused or convicted person.

Article 23

Prohibition of Double Jeopardy

No person shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the criminal law and procedure.

Article 24

Right to Honour and Reputation

1. Everyone has the right to respect for his human dignity, reputation and honour.
2. Everyone has the right to the free development of his personality in a manner compatible with the rights of other citizens.
3. Everyone has the right to recognition everywhere as a person.

Article 25

Right to Equality

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

Article 26

Right to Privacy

1. Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession.
2. Everyone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunications and electronic devices.
3. Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purposes shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of helath, public morality or the rights and freedoms of others.

Article 27

Freedom of Religion, Belief and Opinion

1. Everyone has the right to freedom of thought, conscience and religion. This right shall include the freedom to hold or to adopt a religion or belief of his choice, and the

እምነቱን ለብቻ ወይም ከሌሎች ጋር በመሆን በይፋ ወይም በግል የማምለክ ፣ የመከተል ፣ የመተግበር ፣ የማስተማር ወይም የመግለጽ መብትን ያካትታል ።

፪. በአንቀጽ ፺ ንዑስ አንቀጽ ፪ የተጠቀሰው እንደተጠበቀ ሆኖ የሃይማኖት ተከታዮች ሃይማኖታቸውን ለማስፋፋትና ለማደራጀት የሚያስችሏቸው የሃይማኖት ትምህርትና የአስተዳደር ተቋማት ማቋቋም ይችላሉ ።

፫. ማንኛውንም ሰው የሚፈልገውን እምነት ለመያዝ ያለውን ነፃነት በኃይል ወይም በሌላ ሁኔታ በማስገደድ መገደብ ወይም መከልከል አይቻልም ።

፬. ወላጆችና ሕጋዊ ሞግዚቶች በእምነታቸው መሰረት የሃይማኖታቸውንና የመልካም ሥነ ምግባር ትምህርት በመስጠት ልጆቻቸውን የማሳደግ መብት አላቸው ።

፭. ሃይማኖትንና እምነትን የመግለጽ መብት ሊገደብ የሚችለው የሕዝብን ደህንነት ፣ ሰላምን ፣ ጤናን ፣ ትምህርትን ፣ የሕዝብን የሞራል ሁኔታ ፣ የሌሎች ዜጎችን መሰረታዊ መብቶች ፣ ነፃነቶች እና መንግሥት ከሃይማኖት ነፃ መሆኑን ለማረጋገጥ በሚወጡ ሕጎች ይሆናል ።

አንቀጽ ፳፰
በሰብዕና ላይ ስለሚፈጸሙ ወንጀሎች

፩. ኢትዮጵያ ባጸደቀቻቸው ዓለም አቀፍ ስምምነቶች እና በሌሎች የኢትዮጵያ ሕጎች በሰው ልጅ ላይ የተፈጸሙ ወንጀሎች ተብለው የተወሰኑትን ወንጀሎች ፣ የሰው ዘር የማጥፋት ፣ ያለፍርድ የሞት ቅጣት እርምጃ የመውሰድ ፣ በአስገዳጅ ሰውን የመሰወር ፣ ወይም ኢሰብዓዊ የድብደባ ድርጊቶችን በፈጸሙ ሰዎች ላይ ክስ ማቅረብ በይርጋ አይታገድም ። በሕግ አውጪው ክፍልም ሆነ በማንኛውም የመንግሥት አካል ውሳኔዎች በምሕረት ወይም በይቅርታ አይታለፉም ።

፪. ከዚህ በላይ የተደነገገው እንደተጠበቀ ሆኖ ፣ በዚህ አንቀጽ ንዑስ አንቀጽ ፩ የተጠቀሱትን ወንጀሎች ፈጽመው የሞት ቅጣት ለተፈረደባቸው ሰዎች ርዕሰ ብሔሩ ቅጣቱን ወደ ዕድሜ ልክ ጽኑ እስራት ሊያሻሽለው ይችላል ።

ክፍል ሁለት
ዴሞክራሲያዊ መብቶች

አንቀጽ ፳፱
የአመለካከት እና ሀሳብን በነፃ የመያዝና የመግለጽ መብት

፩. ማንኛውም ሰው ያለማንም ጣልቃ ገብነት የመሰለውን አመለካከት ለመያዝ ይችላል ።

፪. ማንኛውም ሰው ያለማንም ጣልቃ ገብነት ሀሳቡን የመግለጽ ነፃነት አለው ። ይህ ነፃነት በሀገር ውስጥም ሆነ ከሀገር ውጭ ወሰን ሳይደረግበት በቃልም ሆነ በጽሑፍ ወይም በሕትመት ፣ በሥነ ጥበብ መልክ ወይም በመረጠው በማንኛውም የማሰራጫ ዘዴ ፣ ማንኛውንም ዓይነት መረጃና ሀሳብ የመሰብሰብ ፣ የመቀበልና የማሰራጨት ነፃነቶችን ያካትታል ።

፫. የፕሬስና የሌሎች መገናኛ ብዙሃን ፣ እንዲሁም የሥነ ጥበብ ፈጠራ ነፃነት ተረጋግጧል ። የፕሬስ ነፃነት በተለይ የሚከተሉትን መብቶች ያጠቃልላል ፦

ሀ) የቅድሚያ ምርመራ በማንኛውም መልኩ የተከለከለ መሆኑን ፤

freedom, either individually or in community with others, and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. Without prejudice to the provisions of sub-Article 2 of Article 90, believers may establish institutions of religious education and administration in order to propagate and organize their religion.

3. No one shall be subject to coercion or other means which would restrict or prevent his freedom to hold a belief of his choice.

4. Parents and legal guardians have the right to bring up their children ensuring their religious and moral education in conformity with their own convictions.

5. Freedom to express or manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, peace, health, education, public morality or the fundamental rights and freedoms of others, and to ensure the independence of the state from religion.

Article 28
Crimes Against Humanity

1. Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ.

2. In the case of persons convicted of any crime stated in sub-Article 1 of this Article and sentenced with the death penalty, the Head of State may, without prejudice to the provisions hereinabove, commute the punishment to life imprisonment.

PART TWO
DEMOCRATIC RIGHTS

Article 29
Right of Thought, Opinion and Expression

1. Everyone has the right to hold opinions without interference.

2. Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.

3. Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:

(a) Prohibition of any form of censorship.

ለ) የሕዝብን ጥቅም የሚመለከት መረጃ የማግኘት ዕድልን ።

፬· ለዴሞክራሲያዊ ሥርዓት አስፈላጊ የሆኑ መረጃዎች ፡ ሀሳቦችና አመለካከቶች በነፃ መንሸራሸራቸውን ለማረጋገጥ ሲባል ፕሬስ በተቋምነቱ የአሠራር ነፃነትና የተለያዩ አስተያየቶች የማስተናገድ ችሎታ እንዲኖረው የሕግ ጥበቃ ይደረግለታል ።

፭· በመንግሥት ገንዘብ የሚካሄድ ወይም በመንግሥት ቁጥጥር ሥር ያለ መገናኛ ብዙሃን የተለያዩ አስተያየቶችን ለማስተናገድ በሚያስችለው ሁኔታ እንዲመራ ይደረጋል ።

፮· እነዚህ መብቶች ገደብ ሊጣልባቸው የሚችለው የሀሳብና መረጃ የማግኘት ነፃነት በአስተሳሰባዊ ይዘቱና ሊያስከትል በሚችለው አስተሳሰባዊ ውጤት ሊገታ አይገባውም በሚል መርህ ላይ ተመስርተው በሚወጡ ሕጎች ብቻ ይሆናል ። የወጣቶችን ደህንነት ፡ የሰውን ክብርና መልካም ስም ለመጠበቅ ሲባል ሕጋዊ ገደቦች በነዚህ መብቶች ላይ ሊደነገጉ ይችላሉ ። የጦርነት ቅስቀሳዎች እንዲሁም ሰብዓዊ ክብርን የሚነኩ የአደባባይ መግለጫዎች በሕግ የሚከለከሉ ይሆናሉ።

፯· ማንኛውም ዜጋ ከላይ በተጠቀሱት መብቶች አጠቃቀም ረገድ የሚጣሉ ሕጋዊ ገደቦችን ጥሶ ከተገኘ በሕግ ተጠያቂ ሊሆን ይችላል ።

አንቀጽ ፴
የመሰብሰብ ፡ ሰላማዊ ሰልፍ የማድረግ ነፃነትና አቤቱታ የማቅረብ መብት

፩· ማንኛውም ሰው ከሌሎች ጋር በመሆን መሣሪያ ሳይዝ በሰላም የመሰብሰብ ፡ ሰላማዊ ሰልፍ የማድረግ ነፃነትና ፡ አቤቱታ የማቅረብ መብት አለው ። ከቤት ውጭ የሚደረጉ ስብሰባዎችና ሰላማዊ ሰልፎች በሚንቀሳቀሱባቸው ቦታዎች በሕዝብ እንቅስቃሴ ላይ ችግር እንዳይፈጥሩ ለማድረግ ወይም በመካሔድ ላይ ያለ ስብሰባ ወይም ሰላማዊ ሰልፍ ሰላምን ፡ ዴሞክራሲያዊ መብቶችንና የሕዝብን የሞራል ሁኔታ እንዳይጥሱ ለማስጠበቅ አግባብ ያላቸው ሥርዓቶች ሊደነገጉ ይችላሉ ።

፪· ይህ መብት የወጣቶችን ደህንነት ፡ የሰውን ክብርና መልካም ስምን ለመጠበቅ ፡ የጦርነት ቅስቀሳዎች እንዲሁም ሰብዓዊ ክብርን የሚነኩ የአደባባይ መግለጫዎችን ለመከላከል ሲባል በሚወጡ ሕጎች መሰረት ተጠያቂ ከመሆን አያድንም።

አንቀጽ ፴፩
የመደራጀት መብት

ማንኛውም ሰው ለማንኛውም ዓላማ በማኅበር የመደራጀት መብት አለው ። ሆኖም አግባብ ያለውን ሕግ በመጣስ ወይም ሕገ መንግሥታዊ ሥርዓቱን በሕገ ወጥ መንገድ ለማፍረስ የተመሰረቱ ወይም የተጠቀሱትን ተግባራት የሚያራምዱ ድርጅቶች የተከለከሉ ይሆናሉ ።

አንቀጽ ፴፪
የመዘዋወር ነፃነት

፩· ማንኛውም ኢትዮጵያዊ ወይም በሕጋዊ መንገድ ሀገሪቱ ውስጥ የሚገኝ የውጭ ዜጋ በመረጠው የሀገሪቱ አካባቢ የመዘዋወርና የመኖሪያ ቦታ የመመስረት ፡ እንዲሁም በፈለገው ጊዜ ከሀገር የመውጣት ነፃነት አለው ።

፪· ማንኛውም ኢትዮጵያዊ ወደ ሀገሩ የመመለስ መብት አለው ።

(b) Access to information of public interest.

4. In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.

5. Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.

6. These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honour and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.

7. Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.

Article 30

The Right of Assembly, Demonstration and Petition

1. Everyone has the right to assemble and to demonstrate together with others peaceably and unarmed, and to petition. Appropriate regulations may be made in the interest of public convenience relating to the location of open-air meetings and the route of movement of demonstrators or, for the protection of democratic rights, public morality and peace during such a meeting or demonstration.

2. This right does not exempt from liability under laws enacted to protect the well-being of the youth or the honour and reputation of individulas, and laws prohibiting any propaganda for war and any public expression of opinions intended to injure human dignity.

Article 31

Freedom of Association

Every person has the right to freedom of association for any cause or purpose. Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.

Article 32

Freedom of Movement

1. Any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to.

2. Any Ethiopian national has the right to return to his country.

አንቀጽ ፴፫
የዜግነት መብቶች

፩· ማንኛውም ኢትዮጵያዊ/ኢትዮጵያዊት ከፈቃዱ/ከፈቃዷ ውጭ ኢትዮጵያዊ ዜግነቱን/ዜግነትዋን ሊገፈፍ ወይም ልትገፈፍ አይችልም/አትችልም ። ኢትዮጵያዊ/ኢትዮጵያዊት ዜጋ ከሌላ ሀገር ዜጋ ጋር የሚፈጽመው/የምትፈጽመው ጋብቻ ኢትዮጵያዊ ዜግነቱን/ዜግነትዋን አያስቀርም ።

፪· ማንኛውም ኢትዮጵያዊ ዜጋ የኢትዮጵያ ዜግነት በሕግ የሚያስገኘውን መብት ፣ ጥበቃና ጥቅም የማግኘት መብት አለው ።

፫· ማንኛውም ዜጋ ኢትዮጵያዊ ዜግነቱን የመለወጥ መብት አለው።

፬· ኢትዮጵያ ከአጸደቀቻቸው ዓለም አቀፍ ስምምነቶች ጋር በማይቃረን መንገድ በሚወጣ ሕግ እና በሚደነገግ ሥርዓት መሰረት የኢትዮጵያ ዜግነት ለውጭ ሀገር ሰዎች ሊሰጥ ይችላል።

አንቀጽ ፴፬
የጋብቻ ፣ የግልና የቤተሰብ መብቶች

፩· በሕግ ከተወሰነው የጋብቻ ዕድሜ የደረሱ ወንዶችና ሴቶች በዘር ፣ በብሔር ፣ በብሔረሰብ ወይም በሃይማኖት ልዩነት ሳይደረግባቸው የማግባትና ቤተሰብ የመመስረት መብት አላቸው ። በጋብቻ አፈጻጸም ፣ በጋብቻው ዘመንና በፍቺ ጊዜ እኩል መብት አላቸው ። በፍቺም ጊዜ የልጆችን መብትና ጥቅም እንዲከበር የሚያደርጉ ድንጋጌዎች ይደነገጋሉ ።

፪· ጋብቻ በተጋቢዎች ነፃና ሙሉ ፈቃድ ላይ ብቻ ይመሰረታል።

፫· ቤተሰብ የኅብረተሰብ የተፈጥሮ መሰረታዊ መነሻ ነው ። ከኅብረተሰብና ከመንግሥት ጥበቃ የማግኘት መብት አለው።

፬· በሕግ በተለይ በሚዘረዘረው መሰረት በሃይማኖት ፣ በባሕል የሕግ ሥርዓቶች ላይ ተመስርተው ለሚፈጸሙ ጋብቻዎች እውቅና የሚሰጥ ሕግ ሊወጣ ይችላል ።

፭· ይህ ሕገ መንግሥት የግል እና የቤተሰብ ሕግን በተመለከተ በተከራካሪዎች ፈቃድ በሃይማኖቶች ወይም በባሕሎች ሕጎች መሰረት መዳኘትን አይከለክልም ። ዝርዝሩ በሕግ ይወሰናል።

አንቀጽ ፴፭
የሴቶች መብት

፩· ሴቶች ይህ ሕገ መንግሥት በአረጋገጣቸው መብቶችና ጥበቃዎች በመጠቀም ረገድ ከወንዶች ጋር እኩል መብት አላቸው ።

፪· ሴቶች በዚህ ሕገ መንግሥት በተደነገገው መሰረት በጋብቻ ከወንዶች ጋር እኩል መብት አላቸው ።

፫· ሴቶች በበታችነትና በልዩነት በመታየታቸው የደረሰባቸውን የታሪክ ቅርስ ከግምት ውስጥ በማስገባት ይህ ቅርስ እንዲታረ ምላቸው በተጨማሪ የድጋፍ እርምጃዎች ተጠቃሚ የመሆን መብት አላቸው ። በዚህ በኩል የሚወሰዱት እርምጃዎች ዓላማ በፖለቲካዊ ፣ በማኅበራዊና በኢኮኖሚያዊ መስኮች እንዲሁም በመንግሥት እና በግል ተቋሞች ውስጥ ሴቶች ከወንዶች ጋር በእኩልነት ተወዳዳሪና ተሳታፊ እንዲሆኑ ለማድረግ እንዲቻል ልዩ ትኩረት ለመስጠት ነው ።

፬· ሴቶች ከጎጂ ባሕል ተጽዕኖ የመላቀቅ መብታቸውን መን ግሥት ማስከበር አለበት ። ሴቶችን የሚጨቁኑ ወይም በአካላቸው ወይም በአዕምሮአቸው ላይ ጉዳት የሚያስከትሉ ሕጎች ፣ ወጎችና ልማዶች የተከለከሉ ናቸው ።

Article 33
Rights of Nationality

1. No Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will. Marriage of an Ethiopian national of either sex to a foreign national shall not annul his or her Ethiopian nationality.
2. Every Ethiopian national has the right to the enjoyment of all rights, protection and benefits derived from Ethiopian nationality as prescribed by law.
3. Any national has the right to change his Ethiopian nationality.
4. Ethiopian nationality may be conferred upon foreigners in accordance with law enacted and procedures established consistent with international agreements ratified by Ethiopia.

Article 34
Marital, Personal and Family Rights

1. Men and women, without any distinction as to race, nation, nationality or religion, who have attained marrigeable age as defined by law, have the right to marry and found a family. They have equal rights while entering into, during marriage and at the time of divorce. Laws shall be enacted to ensure the protection of rights and interests of children at the time of divorce.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental unit of society and is entitled to protection by society and the State.
4. In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted.
5. This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.

Article 35
Rights of Women

1. Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.
2. Women have equal rights with men in marriage as prescribed by this Constitution.
3. The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.
4. The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.

፭· ሀ) ሴቶች የወሊድ ፈቃድ ከሙሉ የደመወዝ ክፍያ ጋር የማግኘት መብት አላቸው ። የወሊድ ፈቃድ ርዝመት ሴቲ የምትሠራውን ሥራ ሁኔታ ፣ የሴቲን ጤንነት ፣ የሕፃኑንና የቤተሰቡን ደህንነት ከግምት ውስጥ በማስ ገባት በሕግ ይወሰናል ።

ለ) የወሊድ ፈቃድ በሕግ በሚወሰነው መሰረት ከሙሉ የደመወዝ ክፍያ ጋር የሚሰጥ የእርግዝና ፈቃድን ሊጨምር ይችላል ።

፮· ሴቶች በብሔራዊ የልማት ፖሊሲዎች ዕቅድና በፕሮጀክቶች ዝግጅትና አፈጻጸም ፣ በተለይ የሴቶችን ጥቅም በሚነኩ ፕሮጀክቶች ሀሳባቸውን በተሟላ ሁኔታ እንዲሰጡ የመጠየቅ መብት አላቸው ።

፯· ሴቶች ንብረት የማፍራት ፣ የማስተዳደር ፣ የመቆጣጠር ፣ የመጠቀምና የማስተላለፍ መብት አላቸው ። በተለይ መሬትን በመጠቀም ፣ በማስተላለፍ ፣ በማስተዳደርና በመቆጣጠር ረገድ ከወንዶች ጋር እኩል መብት አላቸው ። እንዲሁም ውርስን በሚመለከት በእኩልነት የመታየት መብት አላቸው ።

፰· ሴቶች የቅጥር ፣ የሥራ እድገት ፣ የእኩል ክፍያና ጡረታን የማስተላለፍ እኩል መብት አላቸው ።

፱· ሴቶች በእርግዝናና በወሊድ ምክንያት የሚደርስባቸውን ጉዳት ለመከላከልና ጤንነታቸውን ለማስጠበቅ የሚያስችል የቤተሰብ ምጣኔ ትምህርት ፣ መረጃ እና አቅም የማግኘት መብት አላቸው ።

አንቀጽ ፴፮
የሕፃናት መብት

፩· ማንኛውም ሕፃን የሚከተሉት መብቶች አሉት ፤

ሀ) በሕይወት የመኖር ፣

ለ) ስምና ዜግነት የማግኘት ፣

ሐ) ወላጆቹን ወይም በሕግ የማሳደግ መብት ያላቸውን ሰዎች የማወቅና የእነሱንም እንክብካቤ የማግኘት ፣

መ) ጉልበቱን ከሚበዘብዙ ልማዶች የመጠበቅ ፣ በትም ህርቱ፣ በጤናውና በደህንነቱ ላይ ጉዳት የሚያደርሱ ሥራዎች እንዲሠራ ያለመገደድ ወይም ከመሥራት የመጠበቅ ፣

ሠ) በትምህርት ቤቶች ወይም በሕፃናት ማሳደጊያ ተቋ ሞች ውስጥ በአካሉ ከሚፈጸም ወይም ከጭካኔና ኢሰብዓዊ ከሆነ ቅጣት ነፃ የመሆን ።

፪· ሕፃናትን የሚመለከቱ እርምጃዎች በሚወሰዱበት ጊዜ በመንግ ሥታዊ ወይም በግል የበጎ አድራጎት ተቋሞች ፣ በፍርድ ቤቶች ፣ በአስተዳደር ባለሥልጣኖች ወይም በሕግ አውጪ አካላት የሕፃናት ደህንነት በቀዳምትነት መታሰብ አለበት ።

፫· ወጣት አጥፊዎች ፣ በማረሚያ ወይም በመቋቋሚያ ተቋሞች የሚገኙ ፣ በመንግሥት እርዳታ የሚያድጉ ወጣቶች ፣ በመን ግሥት ወይም በግል አኅለ ማውታን ተቋሞች ወስጥ የሚገኙ ወጣቶች ከአዋቂዎች ተለይተው መያዝ አለባቸው ።

፬· ከጋብቻ ውጭ የተወለዱ ሕፃናት በጋብቻ ከተወለዱ ሕፃናት ጋር እኩል መብት አላቸው ።

፭· መንግሥት ለአኅለ ማውታን ልዩ ጥበቃ ያደርግላቸዋል ። በጉዲፈቻ የሚያድጉበትን ሥርዓት የሚያመቻቹና የሚያ ስፋፉ እንዲሁም ደህንነታቸውንና ትምህርታቸውን የሚያ ራምዱ ተቋሞች እንዲመሰረቱ ያበረታታል ።

5. (a) Women have the right to maternity leave with full pay. The duration of maternity leave shall be determined by law taking into account the nature of the work, the health of the mother and the well-being of the child and family.

(b) Maternity leave may, in accordance with the provisions of law, include prenatal leave with full pay.

6. Women have the right to full consultation in the formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women.

7. 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.

8. Women shall have a right to equality in employment, promotion, pay, and the transfer of pension entitlements.

9. To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity.

Article 36
Rights of Children

1. Every child has the right:

(a) To life;

(b) To a name and nationality;

(c) To know and be cared for by his or her parents or legal guardians;

(d) Not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being;

(e) To be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.

2. In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child.

3. Juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who become wards of the State or who are placed in public or private orphanages, shall be kept separately from adults.

4. Children born out of wedlock shall have the same rights as children born of wedlock.

5. The State shall accord special protection to orphans and shall encourage the establishment of institutions which ensure and promote their adoption and advance their welfare, and education.

አንቀጽ ፴፯
ፍትሕ የማግኘት መብት

፩· ማንኛውም ሰው በፍርድ ሊወሰን የሚገባውን ጉዳይ ለፍርድ ቤት ወይም ለሌላ በሕግ የዳኝነት ሥልጣን ለተሰጠው አካል የማቅረብና ውሳኔ ወይም ፍርድ የማግኘት መብት አለው ።

፪· በዚህ አንቀጽ ንዑስ አንቀጽ ፩ የተመለከተውን ውሳኔ ወይም ፍርድ ፤

ሀ) ማንኛውም ማኅበር የአባላቱን የጋራ ወይም የግል ጥቅም በመወከል ፣

ለ) ማንኛውንም ቡድን ወይም ተመሳሳይ ጥቅም ያላቸውን ሰዎች የሚወክል ግለሰብ ወይም የቡድን አባል

የመጠየቅና የማግኘት መብት አለው ።

አንቀጽ ፴፰
የመምረጥና የመመረጥ መብት

፩· ማንኛውም ኢትዮጵያዊ ዜጋ በቀለም ፣ በዘር ፣ በብሔር ፣ በብሔረሰብ ፣ በፆታ ፣ በቋንቋ ፣ በሃይማኖት ፣ በፖለቲካ ወይም በሌላ አመለካከት ወይም በሌላ አቋም ላይ የተመሰረተ ልዩነት ሳይደረግበት የሚከተሉት መብቶች አሉት ፤

ሀ) በቀጥታ እና በነፃነት በመረጣቸው ተወካዮች አማካኝነት በሕዝብ ጉዳይ አስተዳደር የመሳተፍ ፣

ለ) ዕድሜው ፲፰ ዓመት ሲሞላ በሕግ መሰረት የመምረጥ፣

ሐ) በማናቸውም የመንግሥት ደረጃ በየጊዜው በሚካሄድ ምርጫ የመምረጥና የመመረጥ ። ምርጫው ሁሉ አቀፍ፣ በሁሉም እኩልነት ላይ የተመሰረተና በሚስጥር ድምፅ አሰጣጥ መራጩ ፈቃዱን በነፃነት የሚገልጽበት ዋስትና የሚሰጥ መሆን አለበት ።

፪· በፖለቲካ ድርጅቶች ፣ በሠራተኞች ፣ በንግድ ፣ በአሠሪዎችና በሙያ ማኅበራት ለተሳትፎ ድርጅቱ የሚጠይቀውን ጠቅላላና ልዩ የአባልነት መስፈርት የሚያሟላ ማንኛውም ሰው በፍላጎቱ አባል የመሆን መብቱ የተከበረ መሆን አለበት።

፫· በዚህ አንቀጽ ንዑስ አንቀጽ ፪ በተመለከቱት ድርጅቶች ውስጥ ለኃላፊነት ቦታዎች የሚካሄዱ ምርጫዎች ነፃና ዴሞክራሲያዊ በሆነ መንገድ ይፈጸማሉ ።

፬· የዚህ አንቀጽ ንዑስ አንቀጽ ፪ እና ፫ ድንጋጌዎች የሕዝብን ጥቅም ሰፋ ባለ ሁኔታ የሚነኩ እስከሆነ ድረስ በሕዝባዊ ድርጅቶች ላይ ተፈጻሚ ይሆናሉ ።

አንቀጽ ፴፱
የብሔሮች ፣ ብሔረሰቦች ፣ ሕዝቦች መብት

፩· ማንኛውም የኢትዮጵያ ብሔር ፣ ብሔረሰብ ፣ ሕዝብ የራሱን ዕድል በራሱ የመወሰን እስከመገንጠል ያለው መብቱ በማናቸውም መልኩ ያለ ገደብ የተጠበቀ ነው ።

፪· ማንኛውም የኢትዮጵያ ብሔር ፣ ብሔረሰብ ፣ ሕዝብ በቋንቋው የመናገር ፣ የመጻፍ ፣ ቋንቋውን የማሳደግ እና ባሕሉን የመግለጽ ፣ የማዳበርና የማስፋፋት እንዲሁም ታሪኩን የመንከባከብ መብት አለው ።

፫· ማንኛውም የኢትዮጵያ ብሔር ፣ ብሔረሰብ ፣ ሕዝብ ራሱን የማስተዳደር ሙሉ መብት አለው ። ይህ መብት ብሔሩ ፣ ብሔረሰቡ ፣ ሕዝቡ በሰፈረበት መልክዓ ምድር ራሱን የሚያስተዳድርበት መንግሥታዊ ተቋማት የማቋቋም እንዲሁም በክልልና በፌዴራል አስተዳደሮች ውስጥ ሚዛናዊ ውክልና የማግኘት መብትን ያጠቃልላል ።

Article 37
Right of Access to Justice

1. Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgement by, a court of law or any other competent body with judicial power.
2. The decision or judgement referred to under sub-Article 1 of this Article may also be sought by:
   (a) Any association representing the Collective or individual interest of its members; or
   (b) Any group or person who is a member of, or represents a group with similar interests.

Article 38
The Right to Vote and to be Elected

1. Every Ethiopian national, without any discrimination based on colour, race, nation, nationality, sex, language, religion, political or other opinion or other status, has the following rights:
   (a) To take part in the conduct of public affairs, directly and through freely chosen representatives;
   (b) On the attainment of 18 years of age, to vote in accordance with law;
   (c) To vote and to be elected at periodic elections to any office at any level of government; elections shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
2. The right of everyone to be a member of his own will in a political organization, labour union, trade organization, or employers' or professional association shall be respected if he or she meets the special and general requirements stipulated by such organization.
3. Elections to positions of responsibility within any of the organizations referred to under sub-Article 2 of this Article shall be conducted in a free and democratic manner.
4. The provisions of sub-Articles 2 and 3 of this Article shall apply to civic organizations which significantly affect the public interest.

Article 39
Rights of Nations, Nationalities, and Peoples

1. Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.
2. Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.
3. Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.

፬· የብሔር ፡ ብሔረሰቦች ፡ ሕዝቦች የራስን ዕድል በራስ የመወሰን እስከ መገንጠል መብት ከሥራ ላይ የሚውለው ፡

ሀ) የመገንጠል ጥያቄ በብሔር ፡ በብሔረሰቡ ወይም በሕዝቡ የሕግ አውጪ ምክር ቤት በሁለት ሦስተኛ የድምፅ ድጋፍ ተቀባይነት ማግኘቱ ሲረጋገጥ ፡

ለ) የፌዴራሉ መንግሥት የብሔር ፡ የብሔረሰቡ ወይም የሕዝቡ ምክር ቤት ውሳኔ በደረሰው በሦስት ዓመት ጊዜ ውስጥ ለጠያቂው ብሔር ፡ ብሔረሰብ ወይም ሕዝብ ሕዝበ ውሳኔ ሲያደራጅ ፡

ሐ) የመገንጠሉ ጥያቄ በሕዝበ ውሳኔው በአብላጫ ድምፅ ሲደገፍ ፡

መ) የፌዴራሉ መንግሥት መገንጠሉን ለመረጠው ብሔር፡ ብሔረሰብ ወይም ሕዝብ ምክር ቤት ሥልጣኑን ሲያስረክብ ፡

ሠ) በሕግ በሚወሰነው መሰረት የንብረት ክፍፍል ሲደረግ ነው።

፭· በዚህ ሕገ መንግሥት ውስጥ ‘‘ብሔር ፡ ብሔረሰብ ፡ ሕዝብ’’ ማለት ከዚህ ቀጥሎ የተገለጸውን ባህርይ የሚያሳይ ማኅበረሰብ ነው ። ሰፋ ያለ የጋራ ጠባይ የሚያንጸባርቅ ባሕል ወይም ተመሳሳይ ልምዶች ያላቸው ፡ ሊግባቡበት የሚችሉበት የጋራ ቋንቋ ያላቸው ፡ የጋራ ወይም የተዛመዱ ሕልውና አለን ብለው የሚያምኑ ፡ የሥነ ልቦና አንድነት ያላቸውና በአብዛኛው በተያያዘ መልክዓ ምድር የሚኖሩ ናቸው ።

አንቀጽ ፵
የንብረት መብት

፩· ማንኛውም የኢትዮጵያ ዜጋ የግል ንብረት ባለቤት መሆኑ/መሆኗ ይከበርለታል/ይከበርላታል ። ይህ መብት የሕዝብን ጥቅም ለመጠበቅ በሌላ ሁኔታ በሕግ እስካልተወሰነ ድረስ ንብረት የመያዝና በንብረት የመጠቀም ወይም የሌሎችን ዜጎች መብቶች እስካልተቃረነ ድረስ ንብረትን የመሸጥ ፡ የማውረስ ወይም በሌላ መንገድ የማስተላለፍ መብቶችን ያካትታል ።

፪· ለዚህ አንቀጽ ዓላማ ‘‘የግል ንብረት’’ ማለት ማንኛውም ኢትዮጵያዊ ዜጋ ወይም ሕጋዊ ሰውነት በሕግ የተሰጣቸው ኢትዮጵያዊ ማኅበራት ወይም አግባብ በአላቸው ሁኔታዎች በሕግ በተለየ በጋራ የንብረት ባለቤት እንዲሆኑ የተፈቀደላቸው ማኅበረሰቦች በጉልበታቸው ፡ በመፍጠር ችሎታቸው ወይም በካፒታላቸው ያፈሩት ተጨባጭ የሆነና የተጨባጭነት ጠባይ ሳይኖረው ዋጋ ያለው ውጤት ነው ።

፫· የገጠርም ሆነ የከተማ መሬትና የተፈጥሮ ሀብት ባለቤትነት መብት የመንግሥትና የሕዝብ ብቻ ነው ። መሬት የማይሸጥ የማይለወጥ የኢትዮጵያ ብሔሮች ፡ ብሔረሰቦችና ሕዝቦች የጋራ ንብረት ነው ።

፬· የኢትዮጵያ አርሶ አደሮች መሬት በነፃ የማግኘትና ከመሬታቸው ያለመነቀል መብታቸው የተከበረ ነው ። አፈጻጸሙን በተመለከተ ዝርዝር ሕግ ይወጣል ።

፭· የኢትዮጵያ ዘላኖች ለግጦሽም ሆነ ለእርሻ የሚጠቀሙበት መሬት በነፃ የማግኘት ፡ የመጠቀምና ከመሬታቸው ያለመፈናቀል መብት አላቸው ። ዝርዝር አፈጻጸሙ በሕግ ይወሰናል ።

፮· የመሬት ባለቤትነት የኢትዮጵያ ብሔሮች ፡ ብሔረሰቦችና ሕዝቦች መሆኑ እንደተጠበቀ ሆኖ መንግሥት ለግል ባለሀብቶች በሕግ በሚወሰን ክፍያ በመሬት የመጠቀም መብታቸውን ያስከብርላቸዋል ። ዝርዝሩ በሕግ ይወሰናል ።

4. The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:

(a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned;

(b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;

(c) When the demand for secession is supported by a majority vote in the referendum;

(d) When the Federal Government will have transferred its powers to the Council of the Nation, Nationality or People who has voted to secede; and

(e) When the division of assets is effected in a manner prescribed by law.

5. A ''Nation, Nationality or People'' for the purpsoe of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

Article 40

The Right to Property

1. Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.

2. ''Private property'', for the purpsoe of this Article, shall mean any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.

3. 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.

4. Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law.

5. Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law.

6. 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.

፯. ማንም ኢትዮጵያዊ በጉልበቱ ፣ ወይም በገንዘቡ በመሬት ላይ ለሚገነባው ቋሚ ንብረት ወይም ለሚያደርገው ቋሚ መሻሻል ሙሉ መብት አለው ። ይህ መብት የመሸጥ ፣ የመለወጥ ፣ የማውረስ ፣ የመሬት ተጠቃሚነቱ ሲቋረጥ ንብረቱን የማንሳት፣ ባለቤትነቱን የማዛወር ወይም የካሳ ክፍያ የመጠየቅ መብትን ያካትታል ። ዝርዝር አፈጻጸሙ በሕግ ይወሰናል ።

፰. የግል ንብረት ባለቤትነት መብት እንደተጠበቀ ሆኖ ፣ መንግሥት ለሕዝብ ጥቅም አስፈላጊ ሆኖ ሲያገኘው ተመጣጣኝ ካሳ በቅድሚያ በመክፈል የግል ንብረትን ለመውሰድ ይችላል።

አንቀጽ ፵፩
የኢኮኖሚ ፣ የማኅበራዊና የባሕል መብቶች

፩. ማንኛውም ኢትዮጵያዊ በሀገሪቱ ውስጥ በማንኛውም የኢኮኖሚ እንቅስቃሴ የመሰማራትና ለመተዳደሪያው የመረጠውን ሥራ የመሥራት መብት አለው ።

፪. ሁሉም ኢትዮጵያዊ መተዳደሪያውን ፣ ሥራውንና ሙያውን የመምረጥ መብት አለው ።

፫. የኢትዮጵያ ዜጎች ሁሉ በመንግሥት ገንዘብ በሚካሄዱ ማኅበራዊ አገልግሎቶች በእኩልነት የመጠቀም መብት አላቸው ።

፬. መንግሥት የጤና ፣ የትምህርትና ሌሎች የማኅበራዊ አገልግሎቶችን ለሕዝብ ለማቅረብ በየጊዜው እየጨመረ የሚሄድ ሀብት ይመድባል ።

፭. መንግሥት የአካል እና የአዕምሮ ጉዳተኞችን ፣ አረጋዊያንንና ያለወላጅ ወይም ያለአሳዳጊ የቀሩ ሕፃናትን ለማቋቋምና ለመርዳት የሀገሪቱ የኢኮኖሚ አቅም በፈቀደው ደረጃ እንክብካቤ ያደርጋል ።

፮. መንግሥት ለሥራ አጦችና ለችግረኞች ሥራ ለመፍጠር የሚያስችል ፖሊሲ ይከተላል ፣ እንዲሁም በሚያካሂደው የሥራ ዘርፍ ውስጥ የሥራ ዕድል ለመፍጠር የሥራ ፕሮግራሞችን ያወጣል ፣ ፕሮጀክቶችን ያካሄዳል ።

፯. መንግሥት ዜጎች ጠቃሚ ሥራ የማግኘት ዕድላቸው እየሰፋ እንዲሄድ ለማድረግ አስፈላጊ እርምጃዎችን ይወስዳል ።

፰. ገበሬዎችና ዘላን ኢትዮጵያውያን በየጊዜው እየተሻሻለ የሚሄድ ኑሮ ለመኖር የሚያስችላቸውና ለምርት ካደረጉት አስተዋጽኦ ጋር ተመጣጣኝ የሆነ ተገቢ ዋጋ ለምርት ውጤቶቻቸው የማግኘት መብት አላቸው ። መንግሥት የኢኮኖሚ ፣ የማኅበራዊና የልማት ፖሊሲዎችን በሚተልምበት ጊዜ በዚህ ዓላማ መመራት አለበት ።

፱. መንግሥት የባሕልና የታሪክ ቅርሶችን የመንከባከብና ለሥነጥበብና ለስፖርት መስፋፋት አስተዋፅዖ የማድረግ ኃላፊነት አለበት ።

አንቀጽ ፵፪
የሠራተኞች መብት

፩. ሀ) የፋብሪካና የአገልግሎት ሠራተኞች ፣ ገበሬዎች ፣ የእርሻ ሠራተኞች ፣ ሌሎች የገጠር ሠራተኞች ፣ ከተወሰነ የኃላፊነት ደረጃ በታች ያሉና የሥራ ጠባያቸው የሚፈቅድላቸው የመንግሥት ሠራተኞች የሥራና የኢኮኖሚ ሁኔታዎችን ለማሻሻል በማኅበር የመደራጀት መብት አላቸው ። ይህ መብት የሠራተኛ ማኅበራትንና ሌሎች ማኅበራትን የማደራጀት ፣ ከአሠሪዎችና ጥቅማቸውን ከሚነኩ ሌሎች ድርጅቶች ጋር የመደራደር መብትን ያካትታል ።

7. 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.

8. 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 41
Economic, Social and Cultural Rights

1. Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory.

2. Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.

3. Every Ethiopian national has the right to equal access to publicly funded social services.

4. The State has the obligation to allocate ever increasing resources to provide to the public health, education and other social services.

5. The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian.

6. The State shall pursue policies which aim to expand job opportunities for the unemployed and the poor and shall accordingly undertake programmes and public works projects.

7. The State shall undertake all measures necessary to increase opportunities for citizens to find gainful employment.

8. Ethiopian farmers and pastoralists have the right to receive fair prices for their products, that would lead to improvement in their conditions of life and to enable them to obtain an equitable share of the national wealth commensurate with their contribution. This objective shall guide the State in the formulation of economic, social and development policies.

9. The State has the responsibility to protect and preserve historical and cultural legacies, and to contribute to the promotion of the arts and sports.

Article 42
Rights of Labour

1. (a) Factory and service workers, farmers, farm labourers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their conditions of employment and economic well-being. This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests.

ለ) በንዑስ አንቀጽ (ሀ) የተመለከቱት የሠራተኛ ክፍሎች ሥራ ማቆምን ጨምሮ ቅሬታቸውን የማሰማት መብት አላቸው ።

ሐ) በንዑስ አንቀጽ (ሀ) እና (ለ) መሰረት እውቅና ባገኙት መብቶች ለመጠቀም የሚችሉት የመንግሥት ሠራተኞች በሕግ ይወሰናሉ ።

መ) ሴቶች ሠራተኞች ለተመሳሳይ ሥራ ተመሳሳይ ክፍያ የማግኘት መብታቸው የተጠበቀ ነው ።

፪· ሠራተኞች በአግባቡ የተወሰነ የሥራ ሰዓት ዕረፍት ፣ የመዝናኛ ጊዜ ፣ በየጊዜው ከክፍያ ጋር የሚሰጡ የዕረፍት ቀኖች ፣ ደመወዝ የሚከፈልባቸው የሕዝብ በዓላት እንዲሁም ጤናማና አደጋ የማያደርስ የሥራ አካባቢ የማግኘት መብት አላቸው ።

፫· እነዚህን መብቶች ተግባራዊ ለማድረግ የሚወጡ ሕጎች በዚህ አንቀጽ ንዑስ አንቀጽ ፩ መሰረት እውቅና ያገኙትን መብቶች ሳይቀንሱ የተጠቀሱት ዓይነት የሠራተኛ ማኅበራት ስለሚቋቋሙበትና የጋራ ድርድር ስለሚካሄድበት ሥርዓት ይደነግጋሉ ።

አንቀጽ ፵፫
የልማት መብት

፩· የኢትዮጵያ ሕዝቦች በአጠቃላይም ሆነ በኢትዮጵያ ያሉ ብሔሮች ፣ ብሔረሰቦች ፣ ሕዝቦች በተናጠል የኑሮ ሁኔታቸውን የማሻሻልና የማያቋርጥ እድገት የማግኘት መብታቸው የተጠበቀ ነው ።

፪· ዜጎች በብሔራዊ ልማት የመሳተፍ በተለይም አባል የሆኑበትን ማኅበረሰብ የሚመለከቱ ፖሊሲዎችና ፕሮጀክቶች ላይ ሀሳባቸውን እንዲሰጡ የመጠየቅ መብት አላቸው።

፫· መንግሥት በዓለም አቀፍ ደረጃ የሚገባቸው ስምምነቶችም ሆኑ የሚያደርጋቸው ግንኙነቶች የኢትዮጵያን የማያቋርጥ እድገት መብት የሚያስከብሩ መሆን አለባቸው ።

፬· የልማት እንቅስቃሴ ዋና ዓላማ የዜጎችን እድገትና መሰረታዊ ፍላጎቶች ማሟላት ይሆናል ።

አንቀጽ ፵፬
የአካባቢ ደህንነት መብት

፩· ሁሉም ሰዎች ንጹህና ጤናማ በሆነ አካባቢ የመኖር መብት አላቸው።

፪· መንግሥት በሚያካሂዳቸው ፕሮግራሞች ምክንያት የተፈናቀሉ ወይም ኑሮአቸው የተነካባቸው ሰዎች ሁሉ በመንግሥት በቂ እርዳታ ወደ ሌላ አካባቢ መዘዋወርን ጨምሮ ተመጣጣኝ የሆነ የገንዘብ ወይም ሌላ አማራጭ ማካካሻ የማግኘት መብት አላቸው።

ምዕራፍ አራት
የመንግሥት አወቃቀር

አንቀጽ ፵፭
ሥርዓተ መንግሥት

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሥርዓተ መንግሥት ፓርላሜንታዊ ነው ።

(b) Categories of persons referred to in paragraph (a) of this sub-Article have the right to express grievances, including the right to strike.

(c) Government employees who enjoy the rights provided under paragraphs (a) and (b) of this sub-Article shall be determined by law.

(d) Women workers have the right to equal pay for equal work.

2. Workers have the right to reasonable limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays as well as healthy and safe work environment.

3. Without prejudice to the rights recognized under sub-Article 1 of this Article, laws enacted for the implementation of such rights shall establish procedures for the formation of trade unions and for the regulation of the collective bargaining process.

Article 43

The Right to Development

1. The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development.

2. Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.

3. All international agreements and relations concluded, established or conducted by the State shall protect and ensure Ethiopia's right to sustainable development.

4. The basic aim of development activities shall be to enhance the capacity of citizens for developement and to meet their basic needs.

Article 44

Environmental Rights

1. All persons have the right to a clean and healthy environment.

2. All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.

CHAPTER FOUR
STATE STRUCTURE

Article 45

Form of Government

The Federal Democratic Republic of Ethiopia shall have a parliamentarian form of government.

አንቀጽ ፵፮
የፌዴራል ክልሎች

፩. የፌዴራሉ መንግሥት በክልሎች የተዋቀረ ነው ።
፪. ክልሎች የሚዋቀሩት በሕዝብ አሰፋፈር ፣ ቋንቋ ፣ ማንነት እና ፈቃድ ላይ በመመስረት ነው ።

አንቀጽ ፵፯
የፌዴራል መንግሥት አባላት

፩. የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ አባላት የሚከተሉት ናቸው ።
፩. የትግራይ ክልል
፪. የአፋር ክልል
፫. የአማራ ክልል
፬. የኦሮሚያ ክልል
፭. የሱማሌ ክልል
፮. የቤንሻንጉል/ጉሙዝ ክልል
፯. የደቡብ ብሔሮች ፣ ብሔረሰቦችና ሕዝቦች ክልል
፰. የጋምቤላ ሕዝቦች ክልል
፱. የሐረሪ ሕዝብ ክልል
፪. በዚህ አንቀጽ ንዑስ አንቀጽ ፩ የተመለከቱት ክልሎች ውስጥ የተካተቱት ብሔሮች ፣ ብሔረሰቦች ፣ ሕዝቦች በማንኛውም ጊዜ የየራሳቸውን ክልል የማቋቋም መብት አላቸው ።
፫. የማንኛውም ብሔር ፣ ብሔረሰብ ፣ ሕዝብ የራሱን ክልል የመመስረት መብት ሥራ ላይ የሚውለው ፤
ሀ) የክልል መመስረት ጥያቄው በብሔሩ ፣ በብሔረሰቡ ወይም በሕዝቡ ምክር ቤት በሁለት ሦስተኛ ድምፅ ተቀባይነት ማግኘቱ ሲረጋገጥና ጥያቄው በጽሑፍ ለክልሉ ምክር ቤት ሲቀርብ ፤
ለ) ጥያቄው የቀረበለት የክልል ምክር ቤት ጥያቄው በደረሰው በአንድ ዓመት ጊዜ ውስጥ ለጠየቀው ብሔር፣ ብሔረሰብ ወይም ሕዝብ ሕዝበ ውሳኔ ሲያደራጅ ፤
ሐ) ክልል የመመስረት ጥያቄው በብሔሩ ፣ በብሔረሰቡ ወይም ሕዝቡ ሕዝበ ውሳኔ በአብላጫ ድምፅ ሲደገፍ፤
መ) የክልሉ ምክር ቤት ሥልጣኑን ለጠየቀው ብሔር ፣ ብሔረሰብ ወይም ሕዝብ ሲያስረክብ ፤
ሠ) በሕዝበ ውሳኔ የሚፈጠረው አዲስ ክልል ጥያቄ ማቅረብ ሳያስፈልገው በቀጥታ የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ አባል ሲሆን ነው ።
፬. የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ አባላት እኩል መብትና ሥልጣን አላቸው ።

አንቀጽ ፵፰
የአከላለል ለውጦች

፩. የክልሎችን ወሰን በሚመለከት ጥያቄ የተነሳ እንደሆነ ጉዳዩ በሚመለከታቸው ክልሎች ስምምነት ይፈጸማል ። የሚመለከታቸው ክልሎች መስማማት ካልቻሉ የፌዴሬሽኑ ምክር ቤት የሕዝብን አሰፋፈርና ፍላጎት መሰረት በማድረግ ይወስናል ።
፪. በዚህ አንቀጽ ንዑስ አንቀጽ ፩ መሰረት የቀረበ ጉዳይ ከሁለት ዓመት ባልበለጠ ጊዜ ውስጥ በፌዴሬሽኑ ምክር ቤት የመጨረሻ ውሳኔ ይሰጥበታል ።

Article 46

States of the Federation

1. The Federal Democratic Republic shall comprise of States.
2. States shall be delimited on the basis of the settlement patterns, language, identity and consent of the people concerned.

Article 47

Member States of the Federal Democratic Republic

1. Member States of the Federal Democratic Republic of Ethiopia are the following:
   1) The State of Tigray
   2) The State of Afar
   3) The State of Amhara
   4) The State of Oromia
   5) The State of Somalia
   6) The State of Benshangul/Gumuz
   7) The State of the Southern Nations, Nationalities and Peoples
   8) The State of the Gambela Peoples
   9) The State of the Harari People
2. Nations, Nationalities and Peoples within the States enumerated in sub-Article 1 of this article have the right to establish, at any time, their own States.
3. The right of any Nation, Nationality or People to form its own state is exercisable under the following procedures:
   (a) When the demand for statehood has been approved by a two-thirds majority of the members of the Council of the Nation, Nationality or People concerned, and the demand is presented in writing to the State Council;
   (b) When the Council that received the demand has organized a referendum within one year to be held in the Nation, Nationality or People that made the demand;
   (c) When the demand for statehood is supported by a majority vote in the referendum;
   (d) When the State Council will have transferred its powers to the Nation, Nationality or People that made the demand; and
   (e) When the new State created by the referendum without any need for application, directly becomes a member of the Federal Democratic Republic of Ethiopia.
4. Member States of the Federal Democratic Republic of Ethiopia shall have equal rights and powers.

Article 48

State Border Changes

1. All State border disputes shall be settled by agreement of the concerned States. Where the concerned States fail to reach agreement, the House of the Federation shall decide such disputes on the basis of settlement patterns and the wishes of the peoples concerned.
2. The House of Federation shall, within a period of two years, render a final decision on a dispute submitted to it pursuant to sub-Article 1 of this Article.

አንቀጽ ፶፱
ርዕሰ ከተማ

፩. የፌዴራሉ መንግስት ርዕሰ ከተማ አዲስ አበባ ነው ።

፪. የአዲስ አበባ ከተማ አስተዳደር ራሱን በራሱ የማስተዳደር ሙሉ ሥልጣን ይኖረዋል ። ዝርዝሩ በሕግ ይወሰናል ።

፫. የአዲስ አበባ ከተማ አስተዳደር ተጠሪነቱ ለፌዴራሉ መንግሥት ይሆናል ።

፬. የአዲስ አበባ ነዋሪዎች በዚህ ሕገ መንግሥት በተደነገገው መሰረት በፌዴራሉ የሕዝብ ተወካዮች ምክር ቤት ይወከላሉ።

፭. የኦሮሚያ ክልል ፥ የአገልግሎት አቅርቦት ወይም የተፈጥሮ ሀብት አጠቃቀምንና የመሳሰሉትን ጉዳዮች በተመለከተ ፥ እንዲሁም አዲስ አበባ በኦሮሚያ ክልል መሀል የሚገኝ በመሆኑ የሚነሱ ሁለቱን የሚያስተሳስሩ አስተዳደራዊ ጉዳዮችን በተመለከተ ያለው ልዩ ጥቅም ይጠበቅለታል ። ዝርዝሩ በሕግ ይወሰናል ።

ምዕራፍ አምስት
የሥልጣን አወቃቀር እና ክፍፍል

አንቀጽ ፶
ስለ ሥልጣን አካላት አወቃቀር

፩. የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ በፌዴራል መንግሥትና በክልሎች የተዋቀረ ነው ።

፪. የፌዴራሉ መንግሥትና ክልሎች የሕግ አውጪነት ፥ የሕግ አስፈጻሚነትና የዳኝነት ሥልጣን አላቸው ።

፫. የፌዴራሉ መንግሥት ከፍተኛ የሥልጣን አካል የፌዴራሉ መንግሥት የሕዝብ ተወካዮች ምክር ቤት ነው ። ተጠሪነቱም ለሀገሪቱ ሕዝብ ነው ። የክልል ከፍተኛ የሥልጣን አካል የክልሉ ምክር ቤት ነው ፥ ተጠሪነቱም ለወከለው ክልል ሕዝብ ነው ።

፬. ክልሎች ፥ በክልልነትና ክልሎች አስፈላጊ ሆነው በሚያገኙ አቸው የአስተዳደር እርከኖች ይዋቀራሉ ። ሕዝቡ በዝቅተኛ የአስተዳደር እርከኖች በቀጥታ ይሳተፍ ዘንድ ለዝቅተኛ እርከኖች በቂ ሥልጣን ይሰጣል ።

፭. የክልል ምክር ቤት በክልሉ ሥልጣን ስር በሆኑ ጉዳዮች የክልሉ የሕግ አውጪ አካል ነው ። ይህንን ሕገ መንግሥት መሰረት በማድረግ የክልሉን ሕገ መንግሥት ያዘጋጃል ፥ ያጸድቃል ፥ ያሻሽላል ።

፮. የክልል መስተዳድር የክልሉ ከፍተኛ የሕግ አስፈጻሚ አካል ነው።

፯. የክልል የዳኝነት ሥልጣን የፍርድ ቤቶች ብቻ ነው ።

፰. የፌዴራሉ መንግሥትና የክልሎች ሥልጣን በዚህ ሕገ መንግሥት ተወስኗል ። ለፌዴራሉ መንግሥት የተሰጠው ሥልጣን በክልሎች መከበር አለበት ። ለክልሎች የተሰጠው ሥልጣን በፌዴራሉ መንግሥት መከበር አለበት ።

፱. የፌዴራል መንግሥት በዚህ ሕገ መንግሥት አንቀጽ ፶፩ ከተሰጡት ሥልጣን እና ተግባሮች እንዳስፈላጊነቱ ለክልሎች በውክልና ሊሰጥ ይችላል ።

Article 49
Capital City

1. Addis Ababa shall be the capital city of the Federal State.
2. The residents of Addis Ababa shall have a full measure of self-government. Particulars shall be determined by law.
3. The Administration of Addis Ababa shall be responsible to the Federal Governement.
4. Residents of Addis Ababa shall in accordance with the provisions of this Constitution, be represented in the House of Peoples' Representatives.
5. The special interest of the State of Oromia in Addis Ababa, regarding the provision of social services or the utilization of natural resources and other similar matters, as well as joint administrative matters arising from the location of Addis Ababa within the State of Oromia, shall be respected. Particulars shall be determined by law.

CHAPTER FIVE
THE STRUCTURE AND DIVISION OF POWERS

Article 50
Structure of the Organs of State

1. The Federal democratic Republic of Ethiopia comprises the Federal Government and the State members.
2. The Federal Governent and the States shall have legislative, executive and judicial powers.
3. The House of Peoples' Representatives is the highest authority of the Federal Government. The House is responsible to the People. The State Council is the highest organ of State authority. It is responsible to the People of the State.
4. State government shall be established at State and other administrative levels that they find necessary. Adequate power shall be granted to the lowest units of government to enable the People to participate directly in the administration of such units.
5. The State Council has the power of legislation on matters falling under State jurisdiction. Consistent with the provisions of this Constitution, the Council has power to draft, adopt and amend the state constitution.
6. The State administration constitutes the highest organ of executive power.
7. State judicial power is vested in its courts.
8. Federal and State powers are defined by this Constitution. The States shall respect the powers of the Federal Government. The Federal Government shall likewise respect the powers of the States.
9. The Federal Government may, when necessary, delegate to the States powers and functions granted to it by Article 51 of this Constitution.

አንቀጽ ፶፩
የፌዴራል መንግሥት ሥልጣንና ተግባር

፩. ሕገ መንግሥቱን ይጠብቃል ፤ ይከላከላል ።
፪. የሀገሪቱን አጠቃላይ የኢኮኖሚ ፣ የማኅበራዊና የልማት ፖሊሲ ፣ ስትራቴጂና ዕቅድ ያወጣል ፤ ያስፈጽማል ።
፫. የጤና ፣ የትምህርት ፣ የባሕልና ታሪካዊ ቅርስ ፣ የሳይንስና ቴክኖሎጂ ሀገር አቀፍ መመዘኛዎችና መሰረታዊ የፖሊሲ መለኪያዎችን ያወጣል ፤ ያስፈጽማል ።
፬. የሀገሪቱን የፋይናንስ ፣ የገንዘብ ፣ የውጭ ኢንቨስትመንት ፖሊሲዎችንና ስትራቴጂዎችን ያወጣል ፤ ያስፈጽማል ።
፭. የመሬት ፣ የተፈጥሮ ሀብትና የታሪክ ቅርሶች አጠቃቀምና ጥበቃን በተመለከተ ሕግ ያወጣል ።
፮. የሀገርና የሕዝብ የመከላከያና የደህንነት እንዲሁም የፌዴራል መንግሥት የፖሊስ ኃይል ያደራጃል ፤ ይመራል።
፯. ብሔራዊ ባንክን ያስተዳድራል ፤ ገንዘብ ያትማል ፤ ይበደራል ፤ የውጭ ምንዛሪና የገንዘብ ልውውጥን ይቆጣጠራል። ክልሎች ከውስጥ ምንጮች ስለሚበደሩበት ሁኔታ ሕግና መመሪያ ያወጣል ።
፰. የውጭ ግንኙነት ፖሊሲን ይወስናል ፤ ፖሊሲውንም ያስፈጽማል ፤ ዓለም አቀፍ ስምምነቶችን ይዋዋላል ፤ ያጸድቃል ።
፱. የአየር ፣ የባቡር ፣ የባሕር መጓጓዣ ፣ የፖስታና የቴሌኮሙኒኬሽን አገልግሎቶች እንደዚሁም ሁለት ወይም ከሁለት በላይ ክልሎችን የሚያገናኙ አውራ መንገዶችን ያስፋፋል ፤ ያስተዳድራል ፤ ይቆጣጠራል ።
፲. ለፌዴራሉ መንግሥት በተሰጡት የገቢ ምንጮች ክልል ግብርና ቀረጥ ይጥላል ፤ ያስተዳድራል ፤ የፌዴራል መንግሥት በጀት ያረቃል ፤ ያጸድቃል ፤ ያስተዳድራል ።
፲፩. ሁለት ወይም ከሁለት በላይ የሆኑ ክልሎችን የሚያስተሳስሩ ወይም ድንበር ተሻጋሪ የሆኑ ወንዞችና ሀይቆችን አጠቃቀም ይወስናል ፤ ያስተዳድራል ።
፲፪. በክልሎች መካከል የሚደረግን የንግድ ግንኙነትና የውጭ ንግድን ይመራል ፤ ይቆጣጠራል ።
፲፫. በፌዴራል መንግሥት ገንዘብ የተቋቋሙ አንድ ወይም ከአንድ ክልል በላይ የሚሸፍኑ የአገልግሎት ተቋሞችን ያስተዳድራል ፤ ያስፋፋል ።
፲፬. ከክልል አቅም በላይ የሆነ የጸጥታ መደፍረስ ሲያጋጥም በክልሉ መስተዳድር ጥያቄ መሰረት የሀገሪቱን የመከላከያ ኃይል ያሰማራል ።
፲፭. በዚህ ሕገ መንግሥት የተረጋገጡትን የፖለቲካ መብቶች ለማስፈጸም አስፈላጊ የሆኑ የፖለቲካ ድርጅቶችን እንዲሁም ምርጫን በሚመለከት ሕጎች ያወጣል ።
፲፮. በሀገሪቱ በአጠቃላይም ሆነ በተወሰኑ የሀገሪቱ ክፍሎች የአስቸኳይ ጊዜ አዋጅ ያውጃል ፤ አዋጁን ያነሳል ።
፲፯. የዜግነት ጥያቄ ይወስናል ።
፲፰. የኢምግሬሽንና የፓስፖርት ፣ ወደ ሀገር የመግቢያና የመውጫ ጉዳዮችን ፣ ስለስደተኞችና ስለ ፖለቲካ ጥገኝነት ይወስናል ፤ ይመራል ።
፲፱. የፈጠራና የድርሰት መብቶችን ይፈቅዳል ፤ ይጠብቃል ።
፳. አንድ ወጥ የመለኪያ ደረጃዎችና የጊዜ ቀመር ያወጣል ።
፳፩. የጦር መሣሪያ ስለመያዝ ሕግ ያወጣል ።

አንቀጽ ፶፪
የክልል ሥልጣንና ተግባር

፩. በሕገ መንግሥቱ ለፌዴራሉ መንግሥት በተለይ ወይም ለፌዴራሉ መንግሥትና ለክልሎች በጋራ በግልጽ ያልተሰጠ ሥልጣን የክልል ሥልጣን ይሆናል ።

Article 51
Powers and Functions of the Federal Government

1. It shall protect and defend the Constitution.
2. It shall formulate and implement the country's policies, strategies and plans in respect of overall economic, social and development matters.
3. It shall establish and implement national standards and basic policy criteria for public health, education, science and technology as well as for the protection and preservation of cultural and historical legacies.
4. It shall formulate and execute the country's financial, monetary and foreign investment policies and strategies.
5. It shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects.
6. It shall establish and administer national defence and public security forces as well as a federal police force.
7. It shall administer the National Bank, print and borrow money, mint coins, regulate foreign exchange and money in circulation; it shall determine by law the conditions and terms under which States can borrow money from internal sources.
8. It shall formulate and implement foreign policy; it shall negotiate and ratify international agreements.
9. It shall be responsible for the development, administration and regulation of air, rail, waterways and sea transport and major roads linking two or more States, as well as for postal and telecommunication services.
10. It shall levy taxes and collect duties on revenue sources reserved to the Federal Government; it shall draw up, approve and administer the Federal Government's budget.
11. It shall determine and administer the utilization of the waters or rivers and lakes linking two or more States or crossing the boundaries of the national territorial jurisdiction.
12. It shall regulate inter-State and foreign commerce.
13. It shall administer and expand all federally funded institutions that provide services to two or more States.
14. It shall deploy, at the request of a state administration, Federal defence forces to arrest a deteriorating security situation within the requesting State when its authorities are unable to control it.
15. It shall enact, in order to give practical effect to political rights provided for in this Constituion, all necessary laws governing political parties and elections.
16. It has the power to declare and to lift national state of emergency and states of emergencies limited to certain parts of the country.
17. It shall detemine matters relating to nationality.
18. It shall determine and administer all matters relating to immigration, the granting of passports, entry into and exit from the coutnry, refugees and asylum.
19. It shall patent inventions and protect copyrights.
20. It shall establish uniform standards of measurement and calendar.
21. It shall enact laws regulating the possession and bearing of arms.

Article 52
Powers and Functions of States

1. All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States.

፪· በዚህ አንቀጽ ንዑስ አንቀጽ ፩ የተጠቀሰው እንደተጠበቀ ሆኖ ፣ የክልሎች ሥልጣንና ተግባር የሚከተሉትን ያጠቃልላል ፤

ሀ) ራስን በራስ ማስተዳደርን ዓላማ ያደረገ ክልላዊ መስተዳድር ያዋቅራል ፤ የሕግ የበላይነት የሰፈነበት ዴሞክራሲያዊ ሥርዓት ይገነባል ፤ ይህን ሕገ መንግሥት ይጠብቃል ፤ ይከላከላል ፤

ለ) የክልል ሕገ መንግሥትና ሌሎች ሕጎችን ያወጣል ፤ ያስፈጽማል ፤

ሐ) የክልሉን የኢኮኖሚ ፣ የማኅበራዊና የልማት ፖሊሲ ፣ ስትራቴጂና ዕቅድ ያወጣል ፤ ያስፈጽማል ፤

መ) የፌዴራሉ መንግሥት በሚያወጣው ሕግ መሰረት መሬትና የተፈጥሮ ሀብትን ያስተዳድራል ፤

ሠ) ለክልሉ በተወሰነው የገቢ ምንጭ ክልል ግብርና ታክስ ይጥላል ፤ ይሰበስባል ፤ የክልሉን በጀት ያወጣል ፤ ያስፈጽማል ፤

ረ) የክልሉን መስተዳድር ሠራተኞች አስተዳደርና የሥራ ሁኔታዎች በተመለከተ ሕግ ያወጣል ፤ ያስፈጽማል ፤ ሆኖም ለአንድ የሥራ መደብ የሚያስፈልጉ የትምህርት፣ የሥልጠናና የልምድ መመዘኛዎች ከአጠቃላይ የሀገሪቱ መመዘኛዎች ጋር የተቀራረቡ መሆናቸውን የማረጋገጥ ኃላፊነት ይኖርበታል ።

ሰ) የክልሉን የፖሊስ ኃይል ያደራጃል ፤ ይመራል ፤ የክልሉን ሰላምና ጸጥታ ያስጠብቃል ።

ምዕራፍ ስድስት
ስለፌዴራሉ መንግሥት ምክር ቤቶች

አንቀጽ ፶፫
የፌዴራል መንግሥት ምክር ቤቶች

የፌዴራሉ መንግሥት ሁለት ምክር ቤቶች ይኖሩታል ፤ እነዚህም የሕዝብ ተወካዮች ምክር ቤት እና የፌዴሬሽን ምክር ቤት ናቸው ።

ክፍል አንድ
የሕዝብ ተወካዮች ምክር ቤት

አንቀጽ ፶፬
የሕዝብ ተወካዮች ምክር ቤት አባላት

፩· የሕዝብ ተወካዮች ምክር ቤት አባላት ፤ ሁሉ አቀፍ ፣ ነፃ ፣ ቀጥተኛ ፣ ትክክለኛ በሆነና ድምፅ በሚሰጥር በሚሰጥበት ሥርዓት በየአምስት ዓመቱ በሕዝብ ይመረጣሉ ።

፪· የምክር ቤቱ አባላት በአንድ የምርጫ ክልል ውስጥ ከሌሎች ተወዳዳሪዎች መካከል አብላጫ ድምፅ ያገኘ ተወዳዳሪ አሸናፊ በሚሆንበት የምርጫ ሥርዓት ይመረጣሉ ። የተለየ ውክልና ያስፈልጋቸዋል ተብሎ የታመነባቸው አናሳ ብሔረሰቦች እና ሕዝቦች በምርጫ የሕዝብ ተወካዮች ምክር ቤት አባል ይሆናሉ። ዝርዝሩ በሕግ ይወሰናል ።

፫· የምክር ቤቱ አባላት ቁጥር የሕዝብ ብዛትንና በልዩ ትኩረት ውክልና የሚሰጣቸው አናሳ ብሔረሰቦችና ሕዝቦችን ቁጥር መሰረት በማድረግ ከ፭፻፶ የማይበልጥ ሆኖ ከዚህ ውስጥ አናሳ ብሔረሰቦች ከ፳ የማያንስ መቀመጫ ይኖራቸዋል ። ዝርዝሩ በሕግ ይደነገጋል ።

2. Consistent with sub-Article 1 of this Article, States shall have the following powers and functions:

(a) To establish a State administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the Federal Constitution;

(b) To enact and execute the State constitution and other laws;

(c) To formulate and execute economic, social and development policies, strategies and plans of the State;

(d) To administer land and other natural resources in accordance with Federal laws;

(e) To levy and collect taxes and duties on revenue sources reserved to the States and to draw up and administer the State budget;

(f) To enact and enforce laws on the State civil service and their condition of work; in the implementation of this responsibility it shall ensure that educational; training and experience requirements for any job, title or position approximate national standards;

(g) To establish and administer a state police force, and to maintain public order and peace within the State;

CHAPTER SIX
THE FEDERAL HOUSES

Article 53
The Federal Houses

There shall be two Federal Houses: The House of Peoples' Representatives and the House of the Federation.

Part One
The House of Peoples' Representatives

Article 54
Members of the House of Peoples' Representatives

1. Members of the House of Peoples' Representatives shall be elected by the People for a term of five years on the basis of universal suffrage and by direct, free and fair elections held by secret ballot.

2. Members of the House shall be elected from candidates in each electoral district by a plurality of the votes cast. Provisions shall be made by law for special representation for minority Nationalities and Peoples.

3. Members of the House, on the basis of population and special representation of minority Nationalities and Peoples, shall not exceed 550; of these, minority Nationalities and Peoples shall have at least 20 seats. Particulars shall be determined by law.

፬· የምክር ቤቱ አባላት የመላው ሕዝብ ተወካዮች ናቸው ። ተገዥነታቸውም ፤
ሀ) ለሕገ መንግሥቱ ፤
ለ) ለሕዝቡ ፤ እና
ሐ) ለሕሊናቸው
ብቻ ይሆናል ።

፭· ማንኛውም የምክር ቤቱ አባል በምክር ቤቱ ውስጥ በሚሰጠው ድምፅ ወይም አስተያየት ምክንያት አይከሰስም። አስተዳደራዊ እርምጃም አይወሰድበትም ።

፮· ማንኛውም የምክር ቤቱ አባል ከባድ ወንጀል ሲፈጽም እጅ ከፍንጅ ካልተያዘ በስተቀር ያለ ምክር ቤቱ ፈቃድ አይያዝም ፤ በወንጀልም አይከሰስም ።

፯· ማንኛውም የምክር ቤቱ አባል የመረጠው ሕዝብ አመኔታ ባጣበት ጊዜ በሕግ መሰረት ከምክር ቤት አባልነቱ ይወገዳል።

አንቀጽ ፶፭
የሕዝብ ተወካዮች ምክር ቤት ሥልጣንና ተግባር

፩· የሕዝብ ተወካዮች ምክር ቤት በዚህ ሕገ መንግሥት መሰረት ለፌዴራሉ መንግሥት በተሰጠው የሥልጣን ክልል ሕጎችን ያወጣል ።

፪· በዚህ አንቀጽ ንዑስ አንቀጽ ፩ የተመለከተው አጠቃላይ ድንጋጌ እንደተጠበቀ ሆኖ ፤ የሕዝብ ተወካዮች ምክር ቤት በሚከተሉት ጉዳዮች ላይ ዝርዝር ሕግ ያወጣል ፤
ሀ) የመሬትና የተፈጥሮ ሀብት ፤ እንዲሁም ድንበር ተሻጋሪ ወይም ከአንድ ክልል በላይ የሚያስተሳስሩ ወንዞችና ሀይቆች አጠቃቀምን በተመለከተ ፤
ለ) በክልሎች መካከል የሚኖረውን የንግድ ልውውጥ ፤ እንዲሁም የውጭ ንግድ ግንኙነትን በተመለከተ ፤
ሐ) የአየር ፤ የባቡርና የባሕር መጓጓዣ ፤ የፖስታና የቴሌኮሙኒኬሽን አገልግሎቶችን እንዲሁም ሁለት ወይም ከሁለት በላይ ክልሎችን የሚያገናኙ አውራ መንገዶችን በተመለከተ ፤
መ) በዚህ ሕገ መንግሥት የተደነገጉትን የፖለቲካ መብቶች አፈጻጸምን እንዲሁም ምርጫን በተመለከተ ፤
ሠ) የዜግነት መብትን ፤ የኢምግሬሽን ፤ የፓስፖርትን ፤ ወደ ሀገር የመግቢያና የመውጫ ጉዳዮችን እንዲሁም የስደተኞችና የፖለቲካ ጥገኝነት ጉዳዮችን በተመለከተ ፤
ረ) አንድ ወጥ የመጠን መለኪያ ደረጃና የጊዜ ቀመርን በተመለከተ ፤
ሰ) የፈጠራና የሥነጥበብ መብቶችን በተመለከተ ፤
ሸ) የጦር መሣሪያ መያዝን በተመለከተ ።

፫· የሠራተኛ ጉዳይ ሕግ ያወጣል ።

፬· የንግድ ሕግ (ኮድ) ያወጣል ።

፭· የወንጀለኛ መቅጫ ሕግ ያወጣል ። ይህ እንደተጠበቀ ሆኖ ክልሎች በፌዴራሉ መንግሥት የወንጀለኛ መቅጫ ሕግ በግልጽ ባልተሸፈኑ ጉዳዮች ላይ ሕግ የማውጣት ሥልጣን ይኖራቸዋል ።

፮· አንድ የኢኮኖሚ ማኅበረሰብን ለመፍጠር ሲባል በፌዴራል መንግሥት ሕግ እንዲወጣላቸው የሚያስገድዱ ለመሆናቸው በፌዴሬሽኑ ምክር ቤት የታመነባቸው የፍትሐብሔር ሕጎችን ያወጣል ።

4. Members of the House are representatives of the Ethiopian People as a whole. They are governed by:
(a) The Constitution;
(b) The will of the people; and
(c) Their Conscience.

5. No member of the House may be prosecuted on account of any vote he casts or opinion he expresses in the House, nor shall any administrative action be taken against any member on such grounds.

6. No member of the House may be arrested or prosecuted without the permission of the House except in the case of flagrante delicto

7. A member of the House may, in accordance with law, lose his mandate of representation upon loss of confidence by the electorate.

Article 55
Powers and Functions of the House of Peoples' Representatives

1. The House of Peoples' Representatives shall have the power of legislation in all matters assigned by this Constitution to Federal jurisdiction.

2. 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;
(b) Inter-State commerce and foreign trade;
(c) Air, rail, water and sea transport, major roads linking two or more States, postal and telecommunication services;
(d) Enforcement of the political rights established by the Constitution and electoral laws and procedures;
(e) Nationality, immigration, passport, exit from and entry into the country, the rights of refugees and of asylum;
(f) Uniform standards of measurement and calendar;
(g) Patents and copyrights;
(h) The possession and bearing of arms.

3. It shall enact a labour code.

4. It shall enact a commercial code.

5. It shall enact a penal code. The States may, however, enact penal laws on matters that are not specifically covered by Federal penal legislation.

6. It shall enact civil laws which the House of the Federation deems necessary to establish and sustain one economic community.

፯. የፈዴራል መንግሥት ፣ የሀገርና የሕዝብ መከላከያ ፣ የደህንነትና የፖሊስ ኃይል አደረጃጀትን ይወስናል ። በሥራ አፈጻጸማቸው ረገድ የሚታዩ መሠረታዊ የዜጎችን ሰብዓዊ መብቶችና የሀገርን ደህንነት የሚነኩ ጉዳዮች ሲከሰቱ ያጣራል ፣ አስፈላጊ እርምጃዎች እንዲወሰዱ ያደርጋል ።

፰. በአንቀጽ ፺፫ በተመለከተው መሰረት የአስቸኳይ ጊዜ አዋጅ ያውጃል ፣ የሕግ አስፈጻሚው የሚያወጣውን የአስቸኳይ ጊዜ አዋጅ ተመልክቶ ይወስናል ።

፱. የሚኒስትሮች ምክር ቤት በሚያቀርብለት የሕግ ረቂቅ መሰረት የጦርነት አዋጅ ያውጃል ።

፲. የሀገሪቱን አጠቃላይ የኢኮኖሚ ፣ የማኅበራዊ ፣ የልማት ፖሊሲዎችንና ስትራቴጂዎችን ፣ የፋይናንስና የገንዘብ ፖሊሲን ያጸድቃል ፣ ገንዘብን ፣ የብሔራዊ ባንክ አስተዳደርን፣ የውጭ ምንዛሪንና ልውውጥን በተመለከተ ዝርዝር ሕግ ያወጣል ።

፲፩. ለፈዴራል መንግሥት በተከለለው የገቢ ምንጭ ክልል ግብርና ታክስ ይጥላል ። የፈዴራል መንግሥት በጀት ያጸድቃል ።

፲፪. የሕግ አስፈጻሚው አካል የሚዋዋላቸውን ዓለም አቀፍ ስምምነቶች ያጸድቃል ።

፲፫. የፈዴራል መንግሥት ፍርድ ቤት ዳኞችን ፣ የሚኒስትሮች ምክር ቤት አባላትን ፣ የኮሚሽነሮችን ፣ የዋናው ኦዲተርን እንዲሁም የሌሎች ሹመታቸው በምክር ቤቱ መጽደቅ ያለበትን ባለሥልጣናት ሹመት ያጸድቃል ።

፲፬. የሰብዓዊ መብቶች ኮሚሽን ያቋቁማል ፣ ሥልጣንና ተግባሩን በሕግ ይወስናል ።

፲፭. የሕዝብ እንባ ጠባቂ ተቋምን ያቋቁማል ፣ ተቋሙን የሚመሩ አባላትን ይመርጣል ፣ ይሰይማል ። ሥልጣንና ተግባሩን በሕግ ይወስናል ።

፲፮. በማንኛውም ክልል ሰብዓዊ መብቶች ሲጣሱና ክልሉ ድርጊቱን ማቆም ሳይችል ሲቀር ፣ በራሱ አነሳሽነትና ያለ ክልሉ ፈቃድ ተገቢው እርምጃ እንዲወሰድ ለፈዴሬሽኑ ምክር ቤትና ለሕዝብ ተወካዮች ምክር ቤት የጋራ ስብሰባ ጥያቄ ያቀርባል ፣ በተደረሰበት ውሳኔ መሰረት ለክልሉ ምክር ቤት መመሪያ ይሰጣል ።

፲፯. ምክር ቤቱ ጠቅላይ ሚኒስትሩን እና ሌሎች የፈዴራሉ መንግሥት ባለሥልጣናትን ለጥያቄ የመጥራትና የሕግ አስፈጻሚውን አካል አሠራር የመመርመር ሥልጣን አለው።

፲፰. ለሕግ አስፈጻሚው አካል በተሰጠ ማንኛውም ሥልጣን ላይ የምክር ቤቱ አባላት በአንድ ሦስተኛ ድምፅ ሲጠይቁ ምክር ቤቱ ይወያያል ። ምክር ቤቱ በጉዳዩ ላይ የመመካከርና አስፈላጊ መስሎ የታየውን እርምጃ የመውሰድ ሥልጣን አለው ።

፲፱. ምክር ቤቱን የሚመሩ አፈ ጉባዔና ምክትል አፈጉባዔ ይመርጣል ፣ ለምክር ቤቱ ሥራ የሚያስፈልጉትን ቋሚና ጊዜያዊ ኮሚቴዎች ያዋቅራል ።

አንቀጽ ፶፮
የፖለቲካ ሥልጣን

በምክር ቤቱ አብላጫ መቀመጫ ያገኘ የፖለቲካ ድርጅት ወይም ጣምራ ድርጅቶች የፈዴራሉን መንግሥት የሕግ አስፈጻሚ አካል ያደራጃል/ያደራጃሉ ፣ ይመራል/ይመራሉ ።

7. It shall determine the organization of national defence, public security, and a national police force. If the conduct of these forces infringes upon human rights and the nation's security, it shall carry out investigations and take necessary measures.

8. In conformity with Article 93 of the Constitution it shall declare a state of emergency; it shall consider and resolve on a decree of a state of emergency declared by the executive.

9. On the basis of a draft law submitted to it by the Council of Ministers it shall proclaim a state of war.

10. It shall approve general policies and strategies of economic, social and development, and fiscal and monetary policy of the country. It shall enact laws on matters relating to the local currency, the administration of the National Bank, and foreign exchange.

11. It shall levy taxes and duties on revenue sources reserved to the Federal Government, it shall ratify the Federal budget.

12. It shall ratify international agreements concluded by the Executive.

13. It shall approve the appointment of Federal judges, members of the Council of Minsiters, commissioners, the Auditor General, and of other officials whose appointment is required by law to be approved by it.

14. It shall establish a Human Rights Commission and determine by law its powers and functions.

15. It shall establish the institution of the Ombudsman, and select and appoint its members. It shall deermine by law the powers and functions of the institution.

16. It shall, on its own initiative, request a joint session of the House of the Federation and of the House of Peoples' Representatives to take appropriate measures when State authorities are unable to arrest violations of human rights within their jurisdiction. It shall, on the basis of the joint decision of the House, give directives to the concerned State authorities.

17. It has the power to call and to question the Prime Minister and other Federal officials and to investigate the Executive's conduct and discharge of its responsibilities.

18. It shall, at the request of one-third of its members, discuss any matter pertaining to the powers of the executive. It has, in such cases, the power to take decisions or measures it deems necessary.

19. It shall elect the Speaker and Deputy Speaker of the House. It shall establish standing and ad hoc committees as it deems necessary to accomplish its work.

Article 56
Political Power

A political party, or a coalition of political parties that has the greatest number of seats in the House of Peoples' Representatives shall form the Executive and lead it.

አንቀጽ ፶፯
ስለሕግ አጸዳደቅ

ምክር ቤቱ መክሮ የተስማማበት ሕግ ለሀገሪቱ ፕሬዚዳንት ለፊርማ ይቀርባል ፤ ፕሬዚዳንቱ በአሥራ አምስት ቀናት ውስጥ ይፈርማል ። ፕሬዚዳንቱ በአሥራ አምስት ቀናት ውስጥ ካልፈረመ ሕጉ በሥራ ላይ ይውላል ።

አንቀጽ ፶፰
የምክር ቤቱ ስብሰባና የሥራ ዘመን

፩· ከምክር ቤቱ አባላት ከግማሽ በላይ ከተገኙ ምልዓተ ጉባዔ ይኖራል ።

፪· የምክር ቤቱ የሥራ ጊዜ ከመስከረም ወር የመጨረሻ ሳምንት ሰኞ እስከ ሰኔ ሠላሳ ነው ፤ በመካከሉም ምክር ቤቱ በሚወስነው ጊዜ የአንድ ወር ዕረፍት ይኖረዋል ።

፫· የሕዝብ ተወካዮች ምክር ቤት የሚመረጠው ለአምስት ዓመታት ነው ፤ የሥራ ዘመኑ ከማብቃቱ ከአንድ ወር በፊት አዲስ ምርጫ ተካሒዶ ይጠናቀቃል ።

፬· ምክር ቤቱ ዕረፍት ላይ በሚሆንበት ጊዜ የምክር ቤቱ አፈጉባዔ ስብሰባ ሊጠራ ይችላል ። ከምክር ቤቱ አባላት ከግማሽ በላይ ስብሰባ እንዲጠራ ከጠየቁ አፈጉባዔው ስብሰባ የመጥራት ግዴታ አለበት ።

፭· የሕዝብ ተወካዮች ምክር ቤት ስብሰባዎች በግልጽ ይካሔዳሉ፤ ሆኖም በምክር ቤቱ አባላት ወይም በፌዴራል የሕግ አስፈጻሚ አካል በዝግ ስብሰባ እንዲደረግ ከተጠየቀና ከምክር ቤቱ አባላት ከግማሽ በላይ ከደገፉት ዝግ ስብሰባ ሊደረግ ይችላል ።

አንቀጽ ፶፱
የምክር ቤቱ ውሳኔዎችና የሥነ ሥርዓት ደንቦች

፩· በዚህ ሕገ መንግሥት በግልጽ በተለይ ካልተደነገገ በስተቀር ማናቸውም ውሳኔዎች የሚተላለፉት በምክር ቤቱ አባላት የአብላጫ ድምፅ ነው ።

፪· ምክር ቤቱ ስለ አሠራሩና ስለ ሕግ አወጣጡ ሒደት ደንቦችን ያወጣል ።

አንቀጽ ፷
ስለምክር ቤቱ መበተን

፩· ጠቅላይ ሚኒስትሩ የሥልጣን ዘመኑ ከማለቁ በፊት አዲስ ምርጫ ለማካሔድ በምክር ቤቱ ፈቃድ ምክር ቤቱ እንዲበተን ለማድረግ ይችላል ።

፪· በጣምራ የመንግሥት ሥልጣን የያዙ የፖለቲካ ድርጅቶች ጣምራ ጎታቸው ፈርሶ በምክር ቤቱ የነበራቸውን አብላጫነት ያጡ እንደሆነ የሚኒስትሮች ምክር ቤት ተበትኖ በሕዝብ ተወካዮች ምክር ቤት ባሉ የፖለቲካ ድርጅቶች ሌላ ጣምራ መንግሥት በአንድ ሳምንት ጊዜ ውስጥ ለመመስረት እንዲቻል ፕሬዚዳንቱ የፖለቲካ ድርጅቶችን ይጋብዛል ። የፖለቲካ ድርጅቶቹ አዲስ መንግሥት ለመፍጠር ወይም የነበረውን ጣምራነት ለመቀጠል ካልቻሉ ምክር ቤቱ ተበትኖ አዲስ ምርጫ ይደረጋል ።

፫· በዚህ አንቀጽ ንዑስ አንቀጽ ፩ ወይም ፪ መሰረት ምክር ቤቱ የተበተነ እንደሆነ ከስድስት ወር ባልበለጠ ጊዜ ውስጥ አዲስ ምርጫ መደረግ አለበት ።

፬· ምርጫው በተጠናቀቀ በሠላሳ ቀናት ውስጥ አዲሱ የሕዝብ ተወካዮች ምክር ቤት ሥራውን ይጀምራል ።

Article 57

Adoption of Laws

Laws deliberated upon and passed by the House shall be submitted to the Nation's President for signature. The President shall sign a law submitted to him within fifteen days. If the President does not sign the law within fifteen days it shall take effect without his signature.

Article 58

Meetings of the House, Duration of its Term

1. The presence of more than half of the members of the House constitutes a quorum.
2. The annual session of the House shall begin on Monday of the final week of the Ethiopian month of Meskerem and end on the 30th day of the Ethiopian month of Sene. The House may adjourn for one month of recess during its annual session.
3. The House of Peoples' Representatives shall be elected for a term of five years. Elections for a new House shall be concluded one month prior to the expiry of the House's term.
4. The Speaker of the House may call a meeting of the House when it is in recess. The Speaker of the House is also obliged to call a meeeting of the House at the request of more than one-half of the members.
5. Meetings of the House shall be public. The House may, however, hold a closed meeting at the request of the Executive or members of the House if such a request is supported by a decision of more than one-half of the members of the House.

Article 59

Decisions and Rules of Procedure of the House

1. Unless otherwise provided in the Constitution, all decisions of the House shall be by a majority vote of the members present and voting.
2. The House shall adopt rules and procedures regarding the organization of its work and of its legislative process.

Article 60

Dissolution of the House

1. With the consent of the House, the Prime Minister may cause the dissolution of the House before the expiry of its term in order to hold new elections.
2. The President may invite political parties to form a coalition government within one week, if the Council of Ministers of a previous coalition is dissolved because of the loss of its majority in the House. The House shall be dissolved and new elections shall be held if the political parties cannot agree to the continuation of the previous coalition or to form a new majority coalition.
3. If the House is dissolved pursuant to sub-Article 1 or 2 of this Article, new elections shall be held within six months of its dissolution.
4. The new House shall convene within thirty days of the conclusion of the elections.

፭· የሕዝብ ተወካዮች ምክር ቤት ከተበተነ በኋላ ሀገሪቱን የሚመራው ሥልጣን ይዞ የነበረው የፖለቲካ ድርጅት ወይም የፖለቲካ ድርጅቶች ጣምራ የዕለት ተዕለት የመንግሥት ሥራ ከማከናወንና ምርጫ ከማካሔድ በስተቀር አዲስ አዋጆችን ፣ ደንቦችንና ድንጋጌዎችን ማውጣት ወይም ነባር ሕጎችን መሻርና ማሻሻል አይችልም ።

ክፍል ሁለት
የፌዴሬሽን ምክር ቤት

አንቀጽ ፷፩
የፌዴሬሽን ምክር ቤት አባላት

፩· የፌዴሬሽን ምክር ቤት በፌዴራሉ መንግሥት አባል ክልሎች የሚገኙት ብሔሮች ፣ ብሔረሰቦች ፣ ሕዝቦች የሚልኩዋቸው አባላት የሚወከሉበት ምክር ቤት ነው ።

፪· እያንዳንዱ ብሔር ፣ ብሔረሰብ ፣ ሕዝብ ቢያንስ አንድ ተወካይ ይኖረዋል ፣ በተጨማሪም የብሔር ወይም ብሔረሰቡ አንድ ሚሊዮን ሕዝብ አንድ ተጨማሪ ወኪል ይኖረዋል ።

፫· የፌዴሬሽን ምክር ቤት አባላት በክልል ምክር ቤቶች ይመረጣሉ ፣ የክልል ምክር ቤቶች በራሳቸው ወይም በቀጥታ በሕዝብ እንዲመረጡ በማድረግ የፌዴሬሽን ምክር ቤት አባል እንዲወከል ያደርጋሉ ።

አንቀጽ ፷፪
የፌዴሬሽኑ ምክር ቤት ሥልጣንና ተግባር

፩· ምክር ቤቱ ሕገ መንግሥቱን የመተርጎም ሥልጣን ይኖረዋል።

፪· የሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔን ያደራጃል ።

፫· የብሔሮች ፣ ብሔረሰቦች ፣ ሕዝቦች የራስን ዕድል በራስ የመወሰን እስከ መገንጠል መብትን በተመለከተ በሚነሱ ጥያቄዎች ላይ በሕገ መንግሥቱ መሰረት ይወስናል ።

፬· በሕገ መንግሥቱ የተደነገገው የሕዝቦች እኩልነትና በሕዝቦች መፈቃቀድ ላይ የተመሰረተ አንድነት ስር እንዲሰድና እንዲዳብር ያደርጋል ።

፭· ከሕዝብ ተወካዮች ምክር ቤት ጋር በጣምራ የተሰጡትን ሥልጣኖች ያከናውናል ።

፮· በክልሎች መካከል ለሚነሱ አለመግባባቶች መፍትሄ ይፈልጋል።

፯· የክልሎችና የፌዴራሉ መንግሥት የጋራ ተብለው የተመደቡ ገቢዎች በሁለቱ መካከል የሚከፋፈሉበትን ፣ እንዲሁም የፌዴራሉ መንግሥት ለክልሎች ድጎማ የሚሰጥበትን ቀመር ይወስናል ።

፰· በሕዝብ ተወካዮች ምክር ቤት ሕግ ሊወጣላቸው የሚገቡ የፍትሐብሔር ጉዳዮችን ይለያል ።

፱· ማንኛውም ክልል ይህን ሕገ መንግሥት በመጣስ ሕገ መንግሥታዊ ሥርዓቱን አደጋ ላይ የጣለ እንደሆነ የፌዴራሉ መንግሥት ጣልቃ እንዲገባ ያዛል ።

፲· የምክር ቤቱን የተለያዩ ቋሚና ጊዜያዊ ኮሚቴዎች ያቋቁማል።

፲፩· ምክር ቤቱ የራሱን አፈጉባዔና ምክትል አፈጉባዔ ይመርጣል፣ የራሱን የሥራ አፈጻጸምና የውስጥ አስተዳደር ደንብ ያወጣል።

5. Following the dissolution of the House, the previous governing party or coalition of parties shall continue as a caretaker government. Beyond conducting the day to day affairs of government and organizing new elections, it may not enact new proclamations, regulations or decrees, nor may it repeal or amend any existing law.

PART TWO
THE HOUSE OF THE FEDERATION

Article 61
Members of the House of the Federation

1. The House of the Federation is composed of representatives of Nations, Nationalities and Peoples.
2. Each Nation, Nationality and People shall be represented in the House of the Federation by at least one member. Each Nation or Nationality shall be represented by one additional representative for each one million of its population.
3. Members of the House of the Federation shall be elected by the State Councils. The State Councils may themselves elect representatives to the House of the Federation, or they may hold elections to have the representatives elected by the people directly.

Article 62
Powers and Functions of the House of the Federation

1. The House has the power to interpret the Constitution.
2. It shall organize the Council of Constitutional Inquiry.
3. It shall, in accordance with the Constitution, decide on issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right to secession.
4. It shall promote the equality of the Peoples of Ethiopia enshrined in the Constitution and promote and consolidate their unity based on their mutual consent.
5. It shall exercise the powers concurrently entrusted to it and to the House of Peoples' Representatives.
6. It shall strive to find solutions to disputes or misunderstandings that may arise between States.
7. It shall determine the division of revenues derived from joint Federal and State tax sources and the subsidies that the Federal Government may provide to the States.
8. It shall determine civil matters which require the enactment of laws by the House of Peoples' Representatives.
9. It shall order Federal intervention if any State, in violation of this Constitution, endangers the constitutional order.
10. It shall establish permanent and ad hoc committees.
11. It shall elect the Speaker and the Deputy Speaker of the House, and it shall adopt rules of procedure and internal administration.

አንቀጽ ፷፫
የፌዴሬሽን ምክር ቤት አባላት መብት

፩. ማንኛውም የፌዴሬሽኑ ምክር ቤት አባል በማናቸውም የምክር ቤቱ ስብሰባ ላይ በሚሰጠው አስተያየት ወይም ድምፅ ምክንያት አይከሰስም ፣ አስተዳደራዊ እርምጃም አይወሰድ በትም ።

፪. ማንኛውም የፌዴሬሽኑ ምክር ቤት አባል ከባድ ወንጀል ሲፈጽም እጅ ከፍንጅ ካልተያዘ በስተቀር ያለ ምክር ቤቱ ፈቃድ አይያዝም ፣ በወንጀልም አይከሰስም ።

አንቀጽ ፷፬
ውሳኔዎችና የሥነ ሥርዓት ደንቦች

፩. የፌዴሬሽኑ ምክር ቤት ምልዓተ ጉባዔ የሚኖረው ከአባላቱ ሁለት ሦስተኛው የተገኙ እንደሆነ ነው ። ማናቸውም ውሳኔ የሚያልፈው ስብሰባ ላይ ከተገኙት የምክር ቤቱ አባላት ከግማሽ በላይ ድምፅ ሲደገፍ ብቻ ነው ።

፪. አባላት ድምፅ መስጠት የሚችሉት በአካል ሲገኙ ብቻ ነው ።

አንቀጽ ፷፭
ስለ በጀት

የፌዴሬሽኑ ምክር ቤት በጀቱን ለሕዝብ ተወካዮች ምክር ቤት በማቅረብ ያስወስናል ።

አንቀጽ ፷፮
የምክር ቤቱ አፈ ጉባዔ ሥልጣን

፩. የፌዴሬሽኑ ምክር ቤት አፈ ጉባዔ የምክር ቤቱን ስብሰባዎች ይመራል ።

፪. ምክር ቤቱን በመወከል ጠቅላላ የአስተዳደር ሥራዎችን ይመራል ።

፫. ምክር ቤቱ በአባሎቹ ላይ የወሰነውን የዲስፕሊን እርምጃ ያስፈጽማል ።

አንቀጽ ፷፯
ስብሰባና የሥራ ዘመን

፩. የፌዴሬሽኑ ምክር ቤት ቢያንስ በዓመት ሁለት ጊዜ ይሰበሰባል ።

፪. የፌዴሬሽኑ ምክር ቤት የሥራ ዘመን አምስት ዓመት ይሆናል።

አንቀጽ ፷፰
በሁለቱም ምክር ቤቶች አባል መሆን የማይቻል ስለመሆኑ

ማንኛውም ሰው በአንድ ጊዜ የሕዝብ ተወካዮች ምክር ቤት እና የፌዴሬሽኑ ምክር ቤት አባል ሊሆን አይችልም ።

Article 63
Immunity of Members of the House of the Federation

1. No member of the House of the Federation may be prosecuted on account of any vote he casts or opinion he expresses in the House, nor shall any administrative action be taken against any member on such grounds.
2. No member of the House of the Federation may be arrested or prosecuted without the permission of the House except in the case of flagrante delicto.

Article 64
Decisions and Rules of Procedure

1. The presence at a meeting of two-thirds of the members of the House of the Federation constitutes a quorum. All decisions of the House require the approval of a majority of members present and voting.
2. Members of the House may vote only when they are present in person in the House.

Article 65
Budget

The House of the Federation shall submit its budget for approval to the House of Peoples' Representatives.

Article 66
Powers of the Speaker of the House

1. The Speaker of the House of the Federation shall preside over the meetings of the House.
2. He shall, on behalf of the House, direct all its administrative affairs.
3. He shall enforce all disciplinary actions the House takes on its members.

Article 67
Sessions and Term of Mandate

1. The House of the Federation shall hold at least two sessions annually.
2. The term of mandate of the House of the Federation shall be five years.

Article 68
Prohibition of Simultaneous Membership in the Two Houses

No one may be a member of the House of Peoples' Representatives and of the House of the Federation simultaneously.

ምዕራፍ ሰባት
ስለ ሪፐብሊኩ ፕሬዚዳንት

አንቀጽ ፷፱
ስለ ፕሬዚዳንቱ

ፕሬዚዳንቱ የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ ርዕሰ ብሔር ነው ።

አንቀጽ ፸
የፕሬዚዳንቱ አሰያየም

፩· ለፕሬዚዳንትነት እጩ የማቅረብ ሥልጣን የሕዝብ ተወካዮች ምክር ቤት ነው ።

፪· የቀረበው እጩ በሕዝብ ተወካዮች ምክር ቤትና በፌዴሬሽኑ ምክር ቤት የጋራ ስብሰባ በሁለት ሦስተኛ ድምፅ ከተደገፈ ፕሬዚዳንት ይሆናል ።

፫· የምክር ቤት አባል ፕሬዚዳንት ሆኖ ከተመረጠ የተወከለበትን ምክር ቤት ወንበር ይለቃል ።

፬· የፕሬዚዳንቱ የሥራ ዘመን ስድስት ዓመት ይሆናል ። አንድ ሰው ከሁለት ጊዜ በላይ ለፕሬዚዳንትነት ሊመረጥ አይችልም።

፭· የሪፐብሊኩ ፕሬዚዳንት ምርጫ በዚህ አንቀጽ ንዑስ አንቀጽ ፪ መሰረት ከጸደቀ በኋላ ሥራውን ከመጀመሩ በፊት የጋራ ስብሰባው በሚወስነው ጊዜ ስብሰባው ፊት ለሕገ መንግሥቱና ለኢትዮጵያ ሕዝቦች ያለውን ታማኝነት በሚቀጥሉት ቃላት ይገልጻል ።

"እኔ ..... በዛሬው ዕለት የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ ፕሬዚዳንት በመሆን ሥራዬን ስጀምር የተጣለብኝን ከፍተኛ ኃላፊነት በታማኝነት ለመፈጸም ቃል እገባለሁ ።"

አንቀጽ ፸፩
የፕሬዚዳንቱ ሥልጣንና ተግባር

፩· የሕዝብ ተወካዮችን ምክር ቤትና የፌዴሬሽኑን ምክር ቤት ዓመታዊ የጋራ ስብሰባ ይከፍታል ።

፪· በዚህ ሕገ መንግሥት መሰረት የሕዝብ ተወካዮች ምክር ቤት ያጸደቃቸውን ሕጎችና ዓለም አቀፍ ስምምነቶች በነጋሪት ጋዜጣ ያውጃል ።

፫· ሀገሪቷን በውጭ ሀገሮች የሚወክሉትን አምባሳደሮችና ሌሎች መልዕክተኞች በጠቅላይ ሚኒስትሩ አቅራቢነት ይሾማል ።

፬· የውጭ ሀገር አምባሳደሮችንና የልዩ መልዕክተኞችን የሹመት ደብዳቤ ይቀበላል ።

፭· በሕግ መሰረት ኒሻኖችና ሽልማቶችን ይሰጣል ።

፮· በጠቅላይ ሚኒስትሩ አቅራቢነት በሕግ በተወሰነው መሰረት ከፍተኛ የውትድርና ማዕረጎችን ይሰጣል ።

፯· በሕግ መሰረት ይቅርታ ያደርጋል ።

CHAPTER SEVEN
THE PRESIDENT OF THE REPUBLIC

Article 69
The President

The President of the Federal Democratic Republic of Ethiopia is the Head of State.

Article 70
Nomination and Appointment of the President

1. The House of Peoples' Representatives shall nominate the candidate for President.
2. The nominee shall be elected President if a joint session of the House of Peoples' Representatives and the House of the Federation approves his candidacy by a two-thirds majority vote.
3. A member of either House shall vacate his seat if elected President.
4. The term of office of the President shall be six years. No person shall be elected President for more than two terms.
5. Upon his election in accordance with sub-Article 2 of this Article, the President, before commencing his responsibility, shall, at a time the joint session of the Houses determines, present himself before it and shall make a declaration of loyalty to the Constitution and the Peoples of Ethiopia in the following words:

   "I ....., when on this date commence my responsibility as President of the Federal Democratic Republic of Ethiopia, pledge to carry out faithfully the high responsibility entrusted to me."

Article 71
Powers and Functions of the President

1. He shall open the joint session of the House of Peoples' Representatives and the House of the Federation at the commencement of their annual sessions.
2. He shall proclaim in the Negarit Gazeta laws and international agreements approved by the House of Peoples' Representatives in accordance with the Constitution.
3. He shall, upon recommendation by the Prime Minister, appoint ambassadors and other envoys to represent the country abroad.
4. He shall receive the credentials of foreign ambassadors and special envoys.
5. He shall award medals, prizes and gifts in accordance with conditions and procedures established by law.
6. He shall, upon recommendation by the Prime Minister and in accordance with law, grant high military titles.
7. He shall, in accordance with conditions and procedures established by law, grant pardon.

ምዕራፍ ስምንት
የሕግ አስፈጻሚ አካል

አንቀጽ ፸፪
ስለ አስፈጻሚነት ሥልጣን

፩· የኢትዮጵያ ፌዴራል መንግሥት ከፍተኛ የአስፈጻሚነት ሥልጣን የተሰጠው ለጠቅላይ ሚኒስትሩና ለሚኒስትሮች ምክር ቤት ነው ።

፪· ጠቅላይ ሚኒስትሩና የሚኒስትሮች ምክር ቤት ለሕዝብ ተወካዮች ምክር ቤት ተጠሪዎች ናቸው ። የሚኒስትሮች ምክር ቤት አባላት በመንግሥት ተግባራቸው በጋራ ለሚሰጡት ውሳኔ የጋራ ኃላፊነት አለባቸው ።

፫· በዚህ ሕገ መንግሥት መሰረት በሌላ አኳኋን ካልተወሰነ በስተቀር የጠቅላይ ሚኒስትሩ የሥራ ዘመን የሕዝብ ተወካዮች ምክር ቤት የሥራ ዘመን ነው ።

አንቀጽ ፸፫
የጠቅላይ ሚኒስትሩ አሰያየም

፩· ጠቅላይ ሚኒስትሩ ከሕዝብ ተወካዮች ምክር ቤት አባላት መካከል ይመረጣል ።

፪· በሕዝብ ተወካዮች ምክር ቤት አብላጫ መቀመጫ ያገኘው የፖለቲካ ድርጅት ወይም ያገኙት የፖለቲካ ድርጅቶች የመን ግሥት ሥልጣን ይረከባል/ይረከባሉ ።

አንቀጽ ፸፬
የጠቅላይ ሚኒስትሩ ሥልጣንና ተግባር

፩· ጠቅላይ ሚኒስትሩ የሀገሪቱ ርዕሰ መስተዳድር ፣ የሚኒስትሮች ምክር ቤት ሰብሳቢና የጦር ኃይሎች ጠቅላይ አዛዥ ነው ።

፪· ጠቅላይ ሚኒስትሩ የሚኒስትሮች ምክር ቤት አባሎችን ከሁለቱ ምክር ቤቶች አባላት ወይም ለሥራው ብቃት ካላቸው ሌሎች ግለሰቦች መካከል ለሕዝብ ተወካዮች ምክር ቤት በእጩነት አቅርቦ ሹመታቸውን ያስጸድቃል ።

፫· የሕዝብ ተወካዮች ምክር ቤት ያወጣቸው ሕጎች ፣ ፖሊሲዎች፣ መመሪያዎችና ውሳኔዎች ተግባራዊ መሆናቸውን ይከታተላል፣ ያረጋግጣል ።

፬· የሚኒስትሮች ምክር ቤትን ይመራል ፣ ያስተባብራል ፣ ይወክላል።

፭· የሚኒስትሮች ምክር ቤት ያወጣቸውን ፖሊሲዎች ፣ ደንቦች ፣ መመሪያዎችና ውሳኔዎች ተፈጻሚነት ይከታተላል ።

፮· የሀገሪቱን የውጭ ፖሊሲ በበላይነት ያስፈጽማል ።

፯· ኮሚሽነሮችን ፣ የማዕከላዊ ጠቅላይ ፍርድ ቤት ፕሬዚዳንትና ምክትል ፕሬዚዳንትን እና ዋና ኦዲተርን መርጦ በሕዝብ ተወካዮች ምክር ቤት ሹመታቸውን ያስጸድቃል ።

፰· የመስተዳድሩን ሥራ አፈጻጸምና ብቃት ይቆጣጠራል ፣ አስ ፈላጊ የሆኑ የእርምት እርምጃዎችን ይወስዳል ።

፱· በዚህ አንቀጽ ንዑስ አንቀጽ ፪ እና ፯ ከተዘረዘሩት ውጭ የሆኑ ከፍተኛ የመንግሥት የሲቪል ሹመቶችን ይሰጣል ።

፲· የሕዝብ ተወካዮች ምክር ቤት በሚያወጣው ሕግ ወይም በሚሰጠው ውሳኔ መሠረት ኒሻኖችንና ሽልማቶችን ለፕሬዚ ዳንቱ አቅርቦ ያሰጣል።

፲፩· ስለ ሀገሪቱ ሁኔታ ፣ በመንግሥት ስለተከናወኑ ተግባራትና ስለወደፊት ዕቅዶች ለሕዝብ ተወካዮች ምክር ቤት በየወቅቱ ሪፖርት ያቀርባል ።

CHAPTER EIGHT
THE EXECUTIVE

Article 72
The Powers of the Executive

1. The highest executive powers of the Federal Government are vested in the Prime Minister and in the Council of Ministers.
2. The Prime Minister and the Council of Ministers are responsible to the House of Peoples' Representatives. In the exercise of State functions, members of the Council of Ministers are collectively responsible for all decisions they make as a body.
3. Unless otherwise provided in this Constitution the term of office of the Prime Minister is for the duration of the mandate of the House of Peoples' Representatives.

Article 73
Appointment of the Prime Minister

1. The Prime Minister shall be elected from among members of the House of Peoples' Representatives.
2. Power of Government shall be assumed by the political partry or a coalition of political parties that constitutes a majority in the House of Peoples' Representatives.

Article 74
Powers and Functions of the Prime Minister

1. The Prime Minister is the Chief Executive, the Chairman of the Council of Ministers, and the Commander-in-Chief of the national armed forces.
2. The Prime Minister shall submit for approval to the House of Peoples' Representatives nominees for ministerial posts from among members of the two Houses or from among persons who are not members of either House and possess the required qualifications.
3. He shall follow up and ensure the implementation of laws, policies, directives and other decisions adopted by the House of Peoples' Representatives.
4. He leads the Council of Ministers, coordinates its activities and acts as its representative.
5. He exercises overall supervision over the implementation of policies, regulations, directives and decisions adopted by the Council of Ministers.
6. He exercises overall supervision over the implementation of the country's foreign policy.
7. He selects and submits for approval to the House of Peoples' Representatives nominations for posts of Commissioners, the President and Vice–President of the Federal Supreme Court and the Auditor General.
8. He supervises the conduct and efficiency of the Federal administration and takes such corrective measures as are necessary.
9. He appoints high civilian officials of the Federal Government other than those referred to in sub-Articles 2 and 3 of this Article.
10. In accordance with law enacted or decision adopted by the House of Peoples' Representatives, he recommends to the President nominees for the award of medals, prizes and gifts.
11. He shall submit to the House of Peoples' Representatives periodic reports on work accomplished by the Executive as well as on its plans and proposals.

፲፪· በዚህ ሕገ መንግሥትና በሌሎች ሕጎች የተሰጡትን ሌሎች ተግባሮች ያከናውናል ።

፲፫· ሕገ መንግሥቱን ያከብራል ፤ ያስከብራል ።

አንቀጽ ፸፭
ስለ ምክትል ጠቅላይ ሚኒስትር

፩· ምክትል ጠቅላይ ሚኒስትሩ ፡

ሀ) በጠቅላይ ሚኒስትሩ ተለይተው የሚሰጡትን ተግባሮች ያከናውናል ፤

ለ) ጠቅላይ ሚኒስትሩ በማይኖርበት ጊዜ ተክቶት ይሠራል።

፪· ምክትል ጠቅላይ ሚኒስትሩ ተጠሪነቱ ለጠቅላይ ሚኒስትሩ ይሆናል ።

አንቀጽ ፸፮
የሚኒስትሮች ምክር ቤት

፩· የሚኒስትሮች ምክር ቤት ፡ ጠቅላይ ሚኒስትር ፡ ምክትል ጠቅላይ ሚኒስትር ፡ ሚኒስትሮችና በሕግ በሚወሰን መሰረት ሌሎች አባሎች የሚገኙበት ምክር ቤት ነው ።

፪· የሚኒስትሮች ምክር ቤት ተጠሪነቱ ለጠቅላይ ሚኒስትሩ ነው።

፫· የሚኒስትሮች ምክር ቤት ለሚወሰነው ውሳኔ ለሕዝብ ተወካዮች ምክር ቤት ተጠሪ ነው ።

አንቀጽ ፸፯
የሚኒስትሮች ምክር ቤት ሥልጣንና ተግባር

፩· የሚኒስትሮች ምክር ቤት በሕዝብ ተወካዮች ምክር ቤት የወጡ ሕጎችና የተሰጡ ውሳኔዎች በሥራ መተርጎማቸውን ያረጋግጣል ፡ መመሪያዎችን ይሰጣል ።

፪· የሚኒስቴሮችንና በቀጥታ ለሚኒስትሮች ምክር ቤት ተጠሪ የሆኑ ሌሎች የመንግሥት አካላትን አደረጃጀት ይወስናል፡ ሥራቸውን ያስተባብራል ፡ ይመራል ።

፫· የፌዴራሉን መንግሥት ዓመታዊ በጀት ያዘጋጃል ፡ ለሕዝብ ተወካዮች ምክር ቤት ያቀርባል ፡ ሲጸድቅም ተግባራዊነቱን ያረጋግጣል ።

፬· የገንዘብና የፋይናንስ ፖሊሲን ተግባራዊነት ያረጋግጣል ፡ ብሔራዊ ባንክን ያስተዳድራል ፡ ገንዘብ ያትማል ፡ ከሀገር ውስጥና ከውጭ ይበደራል ፡ የውጭ ምንዛሪና የገንዘብ ልውውጥን ይቆጣጠራል ።

፭· የፈጠራና የኪነ ጥበብ መብቶችን ያስጠብቃል ።

፮· የኢኮኖሚያዊ ፡ የማኅበራዊና የልማት ፖሊሲዎች እና ስትራቴጂዎችን ይነድፋል ፡ ያስፈጽማል ።

፯· አንድ ወጥ የመለኪያ ደረጃዎችንና የጊዜ ቀመር ያወጣል ።

፰· የሀገሪቱን የውጭ ግንኙነት ፖሊሲ ያወጣል ፡ ያስፈጽማል ።

፱· ሕግና ሥርዓት መከበሩን ያረጋግጣል ።

፲· የአስቸኳይ ጊዜ አዋጅ ያውጃል ፡ በዚህ ሕገ መንግሥት በተደነገገው የጊዜ ወሰን ውስጥ ፡ የታወጀውን የአስቸኳይ ጊዜ አዋጅ ለሕዝብ ተወካዮች ምክር ቤት አቅርቦ ያስጸድቃል ።

፲፩· የጦርነት ጉዳዮችን ጨምሮ በማናቸውም ጉዳዮች ላይ የሕግ ረቂቅ ለሕዝብ ተወካዮች ምክር ቤት ያቀርባል ።

፲፪· የሕዝብ ተወካዮች ምክር ቤትና ጠቅላይ ሚኒስትሩ የሚሰጡትን ሌሎች ተግባሮች ያከናውናል ።

፲፫· የሕዝብ ተወካዮች ምክር ቤት በሚሰጠው ሥልጣን መሰረት ደንቦችን ያወጣል ።

12. He shall discharge all responsibilities entrusted to him by this Constitution and other laws.
13. He shall obey and enforce the Constitution.

Article 75
Deputy Prime Minister

1. The Deputy Prime Minister shall:
   (a) Carry out responsibilities which shall be specifically entrusted to him by the Prime Minister;
   (b) Act on behalf of the Prime Minister in his absence.
2. The Deputy Prime Minister shall be responsible to the Prime Minister.

Article 76
The Council of Ministers

1. The Council of Ministers comprises the Prime Minister, the Deputy Prime Minister, Ministers and other members as may be determined by law.
2. The Council of Ministers is responsible to the Prime Minister.
3. In all its decisions, the Council of Ministers is responsible to the House of Peoples' Representatives.

Article 77
Powers and Functions of the Council of Ministers

1. The Council of Ministers ensures the implementation of laws and decisions adopted by the House of Peoples' Representatives.
2. It shall decide on the organizational structure of ministries and other organs of government responsible to it; it shall coordinate their activities and provide leadership.
3. It shall draw up the annual Federal budget and, when approved by the House of Peoples' Representatives, it shall implement it.
4. It shall ensure the proper execution of financial and monetary policies of the country; it shall administer the National Bank, decide on the printing of money and minting of coins, borrow money from domestic and external sources, and regulate foreign exchange matters.
5. It shall protect patents and copyrights.
6. It shall formulate and implement economic, social and development policies and strategies.
7. It shall provide uniform standards of measurement and calendar.
8. It shall formulate the country's foreign policy and exercise overall supervision over its implementation.
9. It shall ensure the observance of law and order.
10. It has the power to declare a state of emergency; in doing so, it shall, within the time limit prescribed by the Constitution, submit the proclamation declaring a state of emergency for approval by the House of Peoples' Representatives.
11. It shall submit draft laws to the House of Peoples' Representatives on any matter falling within its competence, including draft laws on a declaration of war.
12. It shall carry out other responsibilities that may be entrusted to it by the House of Peoples' Representatives and the Prime Minister.
13. It shall enact regulations pursuant to powers vested in it by the House of Peoples' Representatives.

ምዕራፍ ዘጠኝ
ስለ ፍርድ ቤቶች አወቃቀርና ሥልጣን

አንቀጽ ፸፰
ስለ ነፃ የዳኝነት አካል

፩· ነፃ የዳኝነት አካል በዚህ ሕገ መንግሥት ተቋቁሟል ።

፪· የፌዴራሉ መንግሥት ከፍተኛ የዳኝነት አካል የፌዴራሉ ጠቅላይ ፍርድ ቤት ይሆናል ። የሕዝብ ተወካዮች ምክር ቤት አስፈላጊ ሆኖ ሲያገኘው የፌዴራል ከፍተኛ ፍርድ ቤትም ሆነ የመጀመሪያ ደረጃ ፍርድ ቤት በሀገሪቱ በሙሉ ወይም በከፊል እንዲደራጅ በሁለት ሦስተኛ ድምፅ ሊወስን ይችላል። ጉዳዩ በዚህ አኳኋን ካልተወሰነ የፌዴራል ከፍተኛና የመጀመሪያ ደረጃ ፍርድ ቤቶች ሥልጣን ለክልል ፍርድ ቤቶች ተሰጥቷል።

፫· ክልሎች ፡ የክልል ጠቅላይ ፍርድ ቤቶች ፡ የክልል ከፍተኛ ፍርድ ቤቶችና የክልል የመጀመሪያ ደረጃ ፍርድ ቤቶች ይኖራቸዋል ። ዝርዝሩ በሕግ ይወሰናል ።

፬· የዳኝነት ሥልጣንን ከመደበኛ ፍርድ ቤቶች ወይም በሕግ የመዳኘት ሥልጣን ከተሰጠው ተቋም ውጭ የሚያደርግ ፡ በሕግ የተደነገገን የዳኝነት ሥርዓት የማይከተል ልዩ ፍርድ ቤት ወይም ጊዜያዊ ፍርድ ቤት አይቋቋምም ።

፭· የሕዝብ ተወካዮች ምክር ቤትና የክልል ምክር ቤቶች በአንቀጽ ፴፬ ንዑስ አንቀጽ ፭ መሰረት የሃይማኖትና የባሕል ፍርድ ቤቶችን ሊያቋቁሙ ወይም እውቅና ሊሰጡ ይችላሉ ። ይህ ሕገ መንግሥት ከመጽደቁ በፊት በመንግሥት እውቅና አግኝተው ሲሰራባቸው የነበሩ የሃይማኖቶችና የባሕል ፍርድ ቤቶች በዚህ ሕገ መንግሥት መሰረት እውቅና አግኝተው ይደራጃሉ ።

አንቀጽ ፸፱
የዳኝነት ሥልጣን

፩· በፌዴራልም ሆነ በክልል የዳኝነት ሥልጣን የፍርድ ቤቶች ብቻ ነው ።

፪· በየትኛውም ደረጃ የሚገኝ የዳኝነት አካል ከማንኛውም የመንግሥት አካል ፡ ከማንኛውም ባለሥልጣን ሆነ ከማን ኛውም ሌላ ተጽዕኖ ነፃ ነው ።

፫· ዳኞች የዳኝነት ተግባራቸውን በሙሉ ነፃነት ያከናውናሉ ። ከሕግ በስተቀር በሌላ ሁኔታ አይመሩም ።

፬· ማንኛውም ዳኛ ከዚህ በታች በተመለከቱት ሁኔታዎች ካልሆነ በስተቀር በሕግ ከተወሰነው የጡረታ ዕድሜ ከመድረሱ በፊት ከፈቃዱ ውጭ ከዳኝነት ሥራው አይነሳም፡

ሀ) የዳኞች አስተዳደር ጉባዔ በዳኞች የዲሲፕሊን ሕግ መሠረት ጥፋት ፈጽሟል ወይም ጉልህ የሆነ የሥራ ችሎታና ቅልጥፍና አንሶታል ብሎ ሲወስን ፡ ወይም

ለ) በህመም ምክንያት ተግባሩን በተገቢው ሁኔታ ማከና ወን አይችልም ብሎ ሲወስን ፡ እና

ሐ) የጉባዔው ውሳኔ በሕዝብ ተወካዮች ምክር ቤት ወይም በክልል ምክር ቤቶች ከግማሽ በላይ ድምፅ ሲጸድቅ ።

፭· የማንኛውም ዳኛ የጡረታ መውጫ ጊዜ አይራዘምም ።

፮· የፌዴራል ጠቅላይ ፍርድ ቤት የፌዴራሉን መንግሥት የዳኝነት አካል የሚያስተዳድርበትን በጀት ለሕዝብ ተወካዮች ምክር ቤት አቅርቦ ያስወስናል ፡ ሲፈቀድም በጀቱን ያስተዳ ድራል ።

CHAPTER NINE
STRUCTURE AND POWERS OF THE COURTS

Article 78
Independence of the Judiciary

1. An independent judiciary is established by this Constitution.
2. Supreme Federal judicial authority is vested in the Federal Supreme Court. The House of Peoples' Representatives may, by two-thirds majority vote, establish nationwide, or in some parts of the country only, the Federal High Court and First-Instance Courts it deems necessary. Unless decided in this manner, the jurisdictions of the Federal High Court and of the First-Instance Courts are hereby delegated to the State courts.
3. States shall establish State Supreme, High and First-Instance Courts. Particulars shall be determined by law.
4. Special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.
5. Pursuant to sub-Article 5 of Article 34 the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.

Article 79
Judicial Powers

1. Judicial powers, both at Federal and State levels, are vested in the courts.
2. Courts of any level shall be free from any interference of influence of any governmental body, government official or from any other source.
3. Judges shall exercise their functions in full independence and shall be directed solely by the law.
4. No judge shall be removed from his duties before he reaches the retirement age determined by law except under the following conditions:
   (a) When the Judicial Administration Council decides to remove him for violation of disciplinary rules or on grounds of gross incompetence or inefficiency; or
   (b) When the Judicial Administration Council decides that a judge can no longer carry out his responsibilities on account of illness; and
   (c) When the House of Peoples' Representatives or the concerned State Council approves by a majority vote the decisions of the Judicial Administration Council.
5. The retirement of judges may not be extended beyond the retirement age determined by law.
6. The Federal Supreme Court shall draw up and submit to the House of Peoples' Representatives for approval the budget of the Federal courts, and upon approval, administer the budget.

፯· የክልል የዳኝነት አካሎች በጀት በየክልሉ ምክር ቤቶች ይመደባል ። የሕዝብ ተወካዮች ምክር ቤት የፌዴራሉን የከፍተኛና የመጀመሪያ ደረጃ ፍርድ ቤቶች የዳኝነት ሥልጣን ደርበው ለሚሠሩት የክልል ጠቅላይ ፍርድ ቤቶችና የክልል ከፍተኛ ፍርድ ቤቶች የበጀት ማካካሻ ይሰጣል ።

አንቀጽ ፹
የፍርድ ቤቶች ጣምራነትና ሥልጣን

፩· የፌዴራል ጠቅላይ ፍርድ ቤት በፌዴራል ጉዳዮች ላይ የበላይና የመጨረሻ የዳኝነት ሥልጣን ይኖረዋል ።

፪· የክልል ጠቅላይ ፍርድ ቤት በክልሉ ጉዳይ ላይ የበላይና የመጨረሻ የዳኝነት ሥልጣን ይኖረዋል ። በተጨማሪ የፌዴራል የከፍተኛ ፍርድ ቤት የዳኝነት ሥልጣን ይኖረዋል።

፫· በዚህ አንቀጽ ንውስ አንቀጽ ፩ እና ፪ የተጠቀሰው ቢኖርም፣

ሀ) የፌዴራሉ ጠቅላይ ፍርድ ቤት መሰረታዊ የሆነ የሕግ ስህተት ያለበትን ማናቸውንም የመጨረሻ ውሳኔ ለማረም በሰበር ችሎት የማየት ሥልጣን ይኖረዋል ። ዝርዝሩ በሕግ ይወሰናል ።

ለ) የክልል ጠቅላይ ፍርድ ቤት መሰረታዊ የሆነ የሕግ ስህተት ያለበትን በክልል ጉዳዮች የተሰጠ የመጨረሻ ውሳኔ ለማረም በሰበር ችሎት የማየት ሥልጣን ይኖረዋል ። ዝርዝሩ በሕግ ይወሰናል ።

፬· የክልል ከፍተኛ ፍርድ ቤት በክልሉ ከሚኖረው የዳኝነት ሥልጣን በተጨማሪ የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት የዳኝነት ሥልጣን ይኖረዋል ።

፭· የክልል ከፍተኛ ፍርድ ቤት በፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት የዳኝነት ሥልጣኑ መሰረት በሚሰጠው ውሳኔ ላይ የሚቀርበው ይግባኝ በክልል ጠቅላይ ፍርድ ቤት ይታያል ።

፮· የክልል ጠቅላይ ፍርድ ቤት በፌዴራል የዳኝነት ሥልጣኑ በሚሰጠው ውሳኔ ላይ የሚቀርበው ይግባኝ በፌዴራሉ ጠቅላይ ፍርድ ቤት ይታያል ።

አንቀጽ ፹፩
ስለዳኞች አሿሿም

፩· የፌዴራል ጠቅላይ ፍርድ ቤት ፕሬዚዳንትና ምክትል ፕሬዚዳንት በፌዴራል መንግሥት ጠቅላይ ሚኒስትር አቅራቢነት በሕዝብ ተወካዮች ምክር ቤት ይሾማሉ ።

፪· ሌሎች የፌዴራል ጠቅላይ ፍርድ ቤት ዳኞችን በተመለከተ በፌዴራል የዳኞች አስተዳደር ጉባዔ የቀረቡለትን እጩዎች ጠቅላይ ሚኒስትሩ ለሕዝብ ተወካዮች ምክር ቤት አቅርቦ ያሾማል ።

፫· የክልል ጠቅላይ ፍርድ ቤት ፕሬዚዳንትና ምክትል ፕሬዚዳንት በክልሉ ርዕሰ መስተዳድር አቅራቢነት በክልሉ ምክር ቤት ይሾማሉ ።

፬· የክልል ጠቅላይ ፍርድ ቤትና የክልል ከፍተኛ ፍርድ ቤት ዳኞች በክልሉ የዳኞች አስተዳደር ጉባዔ አቅራቢነት በክልሉ ምክር ቤት ይሾማሉ ። የክልሉ የዳኞች አስተዳደር ጉባዔ የዳኞችን ሹመት ለምክር ቤቱ ከማቅረቡ በፊት የፌዴራሉ የዳኞች አስተዳደር ጉባዔ በእጩዎቹ ላይ ያለውን አስተያየት መጠየቅና አስተያየቱን ከራሱ አስተያየት ጋር በማያያዝ ለክልሉ ምክር ቤት የማቅረብ ኃላፊነት አለበት ። የፌዴራሉ የዳኞች አስተዳደር ጉባዔ አስተያየቱን በሦስት ወር ጊዜ ውስጥ ካላቀረበ የክልሉ ምክር ቤት ሹመቱን ያጸድቃል ።

7. Budgets of State courts shall be determined by the respective State Council. The House of Peoples' Representatives shall allocate compensatory budgets for States whose Supreme and High courts concurrently exercise the jurisdictions of the Federal High Court and Federal First-Instance Courts.

Article 80
Concurrent Jurisdiction of Courts

1. The Federal Supreme Court shall have the highest and final judicial power over Federal matters.
2. State Supreme Courts shall have the highest and final judicial power over State matters. They shall also exercise the jurisdiction of the Federal High Court.
3. Notwithstanding the Provisions of sub-Articles 1 and 2 of this Article;
   (a) The Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law. Particulars shall be determined by law.
   (b) The State Supreme Court has power of cassation over any final court decision on State matters which contains a basic error of law. Particulars shall be determined by law.
4. State High Courts shall, in addition to State jurisdiction, exercise the jurisdiction of the Federal First-Instance Court.
5. Decisions rendered by a State High Court exercising the jurisdiction of the Federal First-Instance Court are appealable to the State Supreme Court.
6. Decisions rendered by a State Supreme Court on Federal matters are appealable to the Federal Supreme Court.

Article 81
Appointment of Judges

1. The President and Vice-President of the Federal Supreme Court shall, upon recommendation by the Prime Minister, be appointed by the House of People's Representatives.
2. Regarding other Federal judges, the Prime Minister shall submit to the House of Peoples' Representatives for appointment candidates selected by the Federal Judicial Administration Council.
3. The State Council shall, upon recommendation by the Chief Executive of the State, appoint the President and Vice-President of the State Supreme Court.
4. State Supreme and High Court judges shall, upon recommendation by the State Judicial Administration Council, be appointed by the State Council. The State Judicial Administration Council, before submitting nominations to the State Council, has the responsibility to solicit and obtain the views of the Federal Judicial Administration Council on the nominees and to forward those views along with its recommendations. If the Federal Judicial Administration Council does not submit its views within three months, the State Council may grant the appointments.

፭· የክልል የመጀመሪያ ደረጃ ፍርድ ቤት ዳኞች በክልሉ የዳኞች አስተዳደር ጉባዔ አቅራቢነት በክልሉ ምክር ቤት ይሾማሉ ።

፮· በየትኛውም ደረጃ የሚገኙ ዳኞች የዲሲፕሊንና የዝውውር ጉዳይ በሚመለከተው የዳኞች አስተዳደር ጉባዔ ይወሰናል ።

አንቀጽ ፹፪
የሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔ አወቃቀር

፩· የሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔ በዚህ ሕገ መንግሥት ተቋቁሟል ።

፪· የሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔ አሥራ አንድ አባላት ይኖሩታል ። አባላቱም የሚከተሉት ናቸው ፡

ሀ) የፈዴራል ጠቅላይ ፍርድ ቤት ፕሬዚዳንት ፡ ሰብሳቢ ፤

ለ) የፈዴራል ጠቅላይ ፍርድ ቤት ምክትል ፕሬዚዳንት ፡ ምክትል ሰብሳቢ ፡

ሐ) በሕዝብ ተወካዮች ምክር ቤት አቅራቢነት በሪፐብሊኩ ፕሬዚዳንት የሚሾሙ በሙያ ብቃታቸውና በሥነ ምግባራቸው የተመሰከረላቸው ስድስት የሕግ ባለሙያዎች ፤

መ) የፈዴሬሽኑ ምክር ቤት ከአባላቱ መካከል የሚወክላቸው ሦስት ሰዎች ።

፫· የሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔ የሥራ ቅልጥፍናን ለማረጋገጥ የሚያስችለው መዋቅር ሊዘረጋ ይችላል ።

አንቀጽ ፹፫
ሕገ መንግሥቱን ስለመተርጎም

፩· የሕገ መንግሥታዊ ክርክር ጉዳይ ሲነሳ በፈዴሬሽኑ ምክር ቤት ውሳኔ ያገኛል ።

፪· የፈዴሬሽን ምክር ቤት ፡ የሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔ በሚያቀርብለት ሕገ መንግሥታዊ ጉዳይ ላይ በሠላሳ ቀናት ወስጥ ውሳኔ ይሰጣል ።

አንቀጽ ፹፬
የሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔ ሥልጣንና ተግባር

፩· የሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔ ሕገ መንግሥታዊ ጉዳዮችን የማጣራት ሥልጣን ይኖረዋል ። በሚያደርገው ማጣራት መሰረት ሕገ መንግሥቱን መተርጎም አስፈላጊ ሆኖ ሲያገኘው ለፈዴሬሽን ምክር ቤት በጉዳዩ ላይ የውሳኔ ሃሳብ ያቀርባል ።

፪· በፈዴራሉ መንግሥትም ሆነ በክልል ሕግ አውጪ አካላት የሚወጡ ሕጎች ከዚህ ሕገ መንግሥት ጋር ይቃረናሉ የሚል ጥያቄ ሲነሳና ጉዳዩም በሚመለከተው ፍርድ ቤት ወይም በባለ ጉዳዩ ሲቀርብለት ሙሪምሮ ለመጨረሻ ውሳኔ ለፈዴሬሽኑ ምክር ቤት ያቀርባል ።

፫· በፍርድ ቤቶች የሕገ መንግሥት ትርጉም ጥያቄ ሲነሳ ፡

ሀ) ሕገ መንግሥቱን መተርጎም አስፈላጊ ሆኖ ሳያገኘው ሲቀር ጉዳዩን ለሚመለከተው ፍርድ ቤት ይመልሳል ፡ በአጣሪ ጉባዔው ውሳኔ ቅር የተሰኘ ባለጉዳይ ቅሬታውን ለፈዴሬሽኑ ምክር ቤት በይግባኝ ማቅረብ ይችላል ።

ለ) የትርጉም ጥያቄ መኖሩን ያመነበት እንደሆነ በጉዳዩ ላይ የሚሰጠውን ሕገ መንግሥታዊ ትርጉም ለፈዴሬሽን ምክር ቤት ለመጨረሻ ውሳኔ ያቀርባል ።

፬· የሚመራበትን ሥነ ሥርዓት አርቅቆ ለፈዴሬሽኑ ምክር ቤት ያቀርባል ፡ ሲፈቀድም ተግባራዊ ያደርጋል ።

5. Judges of State First-Instance Courts shall, upon recommendation by the State Judicial Administration Council, be appointed by the State Council.

6. Matters of code of professional conduct and discipline as well as transfer of judges of any court shall be determined by the concerned Judicial Administration Council.

Article 82
Structure of the Council of Constitutional Inquiry

1. The Council of Constitutional Inquiry is established by this Constitution.
2. The Council of Constitutional Inquiry shall have eleven members comprising:
   (a) The President of the Federal Supreme Court, who shall serve as its President;
   (b) The Vice-President of the Federal Supreme Court, who shall serve as its Vice-President;
   (c) Six legal experts, appointed by the President of the Republic on recommendation by the House of Peoples' Representatives, who shall have proven professional competence and high moral standing;
   (d) Three persons designated by the House of the Federation from among its members.
3. The Council of Constitutional Inquiry shall establish organizational structure which can ensure expeditious execution of its responsibilities.

Article 83
Interpretation of the Constitution

1. All constitutional disputes shall be decided by the House of the Federation.
2. The House of the Federation shall, within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry.

Article 84
Powers and Functions of the Council of Constitutional Inquiry

1. The Council of Constitutional Inquiry shall have powers to investigate constitutional disputes. Should the Council, upon consideration of the matter, find it necessary to interpret the Constitution, it shall submit its recommendations thereon to the House of the Federation.
2. Where any Federal or State law is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the Council shall consider the matter and submit it to the House of the Federation for a final decision.
3. When issues of constitutional interpretation arise in the courts, the Council shall:
   (a) Remand the case to the concerned court if it finds there is no need for constitutional interpretation; the interested party, if dissatisfied with the decision of the Council, may appeal to the House of the Federation.
   (b) Submit its recommendations to the House of the Federation for a final decision if it believes there is a need for constitutional interpretation.
4. The Council shall draft its rules of procedure and sumbit them to the House of the Federation; and implement them upon approval.

ምዕራፍ አሥር
የብሔራዊ ፖሊሲ መርሆዎችና ዓላማዎች

አንቀጽ ፹፭
ዓላማዎች

፩. ማንኛውም የመንግሥት አካል ሕገ መንግሥቱን ፡ ሌሎች ሕጎችንና ፖሊሲዎችን ሥራ ላይ ሲያውል በዚህ ምዕራፍ በተመለከቱት መርሆዎችና ዓላማዎች ላይ መመስረት አለበት።

፪. በዚህ ምዕራፍ ውስጥ ''መንግሥት'' ማለት እንደየሁኔታው የፌዴራል መንግሥት ወይም የክልል መስተዳድሮች ማለት ይሆናል ።

አንቀጽ ፹፮
የውጭ ግንኙነት መርሆዎች

፩. የኢትዮጵያን ሕዝቦች ጥቅም የሚያስጠብቅና የሀገሪቱን ሉዓላዊነት የሚያስከብር የውጭ ግንኙነት ፖሊሲ ማራመድ ።

፪. የመንግሥታትን ሉዓላዊነትና እኩልነት ማክበር ፡ በሌሎች ሀገሮች ጉዳዮች ወስጥ ጣልቃ አለመግባት ።

፫. የሀገሪቱ የውጭ ግንኙነት ፖሊሲ በጋራ ጥቅምና በእኩልነት ላይ የተመሰረተ መሆኑን እንዲሁም በዓለም አቀፍ ደረጃ የሚደረጉ ስምምነቶች የኢትዮጵያን ጥቅም የሚያስከብሩ መሆናቸውን ማረጋገጥ ።

፬. የኢትዮጵያን ሉዓላዊነት የሚያስከብሩና የሕዝቦቿን ጥቅም የማይፃረሩ ዓለም አቀፍ ሕጎችና ስምምነቶችን ማክበር ።

፭. ከጎረቤት ሀገሮችና ከሌሎችም የአፍሪካ ሀገሮች ጋር በየጊዜው እያደገ የሚሄድ ኢኮኖሚያዊ ጎብረትና የሕዝቦች ወንድማማችነትን ማጎልበት ።

፮. በሀገሮች መካከል የሚነሱ ግጭቶች ሰላማዊ በሆነ መንገድ እንዲፈቱ ጥረት ማድረግ ።

አንቀጽ ፹፯
የመከላከያ መርሆዎች

፩. የሀገሪቱ የመከላከያ ሠራዊት የብሔሮች ፡ የብሔረሰቦች እና የሕዝቦችን ሚዛናዊ ተዋፅዖ ያካተተ ይሆናል ።

፪. የመከላከያ ሚኒስትር ሆኖ የሚሾመው ሲቪል ይሆናል ።

፫. የመከላከያ ሠራዊት የሀገሪቱን ሉዓላዊነት ከመጠበቅ በተጨማሪ በዚህ ሕገ መንግሥት መሰረት በአስቸኳይ ጊዜ አዋጅ የሚሰጡትን ተግባሮች ያከናውናል ።

፬. የመከላከያ ሠራዊቱ በማናቸውም ጊዜ ለሕገ መንግሥቱ ተገዢ ይሆናል ።

፭. የመከላከያ ሠራዊቱ ተግባሩን ከፖለቲካ ድርጅቶች ወገናዊነት ነፃ በሆነ አኳኋን ያከናውናል ።

አንቀጽ ፹፰
ፖለቲካ ነክ ዓላማዎች

፩. መንግሥት በዴሞክራሲያዊ መርሆዎች ላይ በመመስረት ሕዝቡ በሁሉም ደረጃዎች ራሱን በራሱ የሚያስተዳድርበትን ሁኔታ ማመቻቸት አለበት ።

፪. መንግሥት የብሔሮችን ፡ የብሔረሰቦችን ፡ የሕዝቦችን ማንነት የማክበርና በዚሁ ላይ በመመርኮዝ በመካከላቸው እኩልነት ፡ አንድነትና ወንድማማችነትን የማጠናከር ግዴታ አለበት ።

CHAPTER TEN
NATIONAL POLICY PRINCIPLES AND OBJECTIVES

Article 85
Objectives

1. Any organ of Government shall, in the implementation of the Constitution, other laws and public policies, be guided by the principles and objectives specified under this Chapter.
2. The term ''Government'' in this Chapter shall mean a Federal or State government as the case may be.

Article 86
Principles for External Relations

1. To promote policies of foreign relations based on the protection of national interests and respect for the sovereignty of the country.
2. To promote mutual respect for national sovereignty and equality of states and non-interference in the internal affairs of other states.
3. To ensure that the foreign relation policies of the country are based on mutual interests and equality of states as well as that international agreements promote the interests of Ethiopia.
4. To observe international agreements which ensure respect for Ethiopia's sovereignty and are not contrary to the interests of its Peoples.
5. To forge and promote ever growing economic union and fraternal relations of Peoples with Ethiopia's neighbours and other African countries.
6. To seek and support peaceful solutions to international disputes.

Article 87
Principles for National Defence

1. The composition of the national armed forces shall reflect the equitable representation of the Nations, Nationalities and Peoples of Ethiopia.
2. The Minister of Defence shall be a civilian.
3. The armed forces shall protect the sovereignty of the country and carry out any responsibilities as may be assigned to them under any state of emergency declared in accordance with the Constitution.
4. The armed forces shall at all times obey and respect the Constitution.
5. The armed forces shall carry out their functions free of any partisanship to any political organization(s).

Article 88
Political Objectives

1. Guided by democratic principles, Government shall promote and support the People's self-rule at all levels.
2. Government shall respect the identity of Nations, Nationalities and Peoples. Accordingly Government shall have the duty to strengthen ties of equality, unity and fraternity among them.

አንቀጽ ፹፱
ኢኮኖሚ ነክ ዓላማዎች

፩· መንግሥት ሁሉም ኢትዮጵያውያን የሀገሪቱ የተጠራቀመ ዕውቀትና ሀብት ተጠቃሚዎች የሚሆኑበትን መንገድ የመቀየስ ኃላፊነት አለበት ።

፪· መንግሥት የኢትዮጵያውያንን የኢኮኖሚ ሁኔታዎች ለማሻሻል እኩል ዕድል እንዲኖራቸው ለማድረግና ሀብት ፍትሐዊ በሆነ መንገድ የሚከፋፈሉበትን ሁኔታ የማመቻቸት ግዴታ አለበት ።

፫· የተፈጥሮና ሰው ሰራሽ አደጋ እንዳይደርስ መከላከልና አደጋው ሲደርስም ለተጎጂው እርዳታ በወቅቱ እንዲደርስ ማድረግ ።

፬· በእድገት ወደኋላ ለቀሩ ብሔሮች ፡ ብሔረሰቦች ፡ ሕዝቦች መንግሥት ልዩ ድጋፍ ያደርጋል ።

፭· መንግሥት መሬትንና የተፈጥሮ ሀብትን በሕዝብ ስም በይዞታው ስር በማድረግ ለሕዝቡ የጋራ ጥቅምና እድገት እንዲውሉ የማድረግ ኃላፊነት አለበት ።

፮· የሀገር ልማት ፖሊሲዎችና ፕሮግራሞች በሚዘጋጁበት ወቅት መንግሥት ሕዝቡን በየደረጃው ማሳተፍ አለበት ። የሕዝብንም የልማት እንቅስቃሴዎች መደገፍ አለበት ።

፯· መንግሥት በሀገር ኢኮኖሚያዊና ማኅበራዊ ልማት እንቅስቃሴ ውስጥ ሴቶች ከወንዶች ጋር በእኩልነት የሚሳተፉበትን ሁኔታ የማመቻቸት ኃላፊነት አለበት ።

፰· መንግሥት የሠራተኛውን ሕዝብ ጤንነት ፡ ደህንነትና የኑሮ ደረጃ ለመጠበቅ መጣር አለበት ።

አንቀጽ ፺
ማኅበራዊ ነክ ዓላማዎች

፩· የሀገሪቱ አቅም በፈቀደ መጠን ሁሉም ኢትዮጵያዊ የትምህርት፡ የጤና አገልግሎት ፡ የንጹህ ውሃ ፡ የመኖሪያ ፡ የምግብና የማኅበራዊ ዋስትና እንዲኖረው ይደረጋል ።

፪· ትምህርት በማናቸውም ረገድ ከሃይማኖት ፡ ከፖለቲካ አመለካከቶች እና ከባሕላዊ ተዕዕኖዎች ነፃ በሆነ መንገድ መካሔድ አለበት ።

አንቀጽ ፺፩
ባሕል ነክ ዓላማዎች

፩· መንግሥት መሰረታዊ መብቶችንና ለብዓዊ ክብርን ፡ ዴሞክራሲንና ሕገ መንግሥቱን የማይቃረኑ ባሕሎችና ልማዶች በእኩልነት እንዲጎለብቱና እንዲያድጉ የመርዳት ኃላፊነት አለበት ።

፪· የሀገር የተፈጥሮ ሀብቶችንና የታሪክ ቅርሶችን መጠበቅ የመንግሥትና የሁሉም ኢትዮጵያዊ ግዴታ ነው ።

፫· መንግሥት አቅም በፈቀደ መጠን ኪነጥበብን ፡ ሳይንስና ቴክኖሎጂን የማስፋፋት ግዴታ አለበት ።

አንቀጽ ፺፪
የአካባቢ ደህንነት ጥበቃ ዓላማዎች

፩· መንግሥት ሁሉም ኢትዮጵያዊ ንጹህና ጤናማ አካባቢ እንዲኖረው የመጣር ኃላፊነት አለበት ።

፪· ማንኛውም የኤኮኖሚ ልማት እርምጃ የአካባቢውን ደህንነት የማያናጋ መሆን አለበት ።

Article 89
Economic Objectives

1. Government shall have the duty to formulate policies which ensure that all Ethiopians can benefit from the country's legacy of intellectual and material resources.
2. Government has the duty to ensure that all Ethiopians get equal opportunity to improve their economic conditions and to promote equitable distribution of wealth among them.
3. Government shall take measures to avert any natural and man-made disasters, and, in the event of disasters, to provide timely assistance to the victims.
4. Government shall provide special assistance to Nations, Nationalities, and Peoples least advantaged in economic and social development.
5. 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.
6. Government shall at all times promote the participation of the People in the formulation of national development policies and programmes; it shall also have the duty to support the initiatives of the People in their development endeavours.
7. Government shall ensure the participation of women in equality with men in all economic and social development endeavours.
8. Government shall endeavour to protect and promote the health, welfare and living standards of the working population of the country.

Article 90
Social Objectives

1. To the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.
2. Education shall be provided in a manner that is free from any religious influence, political partisanship or cultural prejudices.

Article 91
Cultural Objectives

1. Government shall have the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Constitution.
2. Government and all Ethiopian citizens shall have the duty to protect the country's natural endowment, historical sites and objects.
3. Government shall have the duty, to the extent its resources permit, to support the development of the arts, science and technology.

Article 92
Environmental Objectives

1. Government shall endeavour to ensure that all Ethiopians live in a clean and healthy environment.
2. The design and implementation of programmes and projects of development shall not damage or destroy the environment.

፫· የሕዝብን የአካባቢ ደህንነት የሚመለከት ፖሊሲና ፕሮግራም በሚነደፍበትና ሥራ ላይ በሚውልበት ጊዜ የሚመለከተው ሕዝብ ሁሉ ሀሳቡን እንዲገልጽ መደረግ አለበት ።

፬· መንግሥትና ዜጎች አካባቢያቸውን የመንከባከብ ግዴታ አለባቸው ።

ምዕራፍ አሥራ አንድ
ልዩ ልዩ ድንጋጌዎች

አንቀጽ ፺፫
ስለ አስቸኳይ ጊዜ አዋጅ

፩· ሀ) የውጭ ወረራ ሲያጋጥም ወይም ሕገ መንግሥታዊ ሥርዓቱን አደጋ ላይ የሚጥል ሁኔታ ሲከሰትና በተለመደው የሕግ ማስከበር ሥርዓት ለመቋቋም የማይቻል ሲሆን ፡ ማናቸውም የተፈጥሮ አደጋ ሲያጋጥም ወይም የሕዝብን ጤንነት አደጋ ላይ የሚጥል በሽታ ሲከሰት ፡ የፌዴራሉ መንግሥት የሚኒስትሮች ምክር ቤት የአስቸኳይ ጊዜ አዋጅ የመዛንግግ ሥልጣን አለው ።

ለ) የተፈጥሮ አደጋ ሲያጋጥም ወይም የሕዝብን ደህንነት አደጋ ላይ የሚጥል በሽታ ሲከሰት የክልል መስተዳድሮች በክልላቸው የአስቸኳይ ጊዜ አዋጅ ሊያውጁ ይችላሉ ። ዝርዝሩ ክልሎች ይህን ሕገ መንግሥት መሰረት በማድረግ በሚያወጧቸው ሕገ መንግሥቶች ይወሰናል ።

፪· በዚህ አንቀጽ ንዑስ አንቀጽ ፩ (ሀ) መሰረት የሚታወጅ የአስቸኳይ ጊዜ አዋጅ ፡

ሀ) የሕዝብ ተወካዮች ምክር ቤት በሥራ ላይ ባለ ጊዜ የታወጀ ከሆነ በታወጀ በአርባ ስምንት ሰዓታት ውስጥ ለሕዝብ ተወካዮች ምክር ቤት መቅረብ አለበት ። አዋጁ በሕዝብ ተወካዮች ምክር ቤት ሁለት ሦስተኛ ድምፅ ተቀባይነት ካላገኘ ወዲያውኑ ይሻራል።

ለ) ከላይ በንዑስ አንቀጽ (ሀ) ስር የተጠቀሰው እንደተጠበቀ ሆኖ ፡ የሕዝብ ተወካዮች ምክር ቤት በሥራ ላይ ባልሆነበት ወቅት የሚታወጅ የአስቸኳይ ጊዜ አዋጅ ለሕዝብ ተወካዮች ምክር ቤት መቅረብ ያለበት አዋጁ በታወጀ በአሥራ አምስት ቀናት ውስጥ ነው ።

፫· በሚኒስትሮች ምክር ቤት የተደነገገው የአስቸኳይ ጊዜ አዋጅ በምክር ቤቱ ተቀባይነት ካገኘ በኋላ ሊቆይ የሚችለው እስከ ስድስት ወራት ነው ። የሕዝብ ተወካዮች ምክር ቤት በሁለት ሦስተኛ ድምፅ አንድን የአስቸኳይ ጊዜ አዋጅ በየአራት ወሩ በተደጋጋሚ እንዲታደስ ሊያደርግ ይችላል ።

፬· ሀ) የአስቸኳይ ጊዜ አዋጅ በሚታወጅበት ጊዜ የሚኒስትሮች ምክር ቤት በሚያወጣቸው ደንቦች መሰረት የሀገርን ሰላምና ሕልውና ፡ የሕዝብን ደህንነት ፡ ሕግና ሥርዓትን የማስከበር ሥልጣን ይኖረዋል ።

ለ) የሚኒስትሮች ምክር ቤት ሥልጣን በሕገ መንግሥቱ የተቀመጡትን መሰረታዊ የፖለቲካና የዴሞክራሲ መብቶችን ፡ የአስቸኳይ ጊዜ አዋጁን ለማወጅ ምክንያት የሆነውን ጉዳይ ለማስወገድ ተፈላጊ ሆኖ በተገኘው ደረጃ ፡ እስከ ማገድ ሊደርስ የሚችል ነው ።

ሐ) የሚኒስትሮች ምክር ቤት በአስቸኳይ ጊዜ አዋጅ ስር የሚያወጣቸው ድንጋጌዎችና የሚወስዳቸው እርምጃዎች በማናቸውም ረገድ በዚህ ሕገ መንግሥት አንቀጽ ፩ ፡ ፲፰ ፡ ፳፭ እና ፴፱ ንዑስ አንቀጽ ፩ እና ፪ የተቀመጡትን መብቶች የሚገድቡ ሊሆኑ አይችሉም።

3. People have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.

4. Government and citizens shall have the duty to protect the environment.

CHAPTER ELEVEN
MISCELLANEOUS PROVISIONS

Article 93
Declaration of State of Emergency

1. (a) The Council of Ministers of the Federal Government shall have the power to decree a state of emergency should an external invasion, a break down of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur.

   (b) State executives can decree a State-wide state of emergency should a natural disaster or an epidemic occur. Particulars shall be determined in State Constitutions to be promulgated in conformity with this Constitution.

2. A state of emergency declared in accordance with sub-Article 1(a) of this Article:

   (a) If declared when the House of Peoples' Representatives is in session, the decree shall be sumbitted to the House within forty-eight hours of its declaration. The decree, if not approved by a two-thirds majority vote of members of the House of Peoples' Representatives, shall be repealed forthwith.

   (b) Subject to the required vote of approval set out in (a) of this sub-Article, the decree declaring a state of emergency when the House of peoples' Representatives is not in session shall be submitted to it within fifteen days of its adoption.

3. A state of emergency decreed by the Council of Ministers, if approved by the House of Peoples' Representatives, can remain in effect up to six months. The House of Peoples' Representatives may, by a two-thirds majority vote, allow the state of emergency proclamation to be renewed every four months successively.

4. (a) When a state of emergency is declared, the Council of Ministers shall, in accordance with regulations it issues, have all necessary power to protect the country's peace and sovereignty, and to maintain public security, law and order.

   (b) The Council of Ministers shall have the power to suspend such political and democratic rights contained in this Constitution to the extent necessary to avert the conditions that required the declaration of a state of emergency.

   (c) In the exercise of its emergency powers the Council of Ministers cannot, however, suspend or limit the rights provided for in Articles 1, 18, 25, and sub-Articles 1 and 2 of Aarticle 39 of this Constitution.

፭· በሀገሪቱ የአስቸኳይ ጊዜ አዋጅ በሚታወጅበት ወቅት የሕዝብ ተወካዮች ምክር ቤት ከአባላቱና ከሕግ ባለሙያዎች መርጦ የሚመድባቸው ሰባት አባላት ያሉት የአስቸኳይ ጊዜ አዋጅ አፈጻጸም መርማሪ ቦርድ ያቋቁማል ። ቦርዱ አዋጁ በሕዝብ ተወካዮች ምክር ቤት በሚጸድቅበት ጊዜ ይቋቋማል ።

፮· የአስቸኳይ ጊዜ አዋጅ አፈጻጸም መርማሪ ቦርድ የሚከተሉት ሥልጣንና ኃላፊነቶች አሉት ፡

ሀ) በአስቸኳይ ጊዜ አዋጅ ምክንያት የታሰሩትን ግለሰቦች ስም በአንድ ወር ጊዜ ውስጥ ይፋ ማድረግና የታሰሩበትን ምክንያት መግለጽ ፡

ለ) በአስቸኳይ ጊዜ አዋጅ ወቅት የሚወሰዱት እርምጃ ዎች በማናቸውም ረገድ ኢሰብዓዊ አለመሆናቸውን መቆጣጠርና መከታተል ፡

ሐ) ማናቸውም የአስቸኳይ ጊዜ አዋጅ እርምጃ ኢሰብዓዊ መሆኑን ሲያምንበት ጠቅላይ ሚኒስትሩ ወይም የሚኒስ ትሮች ምክር ቤት እርምጃውን እንዲያስተካክል ሀሳብ መስጠት ፡

መ) በአስቸኳይ ጊዜ አዋጅ እርምጃዎች ኢሰብዓዊ ድርጊት የሚፈጽሙትን ሁሉ ለፍርድ እንዲቀርቡ ማድረግ ፡

ሠ) የአስቸኳይ ጊዜ አዋጅ እንዲቀጥል ለሕዝብ ተወካዮች ምክር ቤት ጥያቄ ሲቀርብ ያለውን አስተያየት ለምክር ቤቱ ማቅረብ ።

አንቀጽ ፺፬
የፋይናንስ ወጪን በሚመለከት

፩· የፌዴራሉ መንግሥትና ክልሎች በሕግ የተሰጧቸውን ኃላፊነ ቶችና ተግባሮች ለማከናወን የሚያስፈልጋቸውን ወጪ በየበኩ ላቸው ይሸፍናሉ ፡ ሆኖም ማናቸውም ክልል በውክልና ለሚፈ ጽመው ተግባር የሚያስፈልገው ወጪ ሌላ ስምምነት ከሌለ በቀር ውክልናውን በሰጠው ወገን ይሸፈናል ።

፪· የፌዴራሉ መንግሥት ለክልሎች የተመጣጠነ እድገት እንቅፋት ካልሆነ በስተቀር ለአስቸኳይ ጊዜ እርዳታ ፡ ለመልሶ ማቋቋምና ለልማት ማስፋፊያ ለክልሎች ብድርም ሆነ እርዳታ ሊሰጥ ይችላል ። የፌዴራሉ መንግሥት ክልሎች ለሚያስፈልጋቸው ወጪ የሚያደርገውን ድጎማ በሚመለከት አዲትና ቁጥጥር የማድረግ ሥልጣን ይኖረዋል ።

አንቀጽ ፺፭
የፋይናንስ ገቢን በሚመለከት

የፌዴራሉ መንግሥትና ክልሎች የሚዋቀረውን የፌዴራል አደረ ጃጀት የተከተለ የገቢ ክፍፍል ያደርጋሉ ።

አንቀጽ ፺፮
የፌዴራል መንግሥት የታክስና የግብር ሥልጣን

፩· የፌዴራል መንግሥት በወጪና ገቢ ዕቃዎች ላይ የጉምሩክ ቀረጥ ፡ ታክስና ሌሎች ክፍያዎች ይጥላል ፡ ይሰበስባል ።

፪· በፌዴራል መንግሥትና በዓለም አቀፍ ድርጅቶች ተቀጣሪዎች ላይ የሥራ ግብር ይጥላል ፡ ይሰበስባል።

፫· በፌዴራል መንግሥት ባለቤትነት ሥር በሆኑ የልማት ድር ጅቶች ላይ የንግድ ትርፍ ግብር ፡ የሥራ ግብር ፡ የሽያጭና የኤክሳይስ ታክስ ይጥላል ፡ ይሰበስባል ።

፬· በብሔራዊ የሎተሪ እና ሌሎች የዕድል ሙከራ ገቢዎች ላይ ታክስ ይጥላል ፡ ይሰበስባል ።

5. The House of Peoples' Representatives, while declaring a state of emergency, shall simultaneously establish a State of Emergency Inquiry Board, comprising of seven persons to be chosen and assigned by the House from among its members and from legal experts.

6. The State of Emergency Inquiry Board shall have the following powers and responsibilities:
   (a) To make public within one month the names of all individuals arrested on account of the state of emergency together with the reasons for their arrest.
   (b) To inspect and follow up that no measure taken during the state of emergency is inhumane.
   (c) To recommend to the Prime Minister or to the Council of Ministers corrective measures if it finds any case of inhumane treatment.
   (d) To ensure the prosecution of perpetrators of inhumane acts.
   (e) To submit its views to the House of Peoples' Representatives on a request to extend the duration of the state of emergency.

Article 94
Financial Expenditures

1. The Federal Government and the States shall respectively bear all financial expenditures necessary to carry out all responsibilities and functions assigned to them by law. Unless otherwise agreed upon, the financial expenditures required for the carrrying out of any delegated function by a State shall be borne by the delegating party.
2. The Federal Government may grant to States emergency, rehabilitation and development assistance and loans, due care being taken that such assistance and loans do not hinder the proportionate development of States. The Federal Government shall have the power to audit and inspect the proper utilization of subsidies it grants to the States.

Article 95
Revenue

The Federal Government and the States shall share revenue taking the federal arrangement into account.

Article 96
Federal Power of Taxation

1. The Federal Government shall levy and collect custom duties, taxes and other charges on imports and exports.
2. It shall levy and collect income tax on employees of the Federal Government and international organizations.
3. It shall levy and collect income, profit, sales and excise taxes on enterprises owned by the Federal Government.
4. It shall tax the income and winnings of national lotteries and other games of chance.

፭· በአየር ፡ በባቡርና በባሕር ትራንስፖርት ገቢዎች ላይ ታክስ ይጥላል ፡ ይሰበስባል ።

፮· በፌዴራል መንግሥት ባለቤትነት ሥር በሚገኙ ቤቶችና ሌሎች ንብረቶች ገቢ ላይ ግብር ይጥላል ፡ ይሰበስባል ፡ ኪራይ ይወስናል ።

፯· የፌዴራል መንግሥት አካላት ከሚሰጧቸው ፈቃዶችና አገልግሎቶች የሚመነጩ ክፍያዎችን ይወስናል ፡ ይሰበስባል ።

፰· የሞኖፖል ታክስ ይጥላል ፡ ይሰበስባል ።

፱· የፌዴራል የቴምብር ሽያጭ ቀረጥ ይጥላል ፡ ይሰበስባል ።

አንቀጽ ፺፯
የክልል መስተዳድሮች የታክስና የግብር ሥልጣን

፩· ክልሎች ፡ በክልል መስተዳድርና በድርጅት ተቀጣሪዎች ላይ የሥራ ግብር ይጥላሉ ፡ ይሰበስባሉ ።

፪· የመሬት መጠቀሚያ ክፍያ ይወስናሉ ፡ ይሰበስባሉ ።

፫· በግል የሚያርሱና በኅብረት ሥራ ማኅበራት በተደራጁ ገበሬዎች ላይ የእርሻ ሥራ ገቢ ግብር ይጥላሉ ፡ ይሰበስባሉ ።

፬· በክልሉ በሚገኙ ግለሰብ ነጋዴዎች ላይ የንግድ ትርፍ ግብርና የሽያጭ ታክስ ይጥላሉ ፡ ይሰበስባሉ ።

፭· በክልሉ ውስጥ በውሀ ላይ ከሚደረግ ትራንስፖርት በሚገኝ ገቢ ላይ ግብር ይጥላሉ ፡ ይሰበስባሉ ።

፮· በክልል መስተዳድር በግል ባለቤትነት ስር ካሉ ቤቶችና ሌሎች ንብረቶች በሚገኝ ገቢ ላይ ግብር ይጥላሉ ፡ ይሰበስባሉ ፡ በባለቤትነታቸው ስር ባሉ ቤቶችና ሌሎች ንብረቶች ላይ ኪራይ ያስከፍላሉ ።

፯· በክልል መስተዳድር ባለቤትነት ስር በሚገኙ የልማት ድርጅቶች ላይ የንግድ ትርፍ ፡ የሥራ ግብር ፡ የሽያጭና ኤክሳይስ ታክስ ይጥላሉ ፡ ይሰበስባሉ ።

፰· በአንቀጽ ፺፰ ንዑስ አንቀጽ ፫ የተጠቀሰው እንደተጠበቀ ሆኖ ፡ በማዕድን ሥራዎች ላይ የማዕድን ገቢ ግብር ፡ የሮያሊቲና የመሬት ኪራይ ክፍያዎች ይጥላሉ ፡ ይሰበስባሉ ።

፱· በክልል መስተዳድር አካላት ከሚሰጡ ፈቃዶችና አገልግሎቶች የሚመነጩ ክፍያዎች ይወስናሉ ፡ ይሰበስባሉ ።

፲· ከደን የሚገኝ የሮያሊቲ ክፍያ ይወስናሉ ፡ ይሰበስባሉ።

አንቀጽ ፺፰
የጋራ የታክስና የግብር ሥልጣን

፩· የፌዴራል መንግሥትና ክልሎች በጋራ በሚያቋቁሟቸው የልማት ድርጅቶች ላይ የንግድ ትርፍ ግብር ፡ የሥራ ግብር ፡ የሽያጭና የኤክሳይስ ታክስ በጋራ ይጥላሉ ፡ ይሰበስባሉ ።

፪· በድርጅቶች የንግድ ትርፍ ላይ እና በባለ አክሲዮኖች የትርፍ ድርሻ ላይ ግብርና የሽያጭ ታክስ በጋራ ይጥላሉ ፡ ይሰበስባሉ።

፫· በከፍተኛ የማዕድን ሥራዎችና በማናቸውም የፔትሮሊየምና የጋዝ ሥራዎች ላይ የገቢ ግብርና የሮያሊቲ ክፍያዎች በጋራ ይጥላሉ ፡ ይሰበስባሉ ።

አንቀጽ ፺፱
ተለይተው ስላልተሰጡ የታክስ እና የግብር ሥልጣኖች

በዚህ ሕገ መንግሥት ተለይተው ያልተሰጡ ታክስና ግብር የመጣል ሥልጣኖችን በሚመለከት የፌዴሬሽኑ ምክር ቤትና የሕዝብ ተወካዮች ምክር ቤት በጋራ ስብሰባ በሁለት ሦስተኛ ድምፅ ይወስናሉ ።

5. It shall levy and collect taxes on the income of air, rail and sea transport services.
6. It shall levy and collect taxes on income of houses and properties owned by the Federal Government; it shall fix rents.
7. It shall determine and collect fees and charges relating to licenses issued and services rendered by organs of the Federal Governemnt.
8. It shall levy and collect taxes on monopolies.
9. It shall levy and collect Federal stamp duties.

Article 97
State Power of Taxation

1. States shall levy and collect income taxes on employees of the State and of private enterprises.
2. States shall determine and collect fees for land usufractuary rights.
3. States shall levy and collect taxes on the incomes of private farmers and farmers incorporated in cooperative associations.
4. States shall levy and collect profit and sales taxes on individual traders carrying out a business within their territory.
5. States shall levy and collect taxes on income from transport services rendered on waters within their territory.
6. They shall levy and collect taxes on income derived from private houses and other properties within the State. They shall collect rent on houses and other properties they own.
7. States shall levy and collect profit, sales, excise and personal income taxes on income of enterprises owned by the States.
8. Consistent with the provisions sub-Article 3 of Article 98, States shall levy and collect taxes on income derived from mining operations, and royalties and land rentals on such operations.
9. They shall determine and collect fees and charges relating to licenses issued and services rendered by State organs.
10. They shall fix and collect royalty for use of forest resources.

Article 98
Concurrent Power of Taxation

1. The Federal Government and the States shall jointly levy and collect profit, sales, excise and personal income taxes on enterprises they jointly establish.
2. They shall jointly levy and collect taxes on the profits of companies and on dividends due to shareholders.
3. They shall jointly levy and collect taxes on incomes derived from large-scale mining and all petroleum and gas operations, and royalties on such operations.

Article 99
Undesignated Powers of Taxation

The House of the Federation and the House of Peoples' Representatives shall, in a joint session, determine by a two-thirds majority vote on the exercise of powers of taxation which have not been specifically provided for in the Constitution.

አንቀጽ ፻
የታክስና የግብር አጣጣል መርሆዎች

፩. ክልሎችና የፌዴራሉ መንግሥት ታክስና ግብር በሚጥሉበት ጊዜ የሚጠየቀው ታክስና ግብር ከምንጩ ጋር የተያያዘና በአግባቡ ተጠንቶ የተወሰነ መሆኑን ማረጋገጥ አለባቸው ።

፪. በመካከላቸው የሚኖረውን መልካም ግንኙነት የማይጎዳና ከሚ ቀርበው አገልግሎት ጋር ተመጣጣኝ መሆኑን ማረጋገጥ አለባቸው ።

፫. ለትርፍ የቆመ ድርጅት ካልሆነ በስተቀር ክልሎች በፌዴራሉ መንግሥት ንብረት ላይ ፣ የፌዴራሉ መንግሥትም በክልሎች ንብረት ላይ ግብር ወይም ቀረጥ የማስከፈል ሥልጣን አይኖራ ቸውም ።

አንቀጽ ፻፩
ዋናው ኦዲተር

፩. ዋናው ኦዲተር በጠቅላይ ሚኒስትሩ አቅራቢነት በሕዝብ ተወካዮች ምክር ቤት ይሾማል ።

፪. ዋናው ኦዲተር የፌዴራሉን የሚኒስቴርና ሌሎች መሥሪያ ቤቶች ሂሳቦች በመቆጣጠር በሕዝብ ተወካዮች ምክር ቤት የተመደበው ዓመታዊ በጀት ፣ በበጀት ዓመቱ ለተሠሩት ሥራዎች በሚገባ መዋሉን መርምሮ ለምክር ቤቱ ሪፖርት ያቀርባል ።

፫. ዋናው ኦዲተር የመሥሪያ ቤቱን በጀት በቀጥታ ለሕዝብ ተወ ካዮች ምክር ቤት አቅርቦ ያስጸድቃል ።

፬. የዋናው ኦዲተር ዝርዝር ተግባር በሕግ ይወሰናል ።

አንቀጽ ፻፪
የምርጫ ቦርድ

፩. በፌዴራልና በክልል የምርጫ ክልሎች ነፃና ትክክለኛ ምርጫ በገለልተኝነት እንዲያካሂድ ከማንኛውም ተፅዕኖ ነፃ የሆነ ብሔራዊ የምርጫ ቦርድ ይቋቋማል ።

፪. የቦርዱ አባላት በጠቅላይ ሚኒስትሩ አቅራቢነት በሕዝብ ተወካዮች ምክር ቤት ይሾማሉ ። ዝርዝሩ በሕግ ይወሰናል ።

አንቀጽ ፻፫
የሕዝብ ቆጠራ ኮሚሽን

፩. የሀገሪቱን የሕዝብ ቁጥር በየጊዜው የሚያጠናና ቆጠራ የሚ ያካሂድ የሕዝብ ቆጠራ ኮሚሽን ይኖራል ።

፪. የኮሚሽኑ አባላት በጠቅላይ ሚኒስትሩ አቅራቢነት በሕዝብ ተወካዮች ምክር ቤት ይሾማሉ ።

፫. ኮሚሽኑ ዋና ጸሐፊ ፣ አስፈላጊ ባለሙያዎችና ድጋፍ ሰጪ ሠራተኞች ይኖሩታል ።

፬. የኮሚሽኑ ዓመታዊ በጀት በቀጥታ ለሕዝብ ተወካዮች ምክር ቤት ቀርቦ ይጸድቃል ።

፭. የሕዝብ ቆጠራ በየአሥር ዓመቱ ይካሔዳል ። በውጤቱም መሰ ረት የምርጫ ክልሎችን አከላለል የምርጫ ቦርድ በሚያቀ ርበው ረቂቅ መሠረት የፌዴሬሽኑ ምክር ቤት ይወስናል ።

፮. የኮሚሽኑ ተጠሪነት ለሕዝብ ተወካዮች ምክር ቤት ነው ። ስለ ሥራው አፈጻጸም በየጊዜው ለምክር ቤቱ ሪፖርት ያቀርባል ።

Article 100
Directives on Taxation

1. In exercising their taxing powers, States and the Federal Government shall ensure that any tax is related to the source of revenue taxed and that it is determined following proper considerations.
2. They shall ensure that the tax does not adversely affect their relationship and that the rate and amount of taxes shall be commensurate with services the taxes help deliver.
3. Neither States nor the Federal Government shall levy and collect taxes on each other's property unless it is a profit-making enterprise.

Article 101
The Auditor General

1. The Auditor General shall, upon recommendation of the Prime Minister, be appointed by the House of Peoples' Representatives.
2. The Auditor General shall audit and inspect the accounts of ministries and other agencies of the Federal Government to ensure that expenditures are properly made for activities carried out during the fiscal year and in accordance with the approved allocations, and submit his reports thereon to the House of Peoples' Representatives.
3. The Auditor General shall draw up and submit for approval to the House of Peoples' Representatives his office's annual budget.
4. The details of functions of the Auditor General shall be determined by law.

Article 102
Election Board

1. There shall be established a National Election Board independent of any influence, to conduct in an impartial manner free and fair election in Federal and State constituencies.
2. Members of the Board shall be appointed by the House of Peoples' Representatives upon recommendation of the Prime Minister. Particulars shall be determined by law.

Article 103
Population Census Commission

1. There shall be established a National Census Commission that shall conduct a population census periodically.
2. Members of the National Census Commission shall be appointed by the House of Peoples' Representatives upon recommendation of the Prime Minister.
3. The Commission shall have a Secretary General and necessary professional and support staff.
4. The annual budget of the Commission shall be submitted for approval to the House of Peoples' Representatives.
5. A national population census shall be conducted every ten years. The House of the Federation shall determine the boundaries of constituencies on the basis of the census results and a propsal submitted to the House by the National Election Board.
6. The Commission shall be accountable to the House of Peoples' Representatives. It shall submit to the House periodic reports on the conduct of its programmes and activities.

አንቀጽ ፩፻፬
የሕገ መንግሥት ማሻሻያ ሀሳብን ስለማመንጨት

አንድ የሕገ መንግሥት ማሻሻያ ሀሳብ የሕዝብ ተወካዮች ምክር ቤት በሁለት ሦስተኛ ድምፅ የደገፈው ፣ የፌዴሬሽኑ ምክር ቤት በሁለት ሦስተኛ ድምፅ የደገፈው ወይም ከፌዴሬሽኑ አባል ክልሎች ውስጥ አንድ ሦስተኛው የክልል ምክር ቤቶች በድምፅ ብልጫ የደገፉት ከሆነ ለውይይትና ለውሳኔ ለመላው ሕዝብና የሕገ መንግሥቱ መሻሻል ለሚመለከታቸው ክፍሎች ይቀርባል ።

አንቀጽ ፩፻፭
ሕገ መንግሥቱን ስለማሻሻል

፩· በዚህ ሕገ መንግሥት ምዕራፍ ሦስት የተዘረዘሩት መብቶችና ነፃነቶች በሙሉ ፣ ይህ አንቀጽ ፣ እንዲሁም አንቀጽ ፩፻፬ ሊሻሻሉ የሚችሉት በሚከተለው አኳኋን ብቻ ይሆናል ፤

ሀ) ሁሉም የክልል ምክር ቤቶች የቀረበውን ማሻሻያ በድምፅ ብልጫ ሲያጸድቁት ፣

ለ) የፌዴራሉ መንግሥት የሕዝብ ተወካዮች ምክር ቤት በሁለት ሦስተኛ ድምፅ የቀረበውን ማሻሻያ ሲያጸድቀው፣ እና

ሐ) የፌዴሬሽኑ ምክር ቤት በሁለት ሦስተኛ ድምፅ ማሻሻያውን ሲያጸድቀው ነው ።

፪· በዚህ አንቀጽ ንዑስ አንቀጽ ፩ ከተዘረዘሩት ውጭ ያሉት የሕገ መንግሥቱ ድንጋጌዎች ሊሻሻሉ የሚችሉት በሚከተለው አኳኋን ብቻ ይሆናል ፤

ሀ) የሕዝብ ተወካዮች ምክር ቤትና የፌዴሬሽኑ ምክር ቤት በጋራ ስብሰባ በሁለት ሦስተኛ ድምፅ የቀረበውን ማሻሻያ ሲያጸድቁት ፣ እና

ለ) ከፌዴሬሽኑ አባል ክልሎች ምክር ቤቶች ውስጥ የሁለት ሦስተኛ ክልሎች ምክር ቤቶች በድምፅ ብልጫ የቀረበውን ማሻሻያ ሲያጸድቁት ነው ።

አንቀጽ ፩፻፮
የመጨረሻ ሕጋዊ እውቅና ስላለው ቅጂ

የዚህ ሕገ መንግሥት የአማርኛ ቅጂ የመጨረሻው ሕጋዊ እውቅና ያለው ሰነድ ነው ።

Article 104
Initiation of Amendments

Any proposal for constitutional amendment, if supported by a two-thirds majority vote in the House of Peoples' Representatives, or by a two-thirds majority vote in the House of the Federation or when one-third of the State Councils of the member States of the Federation, by a majority vote in each Council have supported it, shall be submitted for discussion and decision to the general public and to those whom the amendment of the Constitution concerns.

Article 105
Amendment of the Constitution

1. All rights and freedoms specified in Chapter Three of this Constitution, this very Article, and Article 104 can be amended only in the following manner:
   (a) When all State Councils, by a majority vote, approve the proposed amendment;
   (b) When the House of Peoples' Representatives, by a two-thirds majority vote, approves the proposed amendment; and
   (c) When the House of the Federation, by a two-thirds majority vote, approves the proposed amendment.
2. All provisions of this Constitiution other than those specified in sub-Article 1 of this Article can be amended only in the following manner:
   (a) When the House of Peoples' Representatives and the House of the Federation, in a joint session, approve a proposed amendment by a two-thirds majority vote; and
   (b) When two-thirds of the Councils of the member States of the Federation approve the proposed amendment by majority votes.

Article 106
The Version with Final Legal Authority

The Amharic version of this Constitution shall have final legal authority.

Appendix 13: FDRE Rural Land Administration and Use Proclamation No. 456/2005

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ

ፌዴራል ነጋሪት ጋዜጣ

FEDERAL NEGARITGAZETA

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

አሥራአንደኛ ዓመት ቁጥር ፵፬
አዲስ አበባ ሐምሌ ፰ ቀን ፲፱፻፺፯

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የሕዝብ ተወካዮች ምክር ቤት ጠባቂነት የወጣ

11th Year No. 44
ADDIS ABABA-15th July, 2005

ማውጫ

CONTENTS

አዋጅ ቁጥር ፬፻፶፮/፲፱፻፺፯

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ መንግስት የገጠር መሬት አስተዳደርና አጠቃቀም አ ዋ ጅ

የመሬት ባለቤትነት መብት የመንግሥትና የሕዝብ ብቻ መሆኑ በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ-መንግሥት በመረጋገጡ፣

በተለያዩ የሀገሪቱ የሥነ ምህዳር ቀጠናዎች ላይ ተመስርቶ ዘላቂ የገጠር መሬት አጠቃቀም ዕቅድ በማውጣትና በመተግበር የተፈጥሮ ሀብቶችን በዘላቂነት በመጠበቅና በማልማት ለመጪው ትውልድ ማስተላለፍ በማስፈለጉ፣

በሀገሪቱ የሚገኙ የተለያዩ የገጠር መሬት ይዞታ ዓይነቶችን ማለትም በወል፣ በግለሰብ ገበሬ እና በፌዴራልና በክልል መንግሥታት ሥር የሚገኙ ይዞታዎችን በስፋት፣ በአቅማጫና በመሬት የመጠቀም መብቶች ለመለየት የሚያስችል የመረጃ ሥርዓት መዘጋጀት አስፈላጊ ሆኖ በመገኘቱ፣

የግለሰብ ገበሬዎችን፣ የአርብቶ አደሮችንና የእርሻ ኢንቨስተሮችን ከማበረታታት አኳያ የሚታዩ ችግሮችን በመቅረፍ ምቹ የሆነ የገጠር መሬት አስተዳደር ሥርዓት መፍጠር አስፈላጊ በመሆኑ፣

PROCLAMATION NO. 456/2005

Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation

WHEREAS, it is confirmed in the Constitution of the Federal Democratic Republic of Ethiopia that the right to ownership of land is exclusively vested in the state and in the people;

WHEREAS, it has become necessary to sustainably conserve and develop natural resources and pass over to the coming generation through the development and implementation of a sustainable rural land use planning based on the different agro-ecological zones of the country;

WHEREAS, it has become necessary to establish an information database that enables to identify the size, direction and use rights of the different types of land holdings in the country such as individual and federal and regional states holdings;

WHEREAS, it has become necessary to resolve problems that arise in connection with encouraging individual farmers, pastoralists and agricultural investors and establish a conducive system of rural land administration;

ያንዱ ዋጋ 4.40
Unit Price

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Negarit G. P.O.Box 80001

ጥምር የሰብልና የእንስሳት ምርት እንቅስቃሴ በሠፈነባቸው አካባቢዎች የአፈር መሸርሸርና የደን መመናመን አደጋ በመኖሩ አርሶ አደሩ አስፈላጊውን እንክብካቤ እንዲያደርግ በይዞታው የመጠቀም መብቱ እንዲጎለብትና እንዲጠናከር ምቹ የሕግ ሁኔታዎች መፍጠሩ አስፈላጊ ሆኖ በመገኘቱ፣

በአርብቶ አደሮች አካባቢ በአብዛኛው በትግ ላይ በተመሠረተው የወል የመሬት ይዞታ ስሪት ውስጥ ለተፈጥሮ ሀብት አያያዝና አጠቃቀም እንዲሁም የግል ባለሀብቶችን ከማበረታታት አኳያ ተስማሚ የገጠር መሬት አስተዳደር ሥርዓት መዘርጋት በማስፈለጉ፣

መሬትንና የተፈጥሮ ሀብትን ለማስተዳደር ለክልሎች የተሰጠው ሥልጣን በሥራ ላይ የሚውለው የፌዴራል መንግሥቱ በሚያወጣው ህግ መሠረት መሆኑን የሕገ-መንግሥት አንቀጽ ፶፪(፪)(መ) ስለሚደነግግ፣

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ-መንግሥት አንቀጽ ፶፯/፩/ መሠረት የሚከተለው ታውጇል።

ክፍል አንድ
ጠቅላላ

፩. አጭር ርዕስ

ይህ አዋጅ "የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ መንግስት የገጠር መሬት አስተዳደርና አጠቃቀም አዋጅ ቁጥር ፬፻፶፮/፲፱፻፺፯" ተብሎ ሊጠቀስ ይችላል።

፪. ትርጓሜ

የቃሉ አገባብ ሌላ ትርጉም የሚያሰጠው ካልሆነ በስተቀር በዚህ አዋጅ ውስጥ፣

፩/ "የገጠር መሬት" ማለት ከማዘጋጃ ቤት ክልል ውጪ ወይም አግባብ ባለው ሕግ "ከተማ" ተብሎ ከሚሰይመው ውጪ ያለ ማንኛውም መሬት ነው፣

፪ "የገጠር መሬት አስተዳደር" ማለት በገጠር መሬት ይዞታ ላይ ዋስትና የሚሰጥበት፣ የገጠር መሬት አጠቃቀም ዕቅድ የሚተገበርበት፣ በገጠር መሬት ተጠቃሚዎች መካከል የሚነሱ ግጭቶች የሚፈቱበትና ማንኛውም የገጠር መሬት ተጠቃሚ መብትና ግዴታዎች የሚተገበሩበት እንዲሁም የባለይዞታዎች ማሳዎችን የግጦሽ መሬትን መረጃ በመሰብሰብና በመተንተን ለተጠቃሚዎች እንዲዳረሱ የሚደረግበት ሂደት ነው፣

WHEREAS, it is deemed necessary to put in place legal conditions which are conducive to enhance and strengthen the land use right of farmers to encourage them take the necessary conservation measures in areas where mixed farming of crop and animal production is prevalent and where there is threat of soil erosion and forest degradation;

WHEREAS, is has become necessary to establish a conducive system of rural land administration that promotes the conservation and management of natural resources, and encourages private investors in pastoralist areas where there is tribe based communal land holding system;

WHEREAS, Article 52 (2) (d) of the Constitution stipulates that the power entrusted to regions to administer land and natural resources is to be implemented in accordance with the law to be enacted by the federal state;

NOW, THEREFORE, in accordance with Article 55(1) of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

Part One
General

1. Short Title

This Proclamation may be cited as the Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005."

2. Definition

In this Proclamation, unless the context requires otherwise:

1/ "rural land" means any land outside of a municipality holding or a town designated as such by the relevant law;

2/ "rural land administration" means a process whereby rural land holding security is provided, land use planning is implemented, disputes between rural land holders are resolved and the rights and obligations of any rural land holder are enforced, and information on farm plots and grazing Land holders are gathered analyzed and supplied to users;

፫/ "የገጠር መሬት አጠቃቀም" ማለት የገጠር መሬትን በእንክብካቤ ይዞ ዘላቂነት ባለው መንገድ ለተሻለ ጠቀሜታ እንዲውል የሚደረግበት ሂደት ነው፣

፬/ "የይዞታ መብት" ማለት ማንኛውም አርሶ አደር ከፊል አርብቶ አደር እና አርብቶ አደር የገጠርን መሬት በግብርናና በተፈጥሮ ሀብት ልማት ተግባር ላይ ለማዋል፣ ለማከራየትና ለቤተሰቡ አባልና ለሌሎች በሕግ መብት ለተሰጣቸው ወራሾች ለማውረስ የሚኖረው መብት ሲሆን፣ በመሬቱ ላይ በጉልበቱ ወይም በገንዘቡ ንብረት ማፍራትና ይህንንም በመሬቱ ላይ ያፈራውን ንብረት መሸጥ፣ መለወጥና ማውረስንም ይጨምራል፣

፭/ "የቤተሰብ አባል" ማለት የይዞታ ባለመብቱን መተዳደሪያ ገቢ በመጋራት በቀሚነት አብሮ የሚኖር ማንኛውም ሰው ነው፣

፮/ "የገጠር መሬት አጠቃቀም ዕቅድ" ማለት አካላዊ፣ ኢኮኖሚያዊና ማሕበራዊ መረጃዎችን መሠረት በማድረግ የገጠር መሬት ሊሰጥ ከሚችለው የተለያዩ የመሬት አጠቃቀም አማራጮች መካከል የመሬት መጎሳቆልንና የአካባቢን ብክለት ሳያስከትሉ ከፍተኛ ኢኮኖሚያዊ ጠቀሜታ የሚያስገኙት አማራጮች የሚወሰኑበትና ተግባራዊ የሚደረጉበት የአሰራር ዘዴ ነው፣

፯/ "አርሶ አደር" ማለት የገጠር መሬት የይዞታ መብት የተሰጠውና ከመሬቱም በሚያገኘው ገቢ እራሱን እና ቤተሰቡን የሚያስተዳድር የገጠሩ ሕብረተሰብ ክፍል አባል ነው፣

፰/ "አርብቶ አደር" ማለት የግጦሽ መሬትን በመያዝና ከቦታ ወደ ቦታ በመንቀሳቀስ በዋነኛነት እንስሳት በማርባትና ኑሮው ከእንስሳት ሀብት በሚገኘው ምርት ላይ የተመሠረተ የገጠሩ የሕብረተሰብ ክፍል አባል ነው፣

፱/ "ከፊል አርብቶ አደር" ማለት በዋነኝነት ከብት በማርባትና በተወሰነ ደረጃ ከእርሻ በሚገኝ ምርት ላይ ኑሮው የተመሠረተ የገጠር ህብረተሰብ ክፍል ነው፣

፲/ "አነስተኛ የይዞታ መጠን" ማለት ምርታማነቱ የአንድን አርሶ አደር ከፊል አርብቶ አደር እና አርብቶ አደር ቤተሰብ የምግብ ዋስትና ሊያረጋግጥ የሚችል የገጠር መሬት ይዞታ ወይንም ለሰብል እርሻ፣ ለቋሚ ሰብል፣ ለግጦሽ፣ ለመኖሪያ ቤትና ለጓሮ የሚበቃ የገጠር መሬት ይዞታ መጠን ነው፣

3/ "rural land use" means a process whereby rural land is conserved and sustainably used in a manner that gives better output;

4/ "holding right" means the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his Land thereon by his labour or capital and to sale, exchange and bequeath same;

5/ "family member" means any person who permanently lives with holder of holding right sharing the livelihood of the later;

6/ "rural land use plan" means a practice whereby the options that give greater economic benefits with out causing land degradation and environmental pollution are determined and implemented from among the different use options a rural land can give on the basis of physical, economic and social information;

7/ "peasant" mans a member of a rural community who has been given rural land holding right and, the livelihood of his family and himself is based on the income from the land;

8/ "pastoralist" means a member of a rural community that raises cattle by holding rangeland and moving from one place to the other, and the livelihood of himself and his family is based on mainly on the produce from cattle;

9/ "semi pastoralist" means a member of a rural community whose livelihood is based mainly on cattle raising and to some extent on crop farming;

10/ "minimum size holding" means size of rural land holding the productivity of which can ensure the food security of a peasant and semi-pastoralist and pastoralist family, or which suffices for crop farming, perennial crop farming, grazing, house construction and garden;

፲፩/ "አነስተኛ የግል ይዞታ" ማለት በአርሶ አደሮች ከፊል አርብቶ አደሮች እና አርብቶ አደሮች ወይንም በሌሎች በህግ መብት በተሰጣቸው አካል በግል ይዞታ ስር ያለ የገጠር መሬት ነው፣

11/ "minimum private holding" means rural land in the holding of peasants Semi-Pastoralists and Pastoralists other bodies who are entitled by law to use rural land;

፲፪/ "የወል ይዞታ" ማለት የአካባቢው ነዋሪዎች በጋራ ይዞታነት ለግጦሽ፣ ለደንና ለሌሎች ማህበራዊ አገልግሎቶች እንዲጠቀሙበት በመንግሥት የተሰጣቸው የገጠር መሬት ነው፣

12/ "communal holding" means rural land which is given by the government to local residents for common grazing, forestry and other social services;

፲፫/ "የመንግሥት ይዞታ" ማለት በፌዴራል ወይንም በክልል መንግሥት ተከልሎ የተያዘ እና ወደፊት የሚከለለው የገጠር መሬት የሚገልፅ ሲሆን፣ የደን መሬቶችን፣ የዱር እንስሳትን ጥበቅ ቦታዎችን፣ የመንግሥት እርሻዎችን፣ የማዕድን መሬቶችን፣ ሃይቆችን፣ ወንዞችንና ሌሎችን በተመሳሳይ መልኩ የተያዙትን ያጠቃልላል፣

13/ "state holding" means rural land demarcated and those lands to be demarcated in the future at federal or regional states holding; and includes forest lands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands;

፲፬/ "የይዞታ ማረጋገጫ ደብተር" ማለት በገጠር መሬት የመጠቀምን መብት ለማረጋገጥ አግባብ ባለው አካል የሚሰጥ ሰነድ ነው፣

14/ "holding certificate" means certificate of title issued by a competent authority as proof of rural land use right;

፲፭/ "የመሬት ምዝገባ" ማለት በገጠር መሬት የመጠቀም መብትና ባለይዞታነት የሚገለፅበት የመረጃ ማሰባሰብና የማጠናቀር ሂደት ነው፣

15/ "land registration" means the process whereby information on the expression of rural land use right and holding is gathered and analyzed;

፲፮/ "የመሬት መረጃ ሥርዓት" ማለት የገጠር መሬት ነክ መረጃዎችን በማሰባሰብ፣ በመተንተንና በአግባቡ እንዲያዙ በማድረግ ለተለያዩ ተጠቃሚ ክፍሎች የማሰራጨት ሥርዓት ነው፣

16/ "land information system" means a system whereby rural land related information is gathered, analysed and distributed to users;

፲፯/ "አግባብ ያለው ባለሥልጣን" ማለት የክልሎች ህገ-መንግሥት በሚፈቅደው መሠረት በክልሎች ውስጥ የገጠር መሬት አስተዳደርና አጠቃቀም ስርዓት መስፈኑን ለመከታተል የተቋቋመ አካል ነው፣

17/ "competent authority" means a body established in accordance with the constitution of a region to ensure that a system of rural land administration and utilization is realized in the region;

፲፰/ "ሰው" ማለት የተፈጥሮ ወይም በህግ የሰውነት መብት የተሰጠው አካል ነው::

18/ "person" means a natural or legal person.

፫. የጾታ አገላለጽ

በዚህ አዋጅ ውስጥ በወንድ ጾታ የተደነገገው የሴትንም ጾታ ያካትታል::

3. Gender Reference

The provisions of this Proclamation that are referring to masculine gender shall also apply to feminine gender.

፬. የአዋጁ ተፈጻሚነት ወሰን

ይህ አዋጅ በኢትዮጵያ ውስጥ በሚገኝ በማንኛውም የገጠር መሬት ላይ ተፈጻሚነት ይኖረዋል::

4. Scope of Application

This Proclamation shall apply to any rural land in Ethiopia.

ክፍል ሁለት
በገጠር መሬት የመጠቀም መብት ስለማረጋገጥ

፭. የገጠር መሬት ስለማግኘትና ስለመጠቀም

፩/ በመሬት አስተዳደር ሕግ መሠረት:-

ሀ/ በግብርና ሥራ ለሚተዳደሩ አርሶ አደር ከፊል አርብቶ አደር እና አርብቶ አደሮች የገጠር መሬት በነፃ እንዲያገኙ ይደረጋል፣

ለ/ ዕድሜው ከ፲፰ ዓመትና ከዚያ በላይ የሆነና በግብርና ሙያ ሊተዳደር የሚፈልግ ማንኛውም የሀገሪቱ ዜጋ በገጠር መሬት የመጠቀም መብቱ የተረጋገጠ ሆኖ እናትና አባታቸውን በሞት ወይም በሌላ ሁኔታ ያጡ ልጆች ፲፰ ዓመት እስኪሞላቸው ድረስ በህጋዊ ሞግዚታቸው አማካኝነት በገጠር መሬት የመጠቀም መብት አላቸው፣

ሐ/ በግብርና ሥራ መሰማራት የሚፈልጉ ሴቶች የገጠር መሬት የማግኘትና የመጠቀም መብት አላቸው፣

፪/ ማንኛውም በገጠር መሬት የመጠቀም መብት ያለው አርሶ አደር ከፊል አርብቶ አደር እና አርብቶ አደር ቤተሰብ አባል ከቤተሰቡ በስጦታ ወይም በውርስ ወይም አግባብ ካለው ባለሥልጣን የገጠር መሬት በይዞታ ሊያገኝ ይችላል፣

፫/ መንግሥት በመሬት ባለቤትነቱ የወል/የጋራ የገጠር መሬት ይዞታዎችን እንደአስፈላጊነቱ ወደ ግል ይዞታነት እንዲቀየሩ ሊያደርግ ይችላል፣

፬/ ለአርሶ አደሮች ለከፊል አርብቶ አደሮችና ለአርብቶ አደሮች ቅድሚያ በመስጠት፣

ሀ/ በግብርና ልማት ለሚሰማሩ ባለሀብቶች በፌዴራልና በክልል ደረጃ በወጡ የኢንቨስትመንት ፖሊሲዎችና ሕጎች መሠረት በገጠር መሬት የመጠቀም መብት ይኖራቸዋል፣

ለ/ መንግሥታዊና መንግሥታዊ ያልሆኑ ድርጅቶች፣ ማህበራዊና ኢኮኖሚያዊ ተቋማት ከልማት ዓላማቸው ጋር እየታየ በገጠር መሬት የመጠቀም መብት ይኖራቸዋል፣

SECTION TWO
THE RIGHT TO HOLD AND USE RURAL LAND

5. Acquisition and Use of Rural Land

1/ In accordance with land administration law:

a) Peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge:

b) 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:

c) Women who want to engage in agriculture shall have the right to get and use rural land.

2/ 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,

3/ Government being the owner of rural land, communal rural land holdings can be changed to private holdings as may be necessary;

4/ subject to giving priority to peasant farmers/semi pastoralists and pastoralist:

a) Private investors that engage in agricultural development activities shall have the right to use rural land in accordance with the investment policies and laws at federal and regional levels;

b) Governmental and non-governmental organizations and social and economic institutions shall have the right to use rural land in line with their development objectives.

፮. የገጠር መሬትን ስለመለካት፣ ስለመመዝገብና ስለይዞታ ማረጋገጫ ደብተር

፩/ በግል፣ በወል፣ በመንግሥትና መንግሥታዊ ባል ሆኑ ድርጅቶች ይዞታዎች ያሉ የገጠር መሬቶች እንደሁኔታው ባህላዊና ዘመናዊ የቅየሳ መሣሪያ ዎችን በመጠቀም የመሬት ስፋታቸውን በመለ ካት እንዲሁም የመሬት አጠቃቀማቸውና የለም ነት ደረጃቸው በክልልና በየደረጃው በተቋቋሙ የመረጃ ማዕከላት እንዲመዘገቡ ይደረጋል፣

፪/ በዚህ አንቀጽ በንዑስ አንቀጽ (፩) የተዘረዘሩት የገጠር መሬት ይዞታዎች አግባብ ባለው ባለሥልጣን ተለክተው የይዛታ ድንበራቸውን የሚሳይ ካርታ ይዘጋጅላቸዋል፣

፫/ ማንኛውም የገጠር መሬት ባለይዞታ አግባብ ባለው ባለሥልጣን የሚዘጋጅና የመሬቱን ይዞታ ስፋት፣ አጠቃቀምና ሽፋን፣ የለምነት ደረጃና አዋሳኞቹን እንዲሁም ኃላፊነትና ግዴታን የያዘ የይዞታ ማረጋገጫ ደብተር እንዲኖረው ይደረጋል፣

፬/ መሬቱ የባልና የሚስት የጋራ ከሆነ ወይም በሌሎች በጋራ የተያዘ ከሆነ የይዞታ ማረጋገጫ ደብተሩ በሁሉም የጋራ ባለይዞታዎች ስም መዘጋጀት አለበት፣

፭/ የገጠር መሬት በማን ይዞታ ሥር እንደሚገኝ፣ ከማን መሬት ጋር እንደሚዋሰን፣ ደረጃው ምን ዓይነት እንደሆነ፣ ለምን አገልግሎት እንደሚ ውልና ባለይዞታው ምን መብትና ግዴታዎች እን ዳለበት የሚገልጽ መረጃ ተመዝግቦ አግባብ ባለው ባለሥልጣን እንዲያዝ ይደረጋል፣

፮/ በሊዝ ወይም በኪራይ የተያዘ የገጠር መሬት አግባብ ባለው አካል መመዝገብ አለበት::

6. Rural land Measurement, Registration and Holding Certificate

1/ 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 equipments; 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.

2/ Rural land holdings described under Sub-Article 1 of this Article shall be measured by the competent authority and shall be given cadastral maps showing their boundaries

3/ 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 boarders, as well as the obligation and right of the holder.

4/ 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.

5/ 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.

6/ Any rural land that is held through lease or rental shall be registered by the competent authority.

፯. በገጠር መሬት የመጠቀም መብት ፀንቶ ስለሚቆይበት ጊዜ

፩/ የአርሶ አደሮች ክፊል አርብቶ አደሮች እና አርብቶ አደሮች በገጠር መሬት የመጠቀም መብት የጊዜ ገደብ የለውም፣

፪/ የሌሎች ባለይዞታዎች በገጠር መሬት የመጠቀም መብት ፀንቶ የሚቆይበት የጊዜ ገደብ በክልሎች የገጠር መሬት አስተዳደር ሕግ መሠረት ይወሰናል፣

7. Duration of Rural Land Use Right

1/ The Rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit.

2/ The duration of rural land use right of other holders shall be determined by the rural land administration laws of regions.

፫/ የገጠር መሬት ባለይዞታ ለሕዝብ ጥቅም ሲባል መሬቱን በመንግሥት እንዲለቅ ሲደረግ በመሬቱ ላይ ላደረገው ማሻሻያና ላፈራው ንብረት ተመጣጣኝ ካሣ ይከፈለዋል። ወይንም በለቀቀው መሬት ምትክ በተቻለ መጠን ሌላ ተለዋጭ መሬት እንዲያገኝ ይደረጋል። የገጠር መሬት ባለይዞታ መሬቱን እንዲለቅ የሚደረገው በፌዴራል መንግሥት ከሆነ ከሚከፈለው ካሣ ተመን በፌዴራል የመሬት አስተዳደር ሕግ ይወሰናል፣ ባለይዞታው መሬቱን እንዲለቅ የሚደረገው በክልል መንግሥት ከሆነ ደግሞ የካሣ ተመኑ በክልሎች የገጠር መሬት አስተዳደር ሕግ ይወሰናል።

3/ Holder of rural land who is evicted for 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 substitule land thereon. Where the rural landholder is evicted by federal government, the rate of compensation would be determined based on the federal land administration law. Where the rural land holder is evicted by regional governments, the rate of compensation would be determined based on the rural land administration laws of regions.

፰/ በገጠር መሬት የመጠቀም መብትን ስለማስተላለፍ

8. Transfer of Rural Land Use Right

፩/ የይዞታ ማረጋገጫ ደብተር የተሰጣቸው አርሶ አደሮች ከፊል አርብቶ አደሮች እና አርብቶ አደሮች እነሱን በማያፈናቅል መልኩ ለሌላ አርሶ አደር ወይንም ባለሀብት እንደየአካባቢው ተጨባጭ ሁኔታ በጥናት ላይ ተመሥርቶ በክልሎች የገጠር መሬት አስተዳደር ሕግ በሚወሰን የጊዜ ገደብ ከይዞታቸው ላይ ለተፈላጊው ልማት በቂ የሆነ የማሳ ስፋት ማከራየት ይችላል

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

፪/ በዚህ አንቀጽ ንዑስ አንቀጽ (፩) መሠረት የሚደረግ የገጠር መሬት ኪራይ ውል በመሬቱ የመጠቀም መብት ያላቸውን አባላት የጋራ ይሁንታ ማግኘትና አግባብ ባለው አካል ጸድቆ መመዝገብ አለበት፣

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

፫/ የገጠር መሬትን በጋራ ለማልማት የመሬት ባለይዞታው በመሬቱ የመጠቀም መብቱን ይዞ ከባለሀብት ጋር በሚገባው ውል መሠረት የልማት ሥራ ሊሠራ ይችላል። ውሉም አግባብ ባለው ባለሥልጣን ፀድቆ መመዝገብ አለበት፣

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

፬/ የገጠር መሬት በሊዝ የተከራየ ባለሀብት የመጠቀም መብቱን እንደዋስትና ለማስያዝ ይችላል፣

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

፭/ ማንኛውም ባለይዞታ በገጠር መሬት የመጠቀም መብቱን ለቤተሰቡ አባላት የማውረስ መብት አለው፣

5/ Any holder shall have the right to transfer his rural land use right through inheritance to members of his family.

፱. ስለገጠር መሬት ሽግሽግ

፩/ የመሬቶች ባለይዞታዎቹ በሕይወት የሌሉና ወራሽ የሌላቸው ከሆነ ወይም ባለይዞታዎቹ በሰፊራ ወይም በፍላጐታቸው በክልሎች የገጠር መሬት አስተዳደር ሕግ ከተወሰነው ጊዜ በላይ ከአካባቢው ለቀው የቆዩ ከሆነ በአካባቢው ለሚኖሩት መሬት አልባ ለሆኑ ወይም መሬት ላነሳቸው አርሶ አደሮች፣ ከፊል አርብቶ አደሮች እና አርብቶ አደሮች በሽግሽግ እንዲሰጥ ይደረጋል።

፪/ የመስኖ መሬትን በአግባቡና በፍታሃዊነት ለመጠቀም በመስኖ መሬት ላይ ሽግሽግ ሊካሄድ ይችላል፣

፫/ በአርሶ አደሮች ከፊል አርብቶ አደሮች እና አርብቶ አደሮች ፍላጎትና ውሳኔ የገጠር መሬት ሽግሽግ ማካሄድ አማራጭ የሌለው ሆኖ ሲገኝ የመሬት ሽግሽጉ ከአነስተኛ የይዞታ መጠን በታች በማይሆንና የተፈጥሮ ሀብት መመናመንን በማያስከትል መልኩ ተግባራዊ መሆን አለበት፣

፬/ የገጠር መሬት ይዞታቸውን ለመስኖ አውታር ግንባታ ሲባል ለሚያጡ አርሶ አደሮች ከፊል አርብቶ አደሮች እና አርብቶ አደሮች በአካባቢው ከሚዘረጋው የመስኖ ልማት ፍትሃዊ በሆነ መንገድ ተጠቃሚ እንዲሆኑ የመሬት ሽግሽግ ተግባራዊ ይሆናል።

፲. የገጠር መሬት ተጠቃሚዎች ግዴታዎች

፩/ የገጠር መሬት ባለይዞታው መሬቱን በአግባቡ የመጠቀምና የመንከባከብ ግዴታ አለበት። በመሬቱ ላይ ጉዳት ከደረሰ የመሬት መጠቀም መብቱን ሊያጣ ይችላል። ዝርዝሩም በክልል የገጠር መሬት አስተዳደር ሕግ መሠረት ይሆናል፣

፪/ የመስኖ ቦዮችና ሌሎች የመሠረተ ልማት አውታሮች በሚዘረገቡበት ወቅት በባለይዞታው መሬት ላይ የሚያልፉ ከሆነ ይህንኑ የመቀበል ግዴታ አለበት፣

፫/ ባለይዞታው አግባብ ባለው ባለሥልጣን የገጠር መሬቱ እንዲለካ ወይም የቅየሳ ሥራ እንዲካሄድ ሲጠየቅ የመተባበር ግዴታ አለበት፣

፬/ ማንኛውም የገጠር መሬት ባለይዞታ በመሬቱ የመጠቀም መብቱን በፈቃዱ ሲተው አግባብ ላለው ባለሥልጣን የማሳወቅ ግዴታ አለበት።

9. Distribution of Rural Land

1/ In accordance with land administration laws of the regions 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 pastoralist and pastoralist who have no land and who have land shortage.

2/ Distribution may be undertaken on irrigable land in order to use irrigable land properly and equitably.

3/ Upon the wish and resolution of peasants farmers, semi pastoralists and pastoralists where land distribution becomes the only alternative, it shall be undertaken in such a way that it shall not be less then the minimum size of holding and in a manner that shall not result in fragmentation of land and degradation of natural resources.

4/ Where peasant farmers, semi pastoralist and pastoralists are evicted from their holdings for purpose of constructing irrigation structure, land distribution shall be undertaken to make them get equitable benefit from the irrigation development to be established.

10. Obligations of Rural Land Users

1/ 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.

2/ 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.

3/ The holder of rural land shall have the obligation to cooperate when requested by the competent authority to measure and survey his land.

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

፲፩. የገጠር መሬት አነስተኛ ወለልን ስለመወሰንና ኩታ ገጠም ይዞታን ስለማበረታታት

፩/ ቀደም ሲል የነበረው የአንድ ቤተሰብ ይዞታ ወይም ማሳ ስፋት እንዳለ ሆኖ፣ ወደፊት የሚሰጠው የማሳ ስፋት ከአነስኛው የይዞታ መጠን በታች መሆን የለበትም፣

፪/ የገጠር መሬት በውርስ በሚተላለፍበት ወቅት የሚተላለፈው የመሬት ይዞታ መጠን ከአነስተኛው የይዞታ መጠን በታች መሆን የለበትም፣

፫/ አነስተኛ ማሳዎች ለልማት አመቺ እንዲሆኑ በአርሶ አደሩ ሙሉ ፍቃደኝነት ላይ የተመሠረተ የይዞታ ልውውጥ እንዲያደርጉ ይበረታታሉ፣

፬/ የይዞታ ልውውጥ ለማድረግ ፈቃደኛ የሆኑ ገበሬዎች ለመለዋወጥ ያሰቡትን የማሳ ስፋትና የለምነት ደረጃ በቀበሌው አስተዳደር ክልል ውስጥ የሚኖሩ ሌሎች ገበሬዎች እንዲያውቁት ለማድረግ መረጃዎቹ በቀበሌው አስተዳደር አማካይነት እንዲሰራጩ ይደረጋል፣

፭/ በሕብረተሰቡ ጥያቄና ተሳትፎ የሚከናወን የሠፈራና የመንደር ምሥረታ ፕሮግራም የመሬት ኩታገጠምነትን ዓላማ ያደረገ እንዲሆን ይደረጋል።

11. Determining Minimum Rural Land Holding Size and Encouraging Land Consolidation

1/ Without prejudice to the former holding or farm plot size of a family, the farm plot to be given in the future shall not be less than the minimum size holding.

2/ Where rural land is transferred by succession, it shall be made in such a way that the size of the land to be transferred is not less than the minimum size holding.

3/ In order to make small farm plots convenient for development, farmers are encouraged to voluntarily exchange farmlands.

4/ The information of the size and level of fertility of the farm plots which farmers intend to exchange holding shall be distributed through kebele administration to let other farmers residing in the kebele know about it.

5/ A settlement and villagization program to be undertaken at the request and participation of the community shall be undertaken taking into account the objective of land consolidation.

፲፪. የክርክሮች አወሳሰን

የገጠር መሬት ይዞታ መብትን በተመለከተ ክርክር ሲነሳ ጉዳዩ በሚመለከታቸው ተከራካሪዎች በውይይትና ስምምነት እንዲፈታ ጥረት ይደረጋል። በስምምነት ሊፈታ ካልቻለ በተከራካሪ ወገኖች በተመረጠ ሽምግልና ወይንም በክልሉ የገጠር መሬት አስተዳደር ሕግ በተደነገገው መሠረት ይወሰናል።

12. Dispute Resolutions

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

ክፍል ሦስት
በገጠር መሬት በአጠቃቀም ረገድ ስለተጣሉ ገደቦች

PART THREE
RURAL LAND USE RESTRICTIONS

፲፫. የገጠር መሬት አጠቃቀም ዕቅድ ስለማውጣትና ስለተዳፋት፣ ቦረቦርና ረግረጋማ መሬቶች አጠቃቀም

፩/ የአፈር ዓይነትን፣ የመሬት አቀማመጥን፣ የተዳፋትነት መጠንን፣ የአየር ወባይን፣ የዕፅዋት ሽፋንን እና ሶሺዮ-ኢኮኖሚያዊ ሁኔታዎችን ባካተተ መልኩ ተፋሰስን መሠረት ያደረገ የመሬት አጠቃቀም መሪ ዕቅድ አግባብ ባለው ባለሥልጣን ወጥቶ ተግባራዊ ይሆናል፣

13. Land Use Planning and Proper Use of Sloppy, Gully and Wetlands

1/ A guiding land use master plan, which takes in to account soil type, landform, weather condition, plant cover and socio-economic conditions and which is based on a water shed approach, shall be developed by the competent authority and implemented.

፪/ በላይኛውና በታችኛው የተፋሰስ ክፍል ባለ ተጠቃሚ ሕብረተሰብ መካከል ፍትሃዊ የሆነ የውሃ አጠቃቀም ሥርዓት እንዲኖር ይደረጋል፣

፫/ የአፈርና ውሃ ጥበቃ ሥራዎች በተከናወነባቸውና ቋሚ ተክሎች በለሙበት ማንኛውም ዓይነት የገጠር መሬት ላይ የልቅ ግጦሽ የአመጋገብ ሥርዓትን በመከልከል ደረጃ በደረጃ አጭዶ መመገብ ሥርዓት እንዲይዝ ይደረጋል፣

፬/ የመሬት ተዳፋትነታቸው ከ፴ ፐርሰንት በታች የሆኑ የገጠር መሬቶች አያያዝ የአፈር ክለትን የሚቀንስና ውሃ የመሰብሰብን ስልት የተከተለ መሆን አለበት። ዝርዝሩ በክልሎች የገጠር መሬት አስተዳደር ሕግ ይወሰናል፣

፭/ የመሬት ተዳፋትነታቸው ከ፴፩-፷ ፐርሰንት የሆኑ የገጠር መሬቶችን ለዓመታዊ ሰብሎች ልማት ለማዋል የሚቻለው ጠረጴዛማ እርከን በመሥራት ብቻ ነው፣

፮/ ተዳፋትነታቸው ከ፷ ፐርሰንት በላይ የሆኑ የገጠር መሬቶች ለእርሻና ለልቅ ግጦሽ እንዳይውሉ ሆኖ ለዛፍ፣ ለቋሚ ተክሎችና ለእንስሳት መኖ ልማት እንዲውሉ ይደረጋል፣

፯/ በማንኛውም ተዳፋት የሚገኝና በጣም የተጐዳ የገጠር መሬት ለተወሰነ ጊዜ ከሰውና ከእንስሳት ንክኪ ተጠብቆ እንዲያገግምና ማገገሙ ሲረጋገጥ ጥቅም ላይ እንዲውል ይደረጋል። መሬቱን በአግባቡ ባለመንከባከብ የሚከሰት ጉዳት ካልሆነ በስተቀር ለመሬቱ ተጠቃሚ አርሶ አደሮች ከፊል አርብቶ አደሮች እና አርብቶ አደሮች በክልሉ የመሬት አስተዳደር ሕግ መሠረት ለተጠቀሰው ጊዜ አማራጭ ይፈለግላቸዋል፣ ወይም ካሣ ይከፈላቸዋል።

፰/ በረቦር የሆኑ የገጠር መሬቶች በግልና በአጐራባች ባለይዞታዎች፣ እንደአስፈላጊነቱም በአካባቢው ሕብረተሰብ ሥነ-ሕይወታዊ እና ፊዚካላዊ ሥራዎችን በመጠቀም እንዲያገግሙና ጥቅም ላይ እንዲውሉ መደረግ አለባቸው፣

፱/ በኮረብታማ አካባቢዎች ያሉ በረቦር የሆኑ የገጠር መሬቶች በወል እንዲሁም እንደየሁኔታው በግል ተይዘው እንዲያገግሙና እንዲለሙ ይደረጋል፣

፲/ ረግረጋማ የሆኑ የገጠር መሬቶች ያላቸው ብዝሀ ሕይወት እንዲጠበቁና እንደአስፈላጊነቱ ተስማሚ በሆነ የመሬት አጠቃቀም ስልት ጥቅም እንዲሰጡ ይደረጋል።

2/ An equitable water use system shall be established between upper and lower watershed communities.

3/ In any type of rural land where soil and water conservation works have been undertaken a system of free grazing shall be prohibited and a system of cut and carry feeding shall be introduced step by step.

4/ The management of rural lands the slope of which is less than 30 percent shall follow the strategy of soil conservation and water harvesting. The details shall be determined by rural land administration laws of regions.

5/ Development of annual crops on rural lands that have slopes between 31-60 percent may be allowed only through making bench terraces.

6/ Rural lands, the slope of which is more than 60 percent, shall not be used for farming and free grazing; they shall be used for development of trees, perennial plants and forage production.

7/ Rural land of any slope which is highly degraded shall be closed from human and animal interference for a given period of time to let it recover, and shall be put to use when ascertained that it has recovered. Unless the degradation is caused by the negligence of the peasant farmers, semi pastoralist and pastoralist the users shall be given compensation or other alternatives for the interim period.

8/ rural lands that have gullies shall be made to rehabilitate by private and neighboring holders and, as appropriate, by the local community, using biological and physical works.

9/ Rural lands that have gullies and are located on hilly areas shall be rehabilitated and developed communally and as appropriate by private individuals.

10/ The biodiversity in rural wetland shall be conserved and utilized as necessary, in accordance with a suitable land use strategy.

፲፬. ለመንደር ምስረታና ለሌሎች ማህበራዊ አገልግሎቶች የገጠር መሬትን ጥቅም ላይ ስለማዋል

የተሻለ የገጠር መሬት አጠቃቀም ሥርዓትን ለማስፈን የሚያስችል የሰፈራ፣ የመንደር ምስረታና የማህበራዊ አገልግሎቶች የሚሰፋፉበት ስልት እንዲነደፍ ይደረጋል።

ክፍል አራት
ልዩ ልዩ ድንጋጌዎች

፲፭. በገጠር መሬት አስተዳደርና አጠቃቀም ላይ ጥናት ስለማካሄድ

በገጠር መሬት አስተዳደርና አጠቃቀም ላይ ያሉ ችግሮችን በመለየትና ተገቢውን መፍትሄ በመፈለግ ላይ ያተኮረ የጥናት ሥርዓት እንዲዘረጋ ይደረጋል።

፲፮. የፌዴራል የግብርናና ገጠር ልማት ሚኒስቴር ኃላፊነት

የፌዴራል ግብርናና ገጠር ልማት ሚኒስቴር

፩/ አግባብ ያላቸውን ባለሥልጣናት በማስተባበርና አስፈላጊውን የሙያ ድጋፍ በመስጠት ይህን አዋጅ የማስፈፀም ኃላፊነት አለበት፣

፪/ በሀገር አቀፍ ደረጃ የተሰበሰቡና በየጊዜው በክትትልና በማጣጣም የሚገኙ መረጃዎችን መሠረት በማድረግ አዳዲስ የፖሊሲ ሃሳቦች እንዲነደፉና አስፈላጊም ሲሆን በሥራ ላይ ያለው ፖሊሲ በየጊዜው እንዲሻሻል ያደርጋል፣

፫/ በክልሎችና በፌዴራል መካከል የገጠር መሬት አስተዳደርና አጠቃቀም የመረጃ ልውውጥ ሥርዓት እንዲዘረጋ ያደርጋል።

፲፯. የክልሎች ኃላፊነት

፩/ እያንዳንዱ የክልል ምክር ቤት ይህን አዋጅ ለማስፈጸም የሚያስፈልጉ ዝርዝር ድንጋጌዎችን የያዘ የገጠር መሬት አስተዳደር እና አጠቃቀም ህግ ያወጣል፣

፪/ ክልሎች የገጠር መሬት አስተዳደር እና አጠቃቀም ሥርዓትን የሚያስፈጽሙ ድርጅታዊ ተቋሞች በተዋረድ እንዲቋቋሙና የተቋቋሙትም እንዲጠናከሩ ማድረግ አለባቸው።

14. Utilization of Rural Land for Villagization and other Social Services

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.

PART FOUR
MISCELLANEOUS PROVISIONS

15. Rural Land Administration and use Study

A system of study that focuses on identification of problems on land administration and use, and recommends solutions shall be established.

16. Responsibly of Federal Ministry of Agriculture and Rural Development

The Federal Ministry of Agriculture and Rural Development shall:

1/ have the responsibility to implement this Proclamation by providing the necessary professional support and by coordinating the competent authorities;

2/ 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;

3/ create the system for the exchange of information between regions and the Federal Government pertaining to rural land administration and use.

17. Responsibility of Regions

1/ Each regional council shall enact rural land administration and Land use law, which consists of detailed provisions necessary to implement this Proclamation.

2/ Regions shall establish institutions at all levels that shall implement rural land administration and Land use systems, and shall strengthen the institutions already established.

፲፰. የመተባበር ግዴታ

ማናቸውም ሰው ለዚህ አዋጅ አፈጻጸም አግባብነት ካላቸው ባለሥልጣናት ጋር የመተባበር ግዴታ አለበት::

፲፱. ስለቅጣት

ማንኛውም ሰው ይህን አዋጅ ወይም አዋጁን ለማስፈፀም የወጡ ደንቦችንና መመሪያዎችን ጥሶ ሲገኝ አግባብ ባለው የወንጀል ሕግ መሠረት ይቀጣል::

፳. ስለተሻሩና ተፈጻሚ ስለማይሆኑ ሕጎች

፩/ የፌዴራል መንግሥት የገጠር መሬት አስተዳደር አዋጅ ቁጥር ፹፬/፲፱፻፹፱ በዚህ አዋጅ ተሽሯል፣

፪/ ይህን አዋጅ የሚቃረን ማንኛውም ሕግ፣ ደንብ፣ መመሪያ ወይም የአሰራር ልምድ በዚህ አዋጅ የተደነገጉትን ጉዳዮች በተመለከተ ተፈጻሚነት አይኖረውም::

፳፩. አዋጁ የሚፀናበት ጊዜ

ይህ አዋጅ ከሰኔ ፳ ቀን 1997 ዓ.ም. ጀምሮ የፀና ይሆናል::

አዲስ አበባ ሰኔ ፳ ቀን 1997 ዓ.ም.

ግርማ ወልደጊዮርጊስ
የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ
ፕሬዚዳንት

18. Obligation to Cooperate

Any person shall have the obligation to cooperate with relevant bodies for the implementation of this proclamation.

19. Penalty

Any person who violates this Proclamation or the regulations and directives issued for the implementation of this Proclamation shall be punishable under the applicable criminal law.

20. Repealed and Inapplicable laws

1/ The Federal Government Rural Land Administration Proclamation No. 89/1997 is hereby repealed.

2/ No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamation, be applicable with respect of matters provided for in this proclamation

21. Effective Date

This Proclamation shall enter into force on this 15th date of July, 2005

Done at Addis Ababa, this 15th day of July, 2005.

GIRMA WOLDEGIORGIS
PRESIDENT OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA

Appendix 14: Tigray Rural Land Administration and Use Proclamation No. 136/2007

ነጋሪት ጋዜጣ ትግራይ

የትግራይ ነጋሪት ጋዜጣ

ብሄራዊ ክልላዊ መንግስቲ ትግራይ
የትግራይ ብሔራዊ ክልላዊ መንግስት

መበል 16 ዓመት ቁ.1
መቐለ 5 ታሕሳስ 2000 ዓ/ም

ብኣልዮት ዕቱብ ምኽሪ ብሄራዊ ክልላዊ መንግስቲ ትግራይ ዝወፀ

16ኛ ዓመት ቁ. 1
መቐለ ታህሣሥ 5/2000 ዓ/ም

ኣዋጅ ቁፅሪ 136/ 2000 ዓ.ም

ዝተመሓየሸ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ብሄራዊ ክልላዊ መንግስቲ ትግራይ ዳግም ንምውሳን ዝወፀ ኣዋጅ

መሬትን ሃፍቲ ተፈጥሮን ንምምሕዳር ንክልላት ዝተውሃበ ስልጣን ኣብ ስራሕ ዝውዕል ብመሰረት መንግስቲ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ኢትዮጵያ ዘውፅኦ ሕጊ ምኽኑ ናይ ኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ-መንግስቲ ዓንቀፅ 52/2/መ/ ስለዝድንግግ፣

ምምሕዳርን ኣጠቓቕማን መሬት ገጠር መንግስቲ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ኢትዮጵያ ኣዋጅ ቁፅሪ 456/ 1997 ዓንቀፅ 17/1/ ነዚ ኣዋጅ ንምፍፃም ዘድልዩ ዝርዝር ድንጋጌታት ዝሓዘ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ዝምልከት ሕጊ ብቤት ምኽሪ እዚ ክልል ንክወፅእ ስለዝድንግግ፣

ነዚ መሰረት ብምግባር ቅድም ክብል ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ንምውሳን ዝወፀ ኣዋጅ ቁፅፅ 97/98 ምስ መሬት ተኣሳሲሮም ንዝልዓሉ ጉዳያት ብዝርዝር ብዝምልስ፣ ፍትሓውን ሚዛናውን ሕጊ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ንክህሉ ነዚ ኣዋጅ ምምሕያሽ ኣድላይ ኮይኑ ስለዝተረኽበ፣

ናይ ሓደ ዋጋ ያንዱ ዋጋ	ብር 5.50

አዋጅ ቁጥር 136/2000 ዓ.ም

የትግራይ ብሄራዊ ክልላዊ መንግስት የተሻሸለ የገጠር መሬት አስተዳደርና አጠቃቀም እንደገና ለመወሰን የወጣ አዋጅ

መሬትና የተፈጥሮ ሀብትን ለማስተዳደር ለክልሎች የተሰጠው ስልጣን በስራ ላይ የሚውለው የኢትዮጵያ የፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ መንግስት በሚያወጣው ህግ መሰረት መሆኑን የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ-መንግት ኣንቀፅ 52/2/መ/ ስለሚደነግግ፣

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ መንግስት የገጠር መሬት አስተዳደርና አጠቃቀም አዋጅ ቁጥር 456/1997 አንቀፅ 17/1/ ይህን አዋጅ ለማስፈፀም የሚያስፈልጉ ዝርዝር ድንጋጌዎችን የያዘ የገጠር መሬት አስተዳደርና አጠቃቀም የሚመለከት ህግ በዚህ ክልል ምክር ቤት እንዲወጣ ስለሚደነግግ፣

ይህን መሰረት በማድረግ ቀደም ሲል የገጠር መሬት አስተዳደርና አጠቃቀም ለመወሰን የወጣ አዋጅ ቁጥር 97/98 ከመሬት ጋር ተያይዘው ለሚነሱ ጉዳዮች በዝርዝር ምላሽ በሚሰጥ፣ ፍትሃዊና ሚዛናዊ የገጠር መሬት አስተዳደርና አጠቃቀም ህግ እንዲኖር አዋጁን ማሻሻል አስፈላጊ ሆኖ በመገኘቱ፣

ነጋሪት ጋዜጣ ቹ.ፓ.ሳ ነጋሪት ጋዜጣ ፓ.ሳ.ቁ	291

ቤት ምኽሪ ብሂራዊ ክልላዊ መንግስቲ ትግራይ ተማሓይሹ ብዝወፀ ሕገ-መንግስቲ ትግራይ ዓንቀፅ 49/3/ሀ/ ብዝተውሃቦ ስልጣን መሰረት እዚ ዝስዕብ አዋጅ ኣውፂኡ ኣሎ፡፡

1. ሓፂር ርእሲ

እዚ ኣዋጅ "ዝተመሓየሸ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ብሂራዊ ክልላዊ መንግስት ትግራይ ዳግም ንምውሳን ዝወፀ ኣዋጅ ቁፅሪ 136/2000 ዓ.ም " ተባሂሉ ክጥቀስ ይኽእል፡፡

2. ትርጉም

ናይቲ ቃል ኣተኣታትዋ ካኢእ ትርጉም ዘውህቦ እንተዘይኮይኑ ኣብዚ ኣዋጅ ውሽጢ፡-

1. "ውላድ ጡብ " ማለት ብመሰረት ሕጊ ቤተሰብ ክልል ትግራይ ሓደ ቆልዓ ምስ መዕበይኡ ብዝፍፅሞ ውዕሊ ዝፍጠር ዝምድና እዩ፣
2. " ዝምልከቶ ኣካል " ማለት ብመሰረት ኣዋጅ ቁፅሪ 77/1996 ዓ.ም ዝተጣየሸን መሬት ገጠር ንኽመሓድር ስልጣን ዝተውሃቦ በዓል መዚ ሓለዋ ክባቢ፣ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ማለት እዩ፣
3. "ዴስክ" ማለት ኣብ ወረዳ ናይቲ በዓል መዚ ሓለዋ ክባቢ፣ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ተግባርን ሓላፍነትን ንምፍፃም ዝቕመ መሓውር እዩ፣
4. "መሬት ገጠር" ማለት ካብ ክሊ ቤት ማዘጋጃ ወፃኢ ወይ ድማ ኣግባብ ብዘለዎ ሕጊ "ከተማ" ተባሂሉ ካብ ዝተወሰነ ወፃኢ ዝርከብ ዝኾነ መሬት እዩ፣
5. "ዝነኣሰ ትሕዝቶ መሬት " ማለት ንሓደ ስድራ ውሕስና ምግቢ ከረጋፅፅ ዝኽእል ትሕዝቶ መሬት ገጠር ኮይኑ በዚ ኣዋጅ ዓንቀፅ 18 ተገሊፁ ዘሎ መጠን ትሕዝቶ መሬት እዩ፣
6. "ሽግሽግ መሬት " ማለት ትሕዝቶ መሬት ፍትሓዊ ብዝኾነን ብዝተመጣጠነን መንገዲ መሬት ንዘይብሎም ክባፃሕን ሓረስታይ ብሓባር ዝጥቀሙሉ ዝድልደለሉን መሬት ተፈሊዩ ዝኽለለሉን መሬት ገጠር ተግባር እዩ፣
7. " ሕዛእቲ " ማለት ኣብ ሓደ ዝተኽለለ ክባቢ ብፍሉይ ንሕዛእቲ ተባሂሉ ዝተኽለለ ሳዕርን ኣግራብን ዘለዎ መሬት እዩ፣

የትግራይ ብሂራዊ ክልላዊ መንግስት ምክር ቤት ተሻሽሎ በወጣው ሕገ-መንግስት አንቀጽ 49/3//ሀ/ በተሰጠው ሥልጣን መሰረት የሚከተለውን አዋጅ አውጥቷል፡፡

1. አጭር ርእስ

ይህ አዋጅ "የትግራይ ብሂራዊ ክልላዊ መንግስት የተሻሸለ የገጠር መሬት አስተዳደርና አጠቃቀም እንደገና ለመወሰን የወጣ አዋጅ ቁጥር 136/2000 ዓ.ም" ተብሎ ሊጠቀስ ይችላል፡፡

2. ትርጉም

በቃሉ ላገባብ ሌላ ትርጉም የሚያሰጠው ካልሆነ በስተቀር በዚህ አዋጅ ውስጥ፡-

1. "ጉዲፈቻ" ማለት በትግራይ ክልል የቤተሰብ ህግ መሰረት አንድ ልጅ ካላዳጊው ጋር በሚፈጽመው ውል የሚፈጠር ዝምድና ነው፣
2. "የሚመለከተው ኣካል" ማለት በአዋጅ ቁጥር 77/1996 ዓ.ም የተቋቋመ የገጠር መሬት ለማስተዳደር ስልጣን የተሰጠው የአከባቢ ጥበቃ፣ የገጠር መሬት አስተዳደርና አጠቃቀም ባለስልጣን ማለት ነው፣
3. "ዴስክ" ማለት የአካባቢ ጥበቃ፣ የመሬት አስተዳደርና አጠቃቀም ባለስልጣን ተግባርና ኃላፊነትን ለማስፈፀም በወረዳ የተቋቋመ መዋቅር ነው፣
4. "ገጠር መሬት" ማለት ከማዘጋጃ ቤት ክልል ውጪ ወይም አግባብነት ባለው ሕግ "ከተማ" ተብሎ ከተወሰነ ውጪ የሚገኝ ማንኛውም መሬት ነው፣
5. "አነስተኛ የመሬት ይዞታ" ማለት የአንድ ቤተሰብ የምግብ ዋስትና ለማረጋገጥ የሚችል የገጠር መሬት ይዞታ ሆኖ በዚህ አዋጅ አንቀፅ 18 የተገለፀው የመሬት ይዞታ መጠን ነው፣
6. "የመሬት ሽግሽግ" ማለት የመሬት ይዞታ ፍትሃዊ በሆነና በተመጣጠነ መንገድ መሬት ለሌላቸው ለማዳረስና ገበሬው በጋራ የሚጠቀምበት መሬት ተለይቶ የሚከለልበትና የገጠር መሬት የሚደላደልበት ተግባር ነው፣
7. "ግጦሽ" ማለት በአንድ የተከለለ አካባቢ በተለይ ለግጦሽ ተብሎ የተከለለ ሳርና ዛፎች ያሉት መሬት ነው፣

8. "ትርፊ መሬት" ማለት ብሕጋዊ መንገዲ ዘይተዓደለን ኣብ ኢድ ዝተፈላለዩ ተጠቀምቲ ዝርከብ መሬት፣ ወራሲ ዘይብሉ መሬት፣ ጎቦታት፣ ጉህምታትን ወናኒ ዘይብሉ ክፍቲ መሬትን ዘጠቓለለ እዩ፣

9. "ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር" ማለት ብመሰረት እዚ ኣዋጅ ከኸም ኣድላይነቱ ኣብ ቁሽት ዝተጣየሽ ሓፂሱ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ንምፍፃም ምምሕዳራውን ስልጣን ዳይነትን ዝተውሃቦ ኣብ ጣብያ ዝጣየሽ ኮይኑ ድሕሪ ሕዚ ኮሚቴ እናተብሃለ ዝፅዋዕ ኣካል እዩ።

3. ብዛዕባ ኣገላልፃ ዖታ

ኣብዚ ኣዋጅ ብተባዕታይ ዖታ ዝተገለፀ ኹሉ ንኣንስታይ ዖታውን ዘካትት እዩ።

4. ወሰን ተፈፃምነት

እዚ ኣዋጅ ኣብ ውሽጢ ክልል ትግራይ ኣብ ዝርከብ ዝኾነ መሬት ገጠር ተፈፃምነት ይህልዎ።

5. መሰል ምርካብን ምጥቃምን መሬት ገጠር

1. ብመሰረት እዚ ኣዋጅ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር፡-

ሀ. ብሕርሻ ስራሕ ክመሓደር ንዝደሊ ሓረስታይ ናይ መሬት ገጠር ብነፃ ክረክብ ይግበር፣

ለ. ሕድ ሕድ ሓረስታይ ብመሬት መቐሎ ወይ ብሽግሽግ ዝረኸቦ ትሕዝቶ መሬቱ ብዘይ ምንም ገደብ ጊዜ ናይ ምጥቃም መሰል ኣለዎ፣

ሐ. ንትሕዝትኡ መረጋገፂ ደፍተር ኣብ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ወይ ኣብ ወረዳ ዴስክ ይወሃቦ። እቲ መሬት ናይ ሰብኣይን ሰበይትን ትሕዝቶ እንተኾይኑ ናይ ሓባር መረጋገፂ ደፍተር ይውሃቦም፣

መ. ዕድሚኡ 18 ዓመትን ካብኡ ንላዕልን ዝኾነ ብናይ ሕርሻ ሙያ ክመሓደር ዝደሊ ዝኾነ ናይቲ ዓዲ ዜጋ ብመሬት ገጠር ናይ ምጥቃም መሰሉ ዝተረጋገፀ ኮይኑ ኣቦኣምን ኣዴኣምን ብሞት ወይ ብኻሊእ ኩነታት ዝሰኣኑ ቆልዑት 18 ዓመት ክሳብ ዝመልኦም ብሕጋዊ መዕበይቶም ኣቢሎም ብመሬት ገጠር ናይ ምጥቃም መሰል ኣለዎም፣

8. "ትርፍ መሬት" ማለት በህጋዊ መንገድ ያልታደለ በተለያዩ ተጠቃሚዎች እጅ ውስጥ የሚገኝ መሬት፣ ወራሽ የሌለው መሬት፣ ተራሮች፣ ቦርቦርና ባለቤት የሌለው ክፍት መሬትን የሚያጠቃልል ነው፣

9. "የጣብያ የገጠር መሬት አስተዳደር ኮሚቴ ማለት በዚህ ኣዋጅ መሰረት፣ እንደየአሰፈላጊነቱ በጎጥ የሚቋቋምን ጨምሮ የገጠር መሬት አስተዳደርና አጠቃቀምን ለማስፈፀም አስተዳደራዊና የዳኝነት ስልጣን የተሰጠው በቀበሌ ደረጃ የሚቋቋም ሆኖ ከዚህ በኋላ ኮሚቴ እየተባለ የሚጠራ አካል ነው።

3. የዖታ አገላለፅ

በዚህ ኣዋጅ ውስጥ በወንድ ዖታ የተገለፀ ሁሉ የሴትንም ዖታ ያካትታል፣

4. የተፈፃሚነት ወሰን

ይህ አዋጅ በትግራይ ክልል ውስጥ በሚገኝ በማንኛውም የገጠር መሬት ተፈፃሚነት ይኖረዋል።

5. የገጠር መሬት የማግኘትና የመጠቀም መብት

1. በዚህ የገጠር መሬት አስተዳደርና አጠቃቀም አዋጅ መሰረት፡-

ሀ. በግብርና ስራ ለመተዳደር የሚፈልግ አርሶ አደር የገጠር መሬት በነፃ እንዲያገኝ ይደረጋል፣

ለ. እያንዳንዱ አርሶ አደር በመሬት ክፍፍል ወይም በሽግሽግ ባገኘው ይዞታ ያለምንም የጊዜ ገደብ የመጠቀም መብት አለው፣

ሐ. ለይዞታው ማረጋገጫ ደብተር በቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ ወይም በወረዳ ዴስክ ይሰጠዋል። መሬቱ የባልና ሚስት የጋራ ይዞታ ከሆነ የጋራ ማረጋገጫ ደብተር ይሰጣቸዋል።

መ. ዕድሜው 18 ዓመትና ከዚያ በላይ የሆነና በግብርና ሙያ ሊተዳደር የሚፈልግ ማንኛውም የሀገሪቱ ዜጋ በገጠር መሬት የመጠቀም መብቱ የተረጋገጠ ሆኖ እናትና አባታቸውን በሞት ወይም በሌላ ሁኔታ ያጡልጆች 18 ዓመት እስኪሞላቸው ድረስ በህጋዊ ሞግዚታቸው አማካኝነት በገጠር መሬት የመጠቀም መብት አላቸው፣

ገፅ 4 የትግራይ ነጋሪት ጋዜጣ ቁ.136 ታህሣሥ 5/2000 ዓ/ም

ረ. ኣብ ሕርሻ ስራሕቲ ክዋፈራ ዝደልያ ደቂ ኣንስትዮ መሬት ገጠር ምርካብን ምጥቃምን መሰል ኣለወን፣

ሰ. ቅድም ክብል ብባይቶን ናይ መሬት ስሪትን በቢሽባቢኡ ዝተገበረ ናይ መወዳእታ መቐሎ መሬት በዚ ኣዋጅ ቅቡል እዩ፣

ሸ. ናይዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ፊደል "ሰ" ዝተገለፀ ድንጋገ ኣብ ግድባት ክባቢ ንዝግበር ናይ መሬት ሽግሽግ ኣይሓውስን፣

2. ዝኾነ ብመሬት ገጠር ናይ ምጥቃም መሰል ዘለዎ ሓረስታይ ካብ ቤተሰቡ ብውህብቶ ወይ ብውርሲ ወይ ድማ ኣግባብ ካብ ዘለዎ ብዓል መዚ ናይ መሬት ገጠር ብትሕዝቶ ክረክብ ይኽእል፣ ዝርዝሩ ብደንቢ ይውሰን፣

3. ኣብዚ ዓንቀፅ ንኡስ ዓንቀፅ 2 ብውህብቶ መሬት ገጠር ምርካብ ዝክኣል ኮይኑ፡-

ሀ. ውህብቶ ዝፍቀድ ትሕዝቶ መሬት ገጠር ንዘይብሉ ውሉድ ወይ ወላዲ ጥራሕ ይኸውን፣

ለ. ብጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ወይ ወረዳ ዴስክ እናተረጋገፀ ኣብ ወረዳ ወይ ንኡስ ወረዳ ፍትሒ ቤት ፅሕፈት ውዕልን መረዳእታን ይምዝገብ፡፡ ቅዳሕ እቲ ሰነድ ኣብ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ወረዳ ዴስክን ይቕመጥ፣

4. ዝኾነ ኣብ ስራሕቲ ሕርሻን ካልኦት ዘፈራት መሬት ገጠር ንምጥቃም ክዋፈር ዝደለየ በዓል ሃፍቲ ብመሰረት እዚ ኣዋጅን ሕጊ ኢንቨስትመንትን ምስ ሓረስታይ ወይ ድማ ኣግባብ ምስ ዘለዎ በዓል መዚ ብዝገብሮ ውዕሊ ክራይ መሬት ናይ ምጥቃም መሰሉ ዝተሓለወ እዩ፣ ዝርዝሩ ብደንቢ ይውሰን፡፡

6. ብዛዕባ ምክራይ መሬት

1. ደፍተር መረጋገፂ ትሕዝቶ ዝተውሃቦም ሓረስቶት ካብ ዘለዎም መሬት ካብ ፍርቂ መጠን ዘይንእስ ንባዕሎም ብምትራፍ ንዕያም ብዘየፈናቕል መልክዑ ዝተረፈ መሬቶም ንካልኢ ሓረስታይ ወይ ባዓል ሃፍቲ ክካርዩ ይኽእሉ፣

2. ሰብኣይን ሰበይትን ሰብ ሓዳር ዝኾኑ መሬቶም ብናይ ክልቲኦም ስምምዕነት ጥራሕ ይካረ፣

3. ሓረስታይ ብውልቀ ምስ ተኻረይቲ ዝገብሮ ናይ መሬት ክራይ ስምምዕ፡-

ሠ. በግብርና ስራ ሊሰማሩ የሚፈልጉ ሴቶች ገጠር መሬት የማግኘትና የመጠቀም መብት ላቸው፣

ረ. ቀደም ሲል በሽንኑና በአከባቢ የመሬት ደንብ መሰረት በየአከባቢው የተደረገው የመጨረሻ የመሬት ክፍፍል በዚህ አዋጅ ተቀባይነት አለው፡፡

ሰ. የዚህ አንቀፅ ንኡስ አንቀፅ 1 ፊደል "ረ" የተጠቀሰው ድንጋጌ በግድቦች አካባቢ የሚደረገውን የመሬት ሽግሽግ አይጨምርም፣

2. ማንኛውም በገጠር መሬት የመጠቀም መብት ያለው አርሶ አደር ከቤተሰቡ በስጦታ ወይም ውርስ ወይም አግባብ ካለው ባለስልጣን ገጠር መሬት ይዞታ ማግኘት ይችላል፣ ዝርዝሩ በደንብ ይወሰናል፣

3. በዚህ አንቀጽ ንኡስ አንቀጽ 2 በስጦታ የገጠር መሬት ማግኘት የሚቻል ሆኖ፡-

ሀ. ስጦታ የሚፈቀደው የገጠር መሬት ይዞታ ለሌው ልጅ ወይም ወላጅ ብቻ ይሆናል ፣

ለ. በቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ ወይም በወረዳ ዴስክ እየተረጋገጠ በወረዳ ወይም በንኡስ ወረዳ ፍትህ ጽሕፈት ቤት ውልና ማስረጃ ይመዘገባል፡፡ የሰነዱ ቅጂ በቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ እና በወረዳ ዴስክ ይቀመጣል፣

4. በማንኛውም የግብርናና በሌሎች የስራ ዘርፎች የገጠር መሬትን በመጠቀም ስራ ላይ ለመሰማራት የፈለገ ማንኛውም ባለሃብት በዚህ አዋጅና በኢንቨስትመንት ህግ መሰረት ከአርሶ አደር ወይም አግባብ ካለው ባለስልጣን በሚያደርገው የኪራይ ውል መሬት የመጠቀም መብቱ የተጠበቀ ነው፣ ዝርዝሩ በደንብ ይወሰናል፡፡

6. መሬት ስለማከራየት

1. የይዞታ ማረጋገጫ ደብተር የተሰጣቸው አርሶ አደሮች ካላቸው መሬት ከግማሽ የይዞታ መጠን የማያንስ ለራሳቸው በማስቀረት እነሱን በማያፈናቅል መልኩ የተረፈ መሬታቸው ለሌላ አርሶ አደር ወይንም ባለሃብት ማከራየት ይችላሉ፣

2. የባልና የሚስት ባለትዳሮች የሆኑ መሬታቸው በሁለቱም ስምምነት ብቻ ይከራያል፣

3. አርሶ አደሩ በግሉ ከተከራዮች ጋር የሚያደርገው የመሬት ክራይ ስምምነት፡-

ሀ. ካብ ልማዳዊ ናይ ሕርሻ ሜላ ወፃኢ ዝኾነ ቴክኖሎጂ ንዝጥቀም እንተኾይኑ ክሳብ 20 ዓመት፣

ለ. በቲ ልማዳዊ ኣገባብ ዝግበር ኪራይ እንተኾይኑ ብተኸታታሊ ካብ ሰለስተ ዓመት ንዘይበልፅ ግዜ ይኸውን፣

4. ብመሰረት እዚ ዓንቀፅ ዝግበር ውዕሊ መሬት ኪራይ ዝምልከት ዝርዝር ኣፈፃፅምኡ ብደንቢ ይውሰን ።።

7. ብመንግስቲ ዝካረ መሬት

1. መንግስቲ ኢኮኖሚያዊ ረብሕኡ ኣብ ግምት ብምእታው ኣብ ሞንጎ ተኻረይትን ዝምልከቶ ኣካልን ብዝግበር ውዕሊ መሬት ከካሪ ይኽእል እዩ፣
2. በዚ ዓንቀፅ ንኡስ ኣንቀፅ 1 ዝግበር ውዕሊ ክራይ መሬት ናይቲ ሓረስታይ ጥቕሚ ብዝጎድእ መልክዑ ክኸውን የብሉን፣
3. መጠን መሬትን ናይቲ ኢንቨስትመንት ዓይነትን እናተርኣየ ብመንግስትን ሰብ ሃብትን ዝግበር ውዕሊ ክራይ ሕርሻ መሬት ክሳብ 50 ዓመት ዝፀንሕ ይኸውን፣ ዝርዝሩ ብደንቢ ይውሰን፣
4. ኣብዚ ዓንቀፅ ንኡስ ኣንቀፅ 3 ዝተቐመጠ ዘበን ወዕሊ ክራይ መሬት ከምዘሎ ኮይኑ ኣብ ገጠር ዝግበር ናይ ኢንድስትሪ ኢንቨስትመንት ዘበን ውዕሊ ብመሰረት ሕጊ ኢንቨስትመንት ይውሰን፣
5. ትሕዝቶ መንግስታውን ዘይመንግስታውን ከምኡውን ማሕበራዊን ኢኮኖሚያውን ትካላት ብመሬት ናይ ምጥቃም መሰሎምን ፀኒዑ ዝፀንሓሉ ግዘ ገደብን ብዝመልከት ብደንቢ ይውሰን፣
6. ተመን ክፍሊት ክራይ መሬትን ኣፈፃፅምኡን ብዝምልከት ዝርዝሩ ብደንቢ ይውሰን፣

8. በብዛዕባ ንሕርሻ ኢንቨስትመንት ዝኸውን መሬት ምርካብ ፡-

1. ኣብ ሕርሻ ኢንቨስትመንት ስራሕ ክዋፈሩ ዝደልዩ ሰብ ሃፍቲ መሬት ገጠር ክረኽቡ ዝኽእሉ፡-

ሀ. ካብ 100,000 ብር - 250,000 ብር ርእሰማል ንዘዋፈሩ ሰብ ሃፍቲ ምስ በዓል መዚ ሓለዋ ክባቢ፣ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ብዝእሰር ውዕሊ፣

ሀ. ከባህላዊ የእርሻ ዘዴ ውጪ የሆነ ቴክኖሎጂ ለሚጠቀም ተከራይ እስከ 20 ዓመት፣

ለ. በልማዳዊ የእርሻ ዘዴ ለሚጠቀም ተከራይ ከሆነ በተከታታይ ከሶስት ዓመት ላልበለጠ ጊዜ ይሆናል፣

4. በዚህ አንቀጽ መሰረት የሚደረግ የመሬት ኪራይ ውል ዝርዝር አፈፃፀም በተመለከተ በደንብ ይወሰናል።።

7. በመንግስት የሚከራይ መሬት

1. መንግስት ኢኮኖሚያዊ ጠቀሜታውን ከግምት ውስጥ በማስገባት፣ በተከራዮችና አግባብ ካለው አካል በሚደረግ ውል መሬት ሊያከራይ ይችላል፣
2. በዚህ አንቀፅ ንኡስ አንቀፅ 1 የሚደረግ የመሬት ክራይ ውል የአርሶ አደሩን ጥቅም በሚጎዳ መልኩ መሆን የለበትም፣
3. የመሬቱ መጠንና የኢንቨስትመንት ዓይነት እየታየ በመንግስትና ባለሃብቶች የሚደረግ የመሬት ክራይ ውል እስከ 50 ዓመት የሚቆይ ይሆናል።። ዝርዝሩ በደንብ ይወሰናል፣
4. በዚህ አንቀጽ ንኡስ አንቀፅ 3 የተቀመጠው የእርሻ መሬት ኪራይ ውል ዘመን እንዳለ ሆኖ በገጠር መሬት የሚደረግ የኢንዱስትሪ ኢንቨስትመንት የውል ዘመን በኢንቨስትመንት ህግ መሰረት ይወሰናል፣
5. የመንግስታዊና መንግስታዊ ያልሆኑ እንዲሁም የማሕበራዊና ኢኮኖሚያዊ ተቋማት ይዞታ እና በመሬት የመጠቀም መብታቸው ፀንቶ የሚቆይበት ጊዜ ገደብ በተመለከተ በደንብ ይወሰናል፣
6. የመሬት ኪራይ ክፍያ ተመንና አፈጻጸሙ በሚመለከት ዝርዝሩ በደንብ ይወሰናል፣

8. ለግብርና ኢንቨስትመንት የሚሆን መሬት ስለማግኘት

1 በግብርና ኢንቨስትመንት ስራ ሊሰማሩ የሚፈልጉ ባለሃብቶች የገጠር መሬት ሊያገኙ የሚችሉት፡-

ሀ. ከ100,000 ብር - 250,000 ብር ካፒታል ለሚያሰማሩ ባለሃብቶች ከአካባቢ ጥበቃ፣ የገጠር መሬት አስተዳደርና አጠቃቀም ባለስልጣን በሚቋሰር ውል፣

ለ. ካብ 250,000 ብር ንላዕሊ ርእሰማል ንዘዋፍሩ ሰብ ሃፍቲ ናይ ኢንቨስትመንት ስርትፊኬት ካብ ቤት ፅሕፈት ኢንቨስትመንት ምስረኽቡ ምስ በዓል መዚ ሓለዋ ከባቢ፣ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ብዝኣስርዎ ውዕሊ ይኽውን፣

2 ስራሕ ኢንቨስትመንት ሕርሻ ንምክያድ ዝደልይዎ መሬት ተፀኒዑ ነፃን ፀገም ዘይፈጥር ምኻኑ በቲ ወረዳ ምምሕዳር፣ ዴስክን ጣብያ ምምሕዳርን ተረጋጊፁ ምስቀረበ ናይ ኢንቨስትመንት ወረቀት ምስክር ይረኽቡ።። እዚ ቅድመ ኩነታት ተማሊኡ ምስቀረበ ምስ ዝምልከቶ ኣካል ብዝግበር ውዕሊ መሬት ይረኽቡ፣

9. ኣብ ስራሕ ሕርሻ ብዛዕባ ዝተዋፈሩ ሰብ ሃፍቲ

ካብ መንግስቲ መሬት ገጠር ተኻርዩ ዝጥቀም ብዓል ሃፍቲ እዞም ዝስዕቡ ግቡኣት ኣለዉዎ፡-

1. ካብ መንግስቲ ሕርሻ መሬት ዝተኻረየ በዓል ሃፍቲ ኣብ ትሕዝትኡ ዝርከብ መሬት ምዕቃብን ዝተወሰነ ኢድ ናይ ትሕዝቶ መሬት ንኣግራብ ልምዓት ክውዕል ኣለዎ፣ ዝርዝሩ ብደንቢ ይውሰን፣
2. ካብ ሕርሻ ወፃኢ ንዝኾነ ንኢንቨስትመንት ስራሕ ዝውዕል መሬት ዝሓቱ ሰብ ሃፍቲ ምስ ዝምልከቶ ኣካል ብመሰረት ብዝግበር ውዕሊ ይፍፀም፣
3. ካብ መንግስቲ መሬት ገጠር ዝተኻረየ በዓል ሃፍቲ ነቲ ዝተኻረዮ መሬት ንኻሊእ ሰብ ምክራይ ዝተኸልከለ እዩ።

10. ምምዝጋብን ምፅዳቕን ውዕሊ ኪራይ መሬት ገጠር

1. ሓዱ ሓረስታይ ምስ ካሊእ ሓረስታይ ዝግበር ወዕሊ ክራይ መሬት ብጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር እናተረጋገፀ ኣብ ወረዳ ወይ ንኡስ ወረዳ ቤት ፅሕፈት ፍትሒ ውዕልን መረዳእታን ይምዝገብ፣
2. ኣብ ሞንጎ ሓረስታይን በዓል ሃፍትን ዝግበር ውዕሊ ክራይ መሬት ብወረዳ ዴስክ መረጋገፂ እንዳቐረበሉ ኣብ ወረዳ ወይ ንኡስ ወረዳ ቤት ፅሕፈት ፍትሒ ውዕልን መረዳእታን ይምዝገብ፣
3. ቅዳሕ ሰነድ ውዕሊ ኣብ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠርን ወረዳ ዴስክን ይቕመጥ፣

ለ. ከ250,000 ብር በላይ ካፒታል ለሚያለማሩ ለሃብቶች የኢንቨስትመንት ሰርትፍኬት ኢንቨስትመንት ጽሕፈት ቤት ካገኙ በኋላ ኣከባቢ ጥበቃ፣ የገጠር የመሬት ኣስተዳደርና ኣጠቃቀም ባለስልጣን ጋር በሚያስሩት ውል ይሆናል፣

2. የግብርና ኢንቨስትመንት ስራ ለማካሄድ የሚፈልጉትን መሬት ተጠንቶና ነፃና ችግር የማይፈጥር መሆኑን በወረዳው ኣስተዳደር፣ በዴስክና በጣብያ ኣስተዳደር ተረጋግጦ ከቀረበ በኋላ የኢንቨስትመንት የምስክር ወረቀት ያገኛሉ።። ይህ ቅድመ ሁኔታ ተሟልቶ እንደቀረበ ከሚመለከተው ኣካል በሚደረግ ውል መሬት ያገኛሉ፣

9. በግብርና ስራ ስለተሰማሩ ባለሃብቶች

ከመንግስት የገጠር መሬት ተከራይቶ የሚጠቀም ባለሃብት የሚከተሉት ግዴታዎች ኣሉት፡-

1. ከመንግስት የእርሻ መሬት የተከራየ ባለሃብት በይዞታው የሚገኝ መሬት መጠበቅና የይዞታ መሬት የተወሰነውን ክፍል ለዛፎች ልማት ማዋል ኣለበት፣ ዝርዝሩ በደንብ ይወሰናል።
2. ከግብርና ውጪ የሚውል መሬት የሚጠይቁ በለሃብቶች ከሚመለከተው ኣካል ጋር በሚደረግ ውል መሰረት ይፈፀማል፣
3. ከመንግስት የገጠር መሬት የተከራየ ባለሃብት ተከራየውን መሬት ለሌላ ሰው ማከራየት የተከለከለ ነው።

10. የገጠር መሬት የኪራይ ውልን ስለ መመዝገብና ማፅደቅ

1. ኣንድ ኣርሶ ኣደር ከሌላ ኣርሶ ኣደር ጋር የሚያደርገው የመሬት ኪራይ ውል በቀበሌ የገጠር መሬት ኣስተዳደር ኮሚቴ እየተረጋገጠ በወረዳ ወይም ንኡስ ወረዳ የፍትህ ጽሕፈት ቤት ውልና ማስረጃ ይመዘገባል፣
2. በኣርሶ ኣደርና ባለሃብት መካከል የሚደረግ የመሬት ኪራይ ውል በወረዳ ዴስክ ማረጋገጫ እየቀረበለት በወረዳ ወይም ንኡስ ወረዳ ፍትህ ጽሕፈት ቤት ውልና ማስረጃ ይመዘገባል፣
3. የውል ሰነድ ቅጂ በቀበሌ የገጠር መሬት ኣስተዳደር ኮሚቴና በወረዳ ዴስክ ይቀመጣል፣

4. አብዚ ዓንቀፅ ንዝተቐመጡ ድንጋገታት ብዝምልከት ዝርዝር ኣፈፃፅመኣም ብዳንቢ ይውሰን ።።

11. ኣጠቓቕማ ተሓራሳይ መሬት

1. ሕድ ሕድ ሓረስታይ ኣብ ትሕዝትኡ ዝርከብ መሬት ናይ ምጥቃም ፡ ብመሰረት እዚ ኣዋጅ ዓንቀፅ 5 ንኡስ ዓንቀፅ 3 ብውህብቶ ምምሕላፍን ዓንቀፅ 6 ንኡስ ዓንቀፅ 1 ምክራይን መሰሉ ዝተሓለወ ኮይኑ ኣብ ኣጠቓቕማ መሬቱ ዝስዕቡ ግቡኣት ይህልዉዎ፡

ሀ. ኣብ ተሓራሳይ መሬት ዝርከቡ ኣጠቓቕማ ኣግራባት ብርሰት ብዘይፅድም ክኸውን ኣለዎ፡ ካብዚ ወፃኢ ብዝኾነ ኣጠቓቕማ ንዝፀበርሱ ኣግራባት ተሓታታይ ይኸውን፡

ለ. ኣብ ሞንጎ ግራውቲ ዘሎ ደረት/ዓርሞ/ዘፍርስ ክኸውን የብሉን ፡

ሐ. ተሓራሳይ መሬት ካብ ወሰን ሩባታትን ዓቢይቲ ጉህሚታትን እንተነኣሰ ሰለስተ ሜትሮ ብምርሓቕ ክሓርስ ኣለዎ፡

መ. ዝኾነ በዓል ትሕዝቶ ሓረስታይ መሬቱ ክዕቀን እንትሕተት ናይ ምትሕብባር ግቡእ ኣለዎ፡

ረ. ዝኾነ በዓል ትሕዝቶ መሬት ገጠር ካብ ዝተፈቐደሉ ናይ መጠሻ መሬት ወፃእ ኣብ ተሓራሳይ መሬቱ መንበሪ ገዛ ምስራሕ ዝተኸልከለ እዩ፡ ነዚ ጥሒሱ ገዛ ሰሪሑ ዝተረኸበ ሓረስታይ ብገበን ዝህልዎ ተሓታትነት ከምዘሎ ኮይኑ እቲ ብዘይኣግባብ ዝተሰርሐ ገዛ ብጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ብቐጥታ ክፈርስ ይግበር።። ዝርዝሩ ብደንቢ ይውሰን።።

2. ሕድ ሕድ ብመሬት ናይ ምጥቃም መሰል ዘለዎ ሰብ ኣብ ውልቀ ትሕዝቶ ይኹን ኣብ ናይ ሓባር መሬት ሓመድን ማይን ክዕቅብን ኣግራብ ክተክልን ግቡእ ኣለዎ ።።

12. ብመሬት ናይ ምጥቃም መሰል

1. መሬት ተመቒሎም ካብ 2 ዓመት ንላዕሊ ብዘይብቁዕ ምኽንያት መሬቶም ካብ ዝርከበሉ ጣብያ ለቒቆም ዝኾዱ ከምኡ'ውን ቅድም ከብል ኣብ ከተማ ወይ መሬቶም ካብ ዝርከበሉ ወፃኢ ኮይኖም ናይ ዝተመቐሉ ሰባት መሬቶም ተወሲዱ በቲ ከባቢ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር

4. በዚህ ኣንቀጽ ለተቀመጡት ድንጋጌዎች በተመለከተ ዝርዝር ኣፈጻጸማቸው በደንብ ይወሰናል።።

11. ስለሚታረስ መሬት ኣጠቃቀም

1. እያንዳንዱ ኣርሶ ኣደር በይዞታው ስር የሚገኝ መሬት የመጠቀም፣ በዚህ ኣዋጅ ኣንቀጽ 5 ንኡስ ኣንቀጽ 3 በስጠታ የማስተላለፍና ኣንቀጽ 6 ንኡስ ኣንቀጽ 1 መሰረት የማከራየት መብቱ የተጠበቀ ሆኖ በመሬቱ ኣጠቃቀም የሚከተሉት ግዴታዎች ይኖሩታል፣

ሀ. በሚታረስ መሬት ላይ የሚገኙት ዛፎች ኣጠቃቀም ጉዳት በማያስከትል ዘዴ መሆን ኣለበት።። ከዚህ ውጪ በሆነ ኣጠቃቀም ለሚወድሙት ዛፎች ተጠያቂ ይሆናል።።

ለ. በማሳዎች መሃከል የሚገኘውን ዳርቻ /ወሰን/ የሚያፈርስ መሆን የለበትም።።

ሐ. የሚታረስ መሬት ከወንዞችና ትላልቅ ቦረቦሮች ዳርቻ ቢያንስ ሶስት ሜትር በመራቅ ማረስ ኣለበት፣

መ. ማንኛውም ባለይዞታ ኣርሶ ኣደር መሬቱ ለመለካት ሲጠየቅ የመተባበር ግዴታ ኣለበት፣

ሠ. ማንኛውም የገጠር መሬት ባለ ይዞታ ከተፈቀደለት የጎጆ መውጫ መሬት ውጭ በሚታረስ መሬቱ የመኖሪያ ቤት መስራት የተከተከለ ነው፣ ይህን ተላልፎ መኖሪያ ቤት ሰርቶ የተገኘ ኣርሶ ኣደር በወንጀል የሚኖረው ተጠያቂነት እንዳለ ሆኖ ያለኣግባብ የተሰራ ቤት በቀበሌ የገጠር መሬት ኣስተዳደር ኮሚቴ በቀጥታ ይፈርሳል።። ዝርዝሩ በደንብ ይወሰናል።።

2. እያንዳንዱ ኣርሶ ኣደር በግል ይዞታው ስር ወይም በጋራ ይዞታ ባለው መሬት ላይ ኣፈርና ውሃ የመጠበቅና ችግኝ የመትከል ግዴታ ኣለበት።።

12. በመሬት የመጠቀም መብት

1. መሬት ተከፋፍለው ያለ በቂ ምክንያት መሬታቸው የሚገኝበትን ቀበሌ ከሁለት ዓመት በላይ ለቀው የሄዱ እንዲሁም ቀደም ሲል በከተማ ወይ መሬታቸው ከሚገኝበት ውጭ ሆነው መሬት የተሰጣቸው ሰዎች መሬታቸው ተወስዶ በኣካባቢው የቀበሌ የገጠር መሬት ኣስተዳደር

ይመሓደር፣ ኣብቲ ጣብያ ነበርቲ ንዝኾኑ መሬት ንዘይብሎም ሓረስቶት ብሽግሽግ ክውሃብ ይግበር።። ይኹን'ምበር ካብ ኣባል ስድራ ሰብኣይ ወይ ሰበይቲ ነቲ ከባቢ ገዲፉ ምኻድ ናይቲ ስድራ ብመሬቱ ናይ ምጥቃም መሰል ዝትንክፍ ኣይኸውንን፣

2. ኣብዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ዝተደንገገ እንተሃለወ'ውን ዝስዕቡ ክፍላት ሕብረተሰብ ብዝነበሮም ትሕዝቶ መሬት ናይ ምጥቃም መሰሎም ሕልዉ ይኸውን።። ዝርዝሩ ብደንቢ ይውሰን፡-

ሀ. ኣባላት ሰራዊት መከላኸሊ ሃገር፣

ለ. ኣባላት ፖሊስ ፌደራልን ክልልን፣

ሐ. ወረስቲ ወይ ተጠቀምቲ መሬት ስውኣት ተጋደልትን ሚልሻታትን፣

መ. ብምኽንያት ሓዳር ናብ ካሊእ ገጠር ከባቢ ዝኸዱ ሰባት፣

ረ. ብምኽንያት ትምህርቲ ጣብየኦም ዝለቐቐ፣

ሰ. ጉዱኣት ኩናት ተጋደልቲ፣ ኣብ ማሕረስ ክሰርሑ ዘይኽእሉ ካልኦት ጉዱኣት ኣካልን ከቢድ ሕማምን ናይ ስነ ኣእምሮ ሽግር ዘለዎምን፣

ሸ. ሰብ ሓዳሮም ወይ ጠወርቲ ጉድኣት ኣካል ተጋደልቲ ነቲ ጉድኣ ንምሕብሓብ ጣብየኦም ዝለቐቐ፣

ቀ. በብብርኩ ካብ ማሕረስ ስረሑም ዝተመረፁ ዘለዉ ጠርነፍቲ ሓፋሽ ማሕበራት፣ ሃይማኖታዊ ትካላትን ኣባላት ተወከልቲ ህዝቢ ፌደራልን ካልኦት ኣብያተ ምኽርን ዝኾኑ ሓረስቶት ብምኽንያት ዝተመረፅሉ ስራሕ ጣብያኦም እንትለቐ፣

በ. ጠዋርን ሓብሓብን ስኢኖም ክሰርሑ ዘይኽእሉ ጣብየኦም ዝለቐቐ ሽማግለታት፣

ተ. መናብርቲ ኤች ኣይ ቪ ኤድስ፣

ቸ. ወለዶም ብሞት ዝስኣኑ ትሕቲ 18 ዓመት ዝዕድሚኦም ዘዕብዮምን ዝሕብሕቦምን ኣለኻ ጣብየኦም ዝለቐ ቆልዑ፣

3. ናይዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ድንጋገ እንተሃለወ'ውን ቅድሚ እዚ መማሓየሺ ኣዋጅ ምውፅኡ፡-

ኮሚቴ ይተዳደራል፣ በቀበሌው ለሚኖሩ መሬት ለሌላቸው አርሶ አደሮች በሽግሽግ እንዲሰጥ ይደረጋል።። ነገር ግን ከቤተሰብ ኣባል ባል ወይም ሚስት አካባቢውን ለቀው መሄድ የቤተሰቡን በመሬት የመጠቀም መብት የሚነካ አይሆንም፣

2. በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተደነገገ ቢኖርም የሚከተሉት የኅብረተሰብ ክፍሎች በነበራቸው የመሬት ይዞታ የመጠቀም መብታቸው የተጠበቀ ይሆናል።። ዝርዝሩ በደንብ ይወሰናል፡-

ሀ. የአገር መከላከያ ሰራዊት አባላት፣

ለ. የፌደራልና የክልል ፖሊስ አባላት፣

ሐ. የተሰዉ ታጋዮችና ሚልሻዎች መሬት ወራሾች ወይም ተጠቃሚዎች፣

መ. በጋብቻ ምክንያት ወደ ሌላ የገጠር አከባቢ የሄዱ ሰዎች፣

ሠ. በትምህርት ምክንያት ቀበሌያቸው የለቀቁ፣

ረ. የጦር ጉዳተኛ ታጋዮች፣ በእርሻ ስራ መሰራት የማይችሉ ሌሎች የአካል ጉዳተኞችና ከባድ ህመምና የስነ-አእምሮ ችግር ያለባቸው፣

ሰ. የአካል ጉዳተኛ ታጋዮች ባለትዳሮች ወይም ጧሪዎች ጉዳተኛውን ለመንከባከብ ቀበሌያቸውን ሲለቁ፣

ሸ. በየደረጃው ያሉ ከእርሻ ስራ የተመረጡ የህዝባዊ ማሕበራት፣ የኃይማኖት ድርጅቶች መሪዎች እና የፌደራልና የሌሎች የህዝብ ተወካዮች ምክር ቤት አባላት የሆኑ አርሶ አደሮች በተመረጡበት ስራ ምክንያት ቀበሌያቸውን ሲለቁ፣

ቀ. ጧሪና ተንከባካቢ አጥተው መስራት የማይችሉ አዛውንቶች ቀበሌያቸውን ሲለቁ፣

በ. ከኤች አይ ቪ ኤድስ ጋር የሚኖሩ፣

ተ. ወላጆቻቸው በሞት ያጡ ዕድሜያቸው ከ18 ዓመት በታች የሆኑ የሚያሳድጋቸውና የሚንከባከባቸው ፍለጋ ቀበሌያቸውን የለቀቁ ልጆች፣

3. የዚህ አንቀፅ ንኡስ አንቀጽ 1 ድንጋጌ ቢኖርም ይህ ማሻሻያ አዋጅ ከመውጣቱ በፊት፡-

ሀ. ኣብ መሬት ገጠር ተመጂሎም ልዕሊ 2 ዓመት ጣብየኦም ዝለቐቑን ኣብ ክሊ ውሽጢ ወረደኦም ዘለዉን ብምኽንያት ሽግሽግ ናብ ካሊእ ወረዳ ዝኸዱን ሰፋት ኣብ ውሽጢ ሰለስተ ዓመት ናብ ገጠር ጣብየኦም እንተተመሊሶም ብዝነበሮም ትሕዝቶ ናይ ምጥቃም መሰሎም ዝተሓለወ ይኸውን፣

ለ. ኣብዚ ኣንቀፅ ንኡስ ኣንቀፅ 3(ሀ) ዝተደንገገ ከምዘሎ ኮይኑ ኣብ ከተማ ምምሕዳር ነበርቲ ዝኾኑ ናይቲ ከባቢ ወረዳ ሰብ ትሕዝቶ መሬት'ውን ዝምልከት ይኸውን፣

ሐ. ኣብዚ ኣንቀፅ ንኡስ ዓንቀፅ 3(ሀ)ን (ለ)ን ዝተመልከቱ ኣብ ውሽጢ ሰለስተ ዓመት ቅድሚ ናብ ገጠር ጣብያኦም ምምላሶም ትሕዝቶኦም ናይ ምምሕላፍ መሰሎም ተገዲቡ ይፀንሕ፣

መ. ኣብ ከተማ ወይ መሬቶም ካብ ዝርከበሉ ወፃኢ ኮይኖም ናይ ዝተዓደሉ መነባብረኦም ኣብ ሕርሻ ዝተመስረተ ኮይኑ ክሳብ ሐዚ ባዕሎም እናሓረሱን እናልምዑን ዝርከቡ ብዘለዎም ትሕዝቶ ናይ ምጥቃም መሰሎም ዝተሓለወ ይኸውን፣

ረ. መሬቶም ኣዋፈሮም ዝጥቀሙን ወርሓዊ እቶቶም ብር 1000 /ሓደ ሽሕ ብርን / ትሕቲኡን ዝኾኑ ክሳብ ብህይወት ዘለዉ ጥራሕ ብዘለዎም ትሕዝቶ ናይ ምጥቃም መሰል ይህልዎም፣

ሰ. መሬቶም ኣዋፈሮም ዝጥቀሙን ወርሓዊ እቶቶም ልዕሊ ብር 1000 /ሓደ ሽሕ ብር/ ዝኾኑን መሬቶም ብቑጥታ ይውሰድ፣

ሸ. ወርሓዊ መሃያኦም ወይ ክፍሊቶም ብር 1000 /ሓደ ሽሕ ብርን / ትሕቲኡን ዝኾኑ ሰራሕተኛታት መንግስትን ዘይመንግስታዊ ትካላትን ኣብ ውሽጢ ሓደ ዓመት ካብ መሬቶም ወይ ስረሖም ክመረፁ ይግበር ።

ቀ. ወርሓዊ መሃያኦም ወይ ክፍሊቶም ልዕሊ ብር 1000 /ሓደ ሽሕ ብር/ ዝኾኑ ሰራሕተኛታት ውንግስታውን ዘይመንግስታውን ትካላት መሬቶም ብቀጥታ ይውሰድ ፣ ይኹን' ምበር ብመሬት ናይ ምጥቃም መሰሎም ንዝመርፁ ምርጫኦም ዝተሓለወ ይኸውን፣

ሀ. በገጠር መሬት ተከፋፍለው ከሁለት ዓመት በላይ ቀበሌያቸውን የለቀቁና በወረዳቸው ክልል ውስጥ ያሉና በሽግሽግ ምክንያት ወደ ሌላ ወረዳ የሄዱ ሰዎች በሶስት ዓመት ጊዜ ውስጥ ወደ ገጠር ቀበሌቸው ከተመለሱ በነበራቸው ይዞታ የመጠቀም መብታቸው የተጠበቀ ይሆናል፣

ለ. በዚህ ኣንቀፅ ንኡስ ኣንቀፅ 3(ሀ) የተደነገገው እንደተጠበቀ ሆኖ በከተማ ኣስተዳደር ነዋሪ የሆኑ የኣከባቢው ወረዳ የመሬት ባለ ይዞታዎችንም ይመለከታል፣

ሐ. በዚህ ኣንቀፅ በንኡስ ኣንቀፅ 3(ሀ) እና (ለ) የተመለከቱት በሶስት ዓመት ጊዜ ውስጥ ወደ ገጠር ቀበሌያቸው ከመመለሳቸው በፊት ይዞታቸውን የማስተላለፍ መብታቸው ታግዶ ይቆያል ፣

መ. በከተማ ወይም መሬታቸው ከሚገኝበት ውጭ ሆነው መሬት የተሰጡ ኑሮኣቸው በግብርና የተመሰረተ ሆኖ እስከአሁን ድረስ ራሳቸው እያረሱና እያለሙ የሚገኙ ባላቸው ይዞታ የመጠቀም መብታቸው የተጠበቀ ይሆናል፣

ሠ. መሬታቸው ለሌሎች አጋዝተው የሚጠቀሙ እና የወር ገቢያቸው ብር 1000 /አንድ ሺህ ብር / እና ከዚያ በታች የሆኑ በህይወት እስካሉ ድረስ ብቻ በይዘታቸው የመጠቀም መብት ይኖራቸዋል፣

ረ. መሬታቸውን ለሌሎች አጋዝተው የሚጠቀሙና የወር ገቢያቸው ከብር 1000 /አንድ ሺህ ብር/ በላይ የሆኑ ይዞታቸው በቀጥታ ይወሰዳል፣

ሰ. የወር ደመወዛቸው ወይም ክፍያቸው ብር 1000 /አንድ ሺህ ብር / እና ከዚያ በታች የሆኑ የመንግስት እና መንግስታዊ ያልሆኑ ተቋማት ሰራተኞች በአንድ ዓመት ጊዜ ውስጥ መሬታቸውን ወይም ስራቸውን እንዲመርጡ ይደረጋል፣

ሸ. የወር ደመወዛቸው ወይም ክፍያቸው ከብር 1000 /አንድ ሺህ ብር/ በላይ የሆኑ የመንግስትና መንግስታዊ ያልሆኑ ተቋማት ሰራተኞች መሬታቸው በቀጥታ ይወሰዳል።። ይሁን እንጂ በመሬት የመጠቀም መብታቸው ለሚመርጡ ምርጫቸው የተጠበቀ ይሆናል፣

4. ብምኽንያት ምስፋሕ ከተማታት ትሕዝቶ መሬቶም ናብ ከተማ ክልል ዝኣተዎም ሓረሰቶት ፡-

ሀ. ካሕሳ ናይ ምርካብ መሰሎም ሕሉው ኮይኑ ኣብ ገጠር ብዝተረፎም መሬት ናይ ምጥቃም መሰል ይህልዎም፣

ለ. ክሳብ ካሕሳ ዝኽፈሎም ኣብ ዘሎ እዋን መሰል ውርስ፣ ውህብቶ፣ ላውጣ፣ ኪራይን ሽግሽግን ይኽበረሎም፣ ዝርዝሩ ብደንቢ ይውሰን፣

ሐ. ምምሕዳር ከተማ በዚ ኣዋጅ መሰረት መሰሎም ከኽብረሎም ይግደድ ፡፡

13. ብዛዕባ ኣብ ተሓራሳይ መሬት ዝርከቡ ኣግራብ

1. ኣብ ተሓራሳይ መሬት ዝርከቡ ኣግራብ ዋንነት ናይቲ ብዓል ትሕዝቶ ሓረስታይ'ዮም፣
2. ልሙዕነት ተሓራሳይ መሬት ዝፃባእ ተኽሊ ምትካል ክልኩል'ዩ ፡፡ ኮይኑ ግን ኣብ ፀዳፍ መሬት እንተይሓረሱ ብመማረፂ ከምበለሰን፣ ቀላሚጦሰን ካሊእ ቀዋሚ ተኽሊ ብድልየቶም ክተኽሉ ንዝደልዩ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር፣ ወረዳ ዴስክ ወይ ዝምልከቶ ኣካል እንትፈቅድ ክተኽሉ ይኽእሉ እዮም፣ ዝርዝሩ ብደንቢ ይውሰን፣
3. ብዛዕባ ሓለዋን ኣጠቓቕማን ኣግራብ ዝወፀ ፊዴራል ኣዋጅ ቁፅሪ 94/86 ዝተደንገገ ከምዘሎ ኮይኑ ኣብ ተሓራሳይ መሬት ዝርከቡ ከም ዕጣን፣ ዓየ፣ዓውሒ፣ ሓንሰ፣ኣውሊዕ፣ ፅሕዲ፣ ዳዕሮ፣ እንዳዲዕ፣ ሰሞኞ፣ ሞሞና፣ መቐዕ፣ ሓቢ፣ ሳግላ፣ ዝግባ ዝመሳሰሉ ምቹራፅ ዝተኽልከለ እዩ፡፡
4. ኣብ ተሓራሳይ መሬት ዝርከቡ ናይ እንዳዲዕን ዕጣንን ኣግራብ ናይቲ በዓል መሬት ኮይኖም ዘፍረይዎ ዕጣንን እንዳዲዕን ብምሻጥ ወይ ብምከራይ ናይ ምጥቃም መሰል ኣለዎ፣
5. ኣብ ተሓራሳይ መሬት ንዝርከቡ ኣግራብ እቲ በዓል ትሕዝቶ ኣድላይ ክንክን ናይ ምግባር ግቡእ ኣለዎ፡፡

14. ብመሬት ናይ ምጥቃም መሰል ምቁራፅ

1. ኣብዚ ኣዋጅን ነዚ ኣዋጅ ንምፍፃም ዝወፅኡ ደንብታትን መምርሒታትን ብዘይምኽባር ኣብቲ መሬት ጉድኣት ንክበፅሕ ዝገበረን ብግቡእ ዘይጥቀምን ብዓል ትሕዝቶ መሬት ገጠር ብመሬት ናይ ምጥቃም መሰሉ ክሕደግ ይኽእል፣ ዓይነት

4. በክተሞች መስፋፋት ምክንያት የገጠር መሬት ይዞታቸው ወደ ከተማ ክልል የገባባቸው አርሶ አደሮች ፡-

ሀ. ካሳ የማግኘት መብታቸው እንደተጠበቀ ሆኖ በገጠር በቀራቸው መሬት የመጠቀም መብት ይኖራቸዋል፣

ለ. ካሳ እስከሚከፈላቸው ድረስ ባለው ጊዜ ውስጥ የውርስ፣ ስጦታ፣ ልዋጭ፣ ኪራይና የሽግሽግ መብታቸው ይከበርላቸዋል፣ ዝርዝሩ በደንብ ይወሰናል፣

ሐ. የከተማ አስተዳደር በዚህ አዋጅ መሰረት መብታቸው እንዲያስከብርላቸው ይገደዳል፡፡

13. በሚታረስ መሬት ላይ ስለሚገኙ ዛፎች

1. በሚታረስ መሬት ላይ የሚገኙ ዛፎች የመሬት ባለይዞታው አርሶ አደር ንብረት ናቸው፣
2. የሚታረስ መሬት ለምነትን የሚጻረሩ ተክሎች መትከል የተከለከለ ነው፡፡ ሆኖም ተዳፋት በሆነ መሬት ሳያርሱ በአማራጭ ቁልቋል፣ ባህርዛፍና ሌላ ቋሚ ዕፀዋት ለመትከል የሚፈልጉ የቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ ፣ የወረዳ ዴስክ ወይም የሚመለከተው አካል ሲፈቅድ መትከል ይችላሉ፣ ዝርዝሩ በደንብ ይወሰናል፣
3. ስለዛፎች ጥበቃና አጠቃቀም የወጣው የፌዴራል አዋጅ ቁጥር 94/86 የተደነገገው እንዳለ ሆኖ፣ በሚታረስ መሬት ላይ የሚገኙት እንደ ዕጣን፣ ዓየ፣ ዋንዛ፣ ቆንጥር፣ ወይራ፣ ጥድ፣ ዋርካ፣ የሙጫ ዛፍ፣ ቅርቅራ፣ ግራር፣ በደኖ፣ ኮሶ ዛፍ ሾላ፣ ዝግባ የመሳሰሉት መቁረጥ የተከለከለ ነው፣
4. በሚታረስ መሬት ላይ የሚገኙ የዕጣንና የሙጫ ዛፎች የመሬቱ ባለ ይዞታ ሆነው የሚያፈሩትን ዕጣንና ሙጫ በመሸጥ ወይም በማከራየት የመጠቀም መብት አለው፣
5. የመሬት ባለይዞታ በመሬቱ ላይ ያሉትን ዛፎች አስፈላጊውን እንክብካቤ የማድረግ ግዴታ አለበት፡፡

14. በመሬት የመጠቀም መብት መቋረጥ

1. በዚህ አዋጅና ይሄን አዋጅ ለማስፈፀም የሚወጡ ደንቦችና መመሪያዎችን ባለማክበር በመሬቱ ላይ ጉዳት እንዲደርስ ያደረገና በአግባቡ ያልተጠቀመ የገጠር መሬት ብለ ይዞታ በመሬት የመጠቀም መብቱ ሊቋረጥ ይችላል፡፡ የጉዳቱ ዓይነትና መጠን

ጉድኣትን መጠንን ብደንቢ ይውሰን፣

2. ኣብዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ዝተገለፀ ሓፈሻዊ ኣበሃህላ ከምዘሎ ኮይኑ ዝኾነ ሓረስታይ ኣብቲ መሬት ንዘብፅሑ ጉድኣት ብተደጋጋሚ መጠንቀቕታ ከስተኻኽል ዘይክኣለ ብናይ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ናይ ውሳነ ሓሳብ ብናይ ወረዳ ዴስክ ውሳነን በቲ ወረዳ ስራሕ ፈፃሚት (ካቢኔ) እንትፀድቕ ብመሬት ናይ ምጥቃም መሰሉ ክቋረፅ ይኽእል፣ ዝርዝሩ ብደንቢ ይውሰን፣

3. እቲ ብጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ዝተውሃበ ውሳነ ሓሳብ እቲ ወረዳ ዴስክ ኣድላዪ ኮይኑ እንትረኽቦ ምፅራይ ብምግባር ናይ መወዳእታ መጠንቀቕታ ክህቦ ይኽእል፣

4. ዝኾነ ሓረስታይ ናይ መሬት ምጥቃም መሰሉ ብድልየቱ ክቋረፅ ይኽእል። ኮይኑ ግን ኣብቲ መሬት ዘበፅሑ ጉድኣት እንተሃልዩ ተሓታቲ ይኸውን፣

5. ናይ መሬት ምጥቃም መሰሉ ብፍቓዱ ወይ ድማ ብውሳነ ዝተቋረፆ ሓረስታይ ናይ ትሕዝቶ መረጋገፂ ደፍተሩ ኣብ ውሽጢ ሓደ ወርሒ ክመልሶ ግቡእ ኣለዎ፣

6. ብውሳነ ወይ ድማ ብፍቓዱ መሬት ናይ ምጥቃም መሰሉ ዘቋረፀ ሓረስታይ መሊሱ መሬት ዝረኽቦሉ ኣገባብ ዝምልከት ብደንቢ ይውሰን፣

7. ብመሬት ምጥቃም መሰል ብፍቃዱ ዘቋረፀ ሓረስታይ ኣብ ልዕሊ መሬት ዘፍረዮም ፍርያትን ዝሃነፆም ንብረታትን ናይ ምልዓል መሰል ኣለዎ። ካሕሳ ናይ ምርካብ መሰል ግን የብሉን። ኮይኑ ግና ቀወምቲ ተኽሊ እንተሃሊይዎ እቲ መሬት ዝውሃቦ ኣካል ግምቱ ክኽፍሎ ይግበር።

15.ብዛዕባ መሰል ምምሕላፍ ኢንቨስትመንት

1. ሓደ ናይ ሕርሻ ኢንቨስትመንት ፕሮጀክት ምህርቲ ምሃብ ቅድሚ ምጅማሩ መሰል ኢንቨስትመንት ምምሕላፍ ኣይክኣልን። ኮይኑ ግን ብባህሪ ናይቲ ፕሮጀክት ምህርቲ ዝጅምረሉ እዋን ልዕሊ ሓደ ዓመት ዝወሰድ እንተኾይኑ መሰል ኢንቨስትመንት ቅድሚ ምህርቲ ክመሓላለፍ ይኽእል'ዩ፣ ዝርዝሩ ብደንቢ ይውሰን፣

2. መሰል ኢንቨስትመንት በዚ ዓንቀፅ ንኡስ ኣንቀፅ 1 ብዝተደንገገ መልክዑ ክመሓላለፍ ይኽእል'ዩ። ኮይኑ ግን ካብ ቀረፅ ነፃ ዝኣተዉ መሳርሒታትን በደንብ ይወሰናል፣

2. በዚህ አንቀጽ ንኡስ አንቀፅ 1 የተገለፀው አጠቃላይ አባባል እንዳለ ሆኖ ማንኛውም አርሶ አደር በመሬቱ ላይ ላደረሰው ጉዳት በተደጋጋሚ ማስጠንቀቂያ ሊያስተካክል ካልቻለ በጣቢያው የመሬት አስተዳደር ኮሚቴ የውሳኔ ሓሳብ በወረዳ ዴስኩም ውሳነ በወረዳው ስራ አስፈፃሚ (ካቢኔ) ሲፀድቅ በመሬት የመጠቀም መብቱ ሊቋረጥ ይችላል ፣ ዝርዝሩ በደንብ ይወሰናል፣

3. በጣቢያው የገጠር መሬት አስተዳደር ኮሚቴ የተሰጠው የውሳኔ ሓሳብ የወረዳ ዴስክ አስፈላጊ ሆኖ ሲያገኘው እንዲጣራ በማድረግ የመጨረሻ ማስጠንቀቂያ ሊሰጥ ይችላል፣

4. ማንኛውም አርሶ አደር በመሬት የመጠቀም መብቱ በፍላጎቱ ሊያቋርጥ ይችላል። ሆኖም በመሬቱ ላይ ያደረሰው ጉዳት ካለ ተጠያቂ ይሆናል፣

5. በመሬት የመጠቀም መብቱ ብፍላጎት ወይም በውሳኔ የተቋረጠበት አርሶ አደር የይዞታ ማረጋገጫ ደብተሩ በአንድ ወር ጊዜ ውስጥ የመመለስ ግዴታ አለበት ፣

6. በውሳኔ ወይም በፍላጎቱ የመሬቱ መጠቀም መብቱ ያቋረጠ አርሶ አደር ድጋሚ መሬት የሚያገኝበት አግባብ በሚመለከት በደንብ ይወሰናል ፣

7. የመሬት መጠቀም መብቱ በፍላጎቱ ያቋረጡ አርሶ አደር በመሬቱ ላይ ያፈራው ፍሬና የገነባው ንብረት የማንሳት መብት አለው። ካሳ የማግሸት መብት ግን የለውም፣ ሆኖም ቋሚ ተክሎች ካሉት መሬቱ የሚሰጠው አካል ግምቱን እንዲከፍለው ይደረጋል።

15.የኢንቨስትመንት መብት ስለማስተላለፍ

1. የእርሻ ኢንቨስትመንት ፕሮጀክት ምርት መስጠት ከመጀመሩ በፊት፣ የእርሻ ኢንቨስትመንት መብት ማስተላለፍ አይቻልም። ሆኖም የኢንቨስትመንት ፕሮጀክቱ በባህሪው ምርት መስጠት የሚጀመረው ከአንድ አመት በላይ ከሆነ የኢንቨስትመንት መብት ከምርት በፊት መተላለፍ ይችላል ፣ ዝርዝሩ በደንብ ይወሰናል፣

2. የኢንቨስትመንት መብት በዚህ አንቀፅ ንኡስ አንቀፅ 1 በተደነገገው መልኩ ሊተላለፍ ይችላል። ሆኖም ከቀረጥ ነፃ ሆነው የገቡ መሳሪያዎችና

ኣቐሑትን ቀረፅ ከይተኸፈሎም ናብ ካልኣይ ወገን ክመሓላለፉ ኣይኽእሉን፣ ተመሳሳሊ መሰል ዘለዎም ግን ክመሓላልፉ ይክእሉ'ዮም።

3. ናይ መሬት ገጠር ብሊዝ ዝተኻረየ በዓል ሃፍቲ ናይ ምጥቃም መሰሉ ብውሕስና ንምትሕዝ ይኽእል እዩ። ዝርዝሩ ብደንቢ ዝውሰን ይኸውን።

16. ምስፍሕፋሕ ኢንቨስትመንት

ሓዱሽ ቴክኖሎጅን ዝለዓለ ካፒታልን ብምጥቃም ውፅኢታዊ ናይ ልምዓት ምንቅስቃስ ሃሊይዎ ኢንቨስትመንቱ ክጋፍሕን ክመሓይሽን ንዝደሊ በዓል ሃፍቲ ይተባባዕ፣ ዝርዝሩ ብደንቢ ይውሰን ።

17. ብዛዕባ ውርሲ

1. ብመሬት ናይ ምጥቃም መሰል ዘለዎ በዓል ትሕዝቶ እንተሞይቱ፣-
   ሀ. ብቐዳምነት መሬት ዘይብሉ ውላዱ ወራሲ ይኸውን፣
   ለ. መዋቲ ውሉድ ዘይብሉ እንተኾይኑ መሬት ዘይብሉ ወላዲኡ ይወርሶ፣
2. ብመሬት ናይ ምጥቃም መሰል ብውርሲ ክመሓላለፍ ዝኽእል፣-
   ሀ. ተሓራላይ መሬት ዘይብሉ ውላድ ጡብ ምስ ደቂ መዕበይቲ ውላድ ጡብ ማዕረ ናይ ምውራስ መሰል ኣለዎ፣
   ለ. እቲ ዝካየድ ውርሲ ካብ ካልኣይ ብርኪ ክሓልፍ የብሉን። ኮይኑ ግን ባዓል ትሕዝቶ መሬት እንትመውት ብመሰረት እዚ ኣዋጅ ዝወርስ ውሉድ እንተዘይሃልይዎ ናይ መዋቲ ትሕዝቶ መሬት ደቂ ደቁ ብቐጥታ ክወርሱ ይኽእሉ እዮም፣
   ሐ. ናይ ባዕሉ ግብሪ መሬት ዘለዎ ወይ ካብ ሕርሻ . ወፃኢ መነባብሮ ዝቐየረ ሰብ ካብ መጠሻ ወፃኢ ተሓራሲ መሬት ክወርስ ኣይኽእልን፣
   መ. ከተማ ነበርቲ ዝኾኑ ውሉዳት መሬት ገጠር ናይ ምውራስ መሰል የብሎምን።
3. ኣብ መንነ ወረስቲ ዝግበር ናይ መሬት ምምቕቓል ካብ ዝነኣሰ ናይ መሬት ትሕዝቶ ንታሕቲ ናይ መሬት ምቁርራስ ክስዕብ ዝኽእል ክኸውን የብሉን። ወረስቲ ብዙሓት ኣብ ዝኾኑሉ እዋን መጀመሪያ ባዕሎም ተሰማሚየም ብሓባር ተጠቀምቲ ዝኾኑሉ ዕድል ይውሃብ፣ በዚ ክስማዕምዑ እንተዘይኪኢሎም እቃዎች ቀረጥ ሳይክፈልባቸው ለሌላ ሰው መተላለፍ አይችሉም። ተመሳሳይ መብት ያላቸው ግን ማስተላለፍ ይችላሉ።
3. የገጠር መሬት በሊዝ የተከራየ ባለሃብት የመጠቀም መብቱ በዋስትና ለማስያዝ ይችላል፣ዝርዝሩ በደንብ ይወሰናል።

16. ኢንቨስትመንት ስለማስፋፋት

አዲስ ቴክኖሎጂ እና ከፍተኛ ካፒታል በመጠቀም ውጤታማ የልማት እንቅስቃሴ ኖሮት ኢንቨስትመንቱን ለማስፋፋትና ለማሻሻል የሚፈልግ ባለ ሃብት ይበረታታል፣ ዝርዝሩ በደንብ ይወሰናል።

17. ስለ ውርስ

1. በመሬት የመጠቀም መብት ያለው ባለ ይዞታ ሲሞት፣-
   ሀ. መሬት የሌለው ልጁ በቅድሚያ ወራሽ ይሆናል፣
   ለ. ሚች ልጅ የሌለው ከሆነ መሬት የሌለው ወላጁ ይወርሰዋል፣
2. የመሬት መጠቀም መብት በውርስ ሊተላለፍ የሚችለው፣-
   ሀ. የሚታረስ መሬት የሌለው ጉዲፈቻ ከጉዲፈቻ አሳዳጊው ልጆች ጋር እኩል የመውረስ መብት አለው፣
   ለ. የሚካሄደው ውርስ ከሁለተኛ ደረጃ የውርስ ደረጃ ማለፍ የለበትም። ሆኖም የመሬት ባለ ዞታ ሲሞት በዚህ አዋጅ መሰረት የሚወርስ ልጅ የሌለው ከሆነ የሚች የልጅ ልጆች ቀጥታ መውረስ ይችላሉ፣
   ሐ. የራሱ የመሬት ይዞታ ያለው ወይም ከግብርና ውጪ ኑሮውን የለወጠ ሰው ከጎጆ መውጫ በስተቀር የእርሻ መሬት መውረስ አይችልም፣
   መ. በከተማ የሚኖሩ ልጆች የገጠር መሬት የመውረስ መብት የላቸውም፣
3. በወራሾች መካከል የሚደረግ የመሬት መከፋፈል ከአነስተኛው የመሬት ይዞታ በታች የመሬት መቆራረስ የሚፈጥር መሆን የለበትም። ወራሾች ብዙ በሚሆኑበት ጊዜ መጀመሪያ ራሳቸው ተስማምተው በጋራ ተጠቃሚዎች የሚሆንበት እድል ይሰጣል፣ በዚህ መስማማት ካልቻሉ

ካብ ዝነኣሰ ትሕዝቶ መሬት ምቁርራስ ብዘየስዕብ መንገዲ ብዕፃ ይወሃብ፣

4. ናይዚ ዓንቀፅ ንኡስ ዓንቀፅ 3 ድንጋገ ኣብ ባህሊዊ መስኖታትን ዓይኒ ማያትን ንዝህሉ ናይ መሬት ኣጠቓቕማ መጠን ዝትንክፍ ኣይኮነን፣
5. በዓል ትሕዝቶ እንትመውት ኣብዚ ዓንቀፅ ብዝተደንገገ መሰረት ተኪኡ ዝወርስ ዘይብሉ እንተኾይኑ መሬቱ ናብ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ተመሊሱ መሬት ንዘይብሎም ክዕደል ይግበር፣
6. ኣብዚ ዓንቀፅ ንኡስ ዓንቀፅ 5 ዝተደንገገ እንተሃለወውን መሬት ዘይብሉን ኣብናይ መዋቲ ገዛ ዝዓበየ ወይ ጠዋሪ ዝኾነ ሰብ፣ ሕጋዊ ወራሲ ናይ ዘይብሉ መሬት ቀዳምነት ተዋሂብዎ ክሸጋሸግ ይግባእ፣
7. ንሓረስታይ ዝተውሃበ ብናይ መሬት ገጠር ናይ ምጥቃም መሰል ውርሲ ዝምልከት ምስዚ ኣዋጅ ዝጓነፁ ናይ ፍትሃብሄር ሕጊ ድንጋገታት ውርሲ ተፈፃምነት ኣይህልዎምን፣

18. መጠን ትሕዝቶ መሬት ገጠር

1. ቅድሚ ሕዚ በቢክባቢኡ ብሕጋዊ መንገዲ ዝተዓደለ ናይ ሓደ ስድራ ትሕዝቶ መሬት ከምዘሎ ኮይኑ ንቕድሚት ዝዕደል መጠን ዝነኣሰ ትሕዝቶ መሬት ትሕቲ 0.25 ሄክታር ክኸውን የብሉን፡፡ እዙይ ግና ኣብ ከባቢ ብመስኖ ንዝለምዕ መሬት ኣይሓውስን፣
2. ንቅድሚት ዝዕደል ዝልዓለ ስፍሓት መሬት ከኸም ከባቢኡ ኩነታት ብደንቢ ዝውሰን ይኸውን፡፡

19. ኣብ ሞንጎ ሰብ ትሕዝቶ ሓረስቶት ዝግበር ልውውጥ መሬት

1. መሬት ክለዋወጡ ዝደልዩ ሓረስቶት ንልምዓት ሕርሻ ብዝጥዕም ኩነት ብስምምዕነት ክለዋወጡ ይኽእሉ፣
2. ናይ ዝተለወጠ መሬት ወረቐት ምስክር ተስተኻኺሉ ክውሃብ ይግበር፣
3. ዝኾነ በዓል ትሕዝቶ መሬት ምስ ዝደለዮ ካልእ በዓል ትሕዝቶ መሬት ካብ ወረዳ ናብ ወረዳ ይኹን ካብ ጣቢያ ናብ ጣቢያ ብስምምዕነት ትሕዝትኡ ናይ ምልዋጥ መሰል ኣለዎ፣ ዝርዝሩ ብደንቢ ይውሰን፣

ከኣነስተኛ የመሬት ይዞታ በታች መቆራረስ በማያስከትል መንገድ በእጣ ይሰጣል፣

4. የዚህ አንቀፅ ንኡስ አንቀጽ 3 ድንጋገ በባህላዊ መስኖዎችና የውሃ ምንጮች የሚኖር መሬት አጠቃቀም መጠን የሚመለከት አይሆንም፣
5. ባለይዞታው በሞት ሲለይ በዚህ አንቀፅ በተደነገገው መሰረት ወራሽ የሌለው ከሆነ መሬቱ ወደ ቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ ተመልሶ መሬት ለሌላቸው እንዲታደል ያደርጋል፣
6. በዚህ አንቀጽ ንኡስ አንቀጽ 5 የተደነገገው ቢኖርም መሬት የሌለውና በሚቹ ቤት ያደገ ወይም ጧሪ ለሆነ ሰው፣ ሕጋዊ ወራሽ የሌለው መሬት ቅድሚያ ተሰጥቶት ሊሸጋሸግ ይገባል፣
7. ለቄርሶ አደር የተሰጠ በገጠር መሬት የመጠቀም መብት ውርስ በሚመለከት ከዚህ አዋጅ ጋር የሚቃረኑ የፍትሃብሄር የውርስ ድንጋጌዎች ተፈጻሚነት ኣይኖራቸውም ፣

18. የገጠር መሬት የይዞታ መጠን

1. ከአሁን በፊት በየአከባቢው በሕጋዊ መንገድ የተከፋፈለ የአንድ ቤተሰብ የመሬት ይዞታ እንዳለ ሆኖ ለወደፊት የሚሰጥ አነስተኛ የመሬት ይዞታ መጠን ከ0.25 ሄክታር በታች መሆን የለበትም፣ ይህ ግን በመስኖ የሚለማ መሬትን አይጨምርም፣
2. ለወደፊቱ የሚሰጥ ከፍተኛ የመሬት ይዞታ ስፋት እንደየአከባቢው ሁኔታ በደንብ የሚወሰን ይሆናል ፡፡

19. በባለይዞታ አርሶ አደሮች መካከል የሚደረግ የመሬት ልውውጥ

1. መሬት መለዋወጥ የሚፈልጉ አርሶ አደሮች ለግብርና ልማት በሚመች ሁኔታ በስምምነት መለዋወጥ ይችላሉ፣
2. የተለወጠውን መሬት የምስክር ወረቀት ተሰተካክሎ እንዲሰጥ ይደረጋል፣
3. ማንኛውም ባለ ይዞታ ከሚፈልገው ከሌላ የመሬት ባለ ይዞታ ጋር ከወረዳ ወደ ሌላ ወረዳ ወይም ከቀበሌ ወደ ሌላ ቀበሌ የመሬት ይዞታውን በስምምነት የመለወጥ መብት አለው፣ ዝርዝሩ በደንብ ይወሰናል፣

4. ናይ ሰብኣይን ሰበይትን ናይ ሓባር ዝኾነ መሬት ብናይ ክልቲኦም ስምምዕነት ጥራሕ እቲ ምልውዋጥ ይፍፀም፣
5. ወራሲ ናይ ዘይብሉ ትሕዝቶ መዋቲ መሬት ንውላዱ ቀዳምነት ተዋሂብዎ ክልውጥ ይኽእል'ዩ፣ ዝርዝሩ ብደንቢ ይውሰን።

20. ምምሕዳር መሬት

1. ስልጣን ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ንዝምልከቶ ኣካል ዝተውሃበ ኮይኑ ኣብ ሕድ ሕድ ጣብያን ቁሸትን ኮሚቴ ምምሕዳር መሬት ገጠር እንትህሉ ኣብ ወረዳ ድማ ዲስክ ይህሉ። ዝርዝር ኣፈፃፅምኡ ብደንቢ ይውሰን፣
2. ሕድ ሕድ ጣብያ ወይ ወረዳ ካብቲ ዝሓለፈ መሬት መቐሎ ተኽሊሉ ካብ ዝተውሃቦ ወፃኢ ዘሎ መሬት በቢብርኩ ብዘለዉ ዝምልከቶም ኣካላት ዝመሓደር ኮይኑ ብዘይካ ፍቓድን መምርሒን እቲ ክልል መንግስቲ ምሓዝን ምኽላልን ኣይከኣልን፣
3. መንግስቲ ንናይ ሓባር ትሕዝቶ መሬት ገጠር ከምኣድላይነቱ ናብ ውልቀ ትሕዝቶ ክዛውር ይኽእል፣
4. ኣጠቓቕማ ክፍቲ ቦታታትን ጎቦታትን ብዝምልከት ቤት ምኽሪ ስራሕ ፈፃሚ ክልል ብዘውፅኦ ደንቢ ይውሰን።

21. በዓል ትሕዝቶ መሬት ገጠር ንህዝቢ ጥቕሚ ተባሂሉ ትሕዝቶ መሬቱ ዝውሰደሉ ኩነታት

1. በዓል ትሕዝቶ መሬት ገጠር ንህዝቢ ጥቕሚ ተባሂሉ መሬቱ ብመንግስቲ እንትውሰድ ኣብቲ መሬት ንዝገበሮ ምምሕያሽን ንዘፍረዮ ንብረትን ተመጣጣኒ ካሕሳ ይኽፈሎ፣ ወይ ድማ ብዝተኽእለ መጠን ንዝተወሰዶ መሬት መተካእታ ካሊእ ተለዋጢ መሬት ንኽረክብ ይግበር።
2. ኣብቲ ዝተወሰደ ትሕዝቶ መሬት ንዝርከብ ንብረት ዝኽፈል ካሕሳ እቲ ንብረት ብዘለዎ ኩነታት ጌምትካእ ዘኽእል ክኸውን ኣለዎ፣
3. ኣብ መሬት ንዝተገበረ ቀዋሚ ምምሕያሽ ዝኽፈል ካሕሳ ኣብቲ መሬት ዝወዓለ ገንዘብን ናይ ጉልበት ዋጋን ዝትክእ ይኽውን፣
4. የባልና የሚስት የጋራ የሆነ መሬት የመሬት መለዋወጡ በሁለቱም ስምምነት ብቻ ይፈጸማል፣
5. ወራሽ የሌለው የሚች የመሬት ይዞታ ልጁ ቅድሚያ ተሰጥቶት ሊለውጥ ይችላል፣ ዝርዝሩ በደንብ ይወሰናል።

20. የመሬት አስተዳደር

1. የገጠር መሬት አስተዳደርና አጠቃቀም ስልጣን ለሚመለከተው አካል የተሰጠ ሆኖ በእያንዳንዱ ቀበሌና ጎጥ የመሬት አስተዳደር ኮሚቴዎች ሲኖሩ በወረዳ ደግሞ ዴስክ ይኖራል። ዝርዝር አፈፃፀሙ በደንብ ይወሰናል፣
2. እያንዳንዱ ጣቢያ ወይም ወረዳ ካለፈው የመሬት ክፍፍል ተከልሎ ከተሰጠው መሬት ውጪ ያለውን መሬት በየደረጃው ባሉት የሚመለከታቸው አካላት የሚተዳደር ሆኖ ከክልል መንግስት ፍቃድና መመሪያ ውጪ መሬት መያዝና መከለል አይቻልም፣
3. መንግስት የወል የገጠር መሬት ይዞታን እንደአስፈላጊነቱ ወደ ግል ይዞታ ማዛወር ይችላል፣
4. የክፍት ቦታዎችና ተራራዎች አጠቃቀም በተመለከተ የክልሉ ስራ አስፈፃሚ ምክር ቤት በሚያወጣው ደንብ ይወሰናል።

21. የገጠር መሬት ባለይዞታ ለሕዝብ ጥቅም ተብሎ የመሬት ይዞታው የሚወሰድበት ሁኔታ

1. የገጠር መሬት ባለይዞታ ለህዝብ ጥቅም ተብሎ መሬቱ በመንግስት ሲወሰድ በመሬቱ ላይ ላደረገው መሻሻልና ላፈራው ንብረት ተመጣጣኝ ካሳ ይከፈለዋል፣ ወይም በተቻለ መጠን ለተወሰደበት መሬት ምትክ ሌላ ተለዋጭ መሬት እንዲያገኝ ይደረጋል።
2. በሚወሰደው የመሬት ይዞታ ላይ የሚገኝ ንብረት የሚከፈል ካሳ ንብረቱን ባለበት ሁኔታ ለመተካት የሚያስችል ይሆናል፣
3. በመሬት ላይ ለተደረገ ቋሚ መሻሻል የሚከፈል ካሳ በመሬቱ ላይ የዋለውን ገንዘብና የጉልበት ዋጋ የሚተካ ይሆናል፣

4. እቲ ንብረት ካብቲ ዘለዎ መሬት ናብ ካሊእ ብምዝዋር ዳግም ክትከልን ከምዝነበሮ ግልጋሎት ንምሃብ ዝኽእል ንብረት መልዓሊ ናይቲ ንብረት፣ መጎዓዝኢን መሊሰካ ናይ መትከሊ ወፃእን በዚ ዝስዕብ ጉድኣት እንተሃልዩ ንዕኡ ዝሽፍን ካሕሳ ይኽፈል።

5. ናይ መፈናቐሊ ካሕሳን ናይ ዝተፈላለዩ ንብረታት ቀመር ካሕሳን ብዝምልከት ዝወፀ ናይ ፌደራል ኣዋጅ ቁፅሪ 455/97፣ ደንቢ ቁፅሪ 135/99 ከምኡ'ውን ብክልል ብዝወፅእ መምርሒ መሰረት ተፈፃሚ ይኸውን።

22. ሽግሽግ መሬት ገጠር

ሽግሽግ መሬት ገጠር ብዝምልከት ምምሕዳርን ኣጠቓቕማን መሬት ገጠር መንግስቲ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ኢትዮጵያ ኣዋጅ ቁፅሪ 456/97 ዓንቀፅ 9 ዝተደንገገ ከምዘሎ ኮይኑ፡-

1. ብሰፈራ ወይ ድማ ብካሊእ ምኽንያት ብድልየቶም ንልዕሊ ክልተ ዓመት ጣብየኦም ለቒቆም ናይ ዝኸዱ መሬት ብዝምልከቶ ኣካል ንክመሓዳር ተገይሩ መሬት ንዘይብሎም ወይ ድማ ንዝነኣሶም ብሽግሽግ ክወሃብ ይግበር፣
2. ጎቦታትን ጉህሚታትን ፍግረ መሬትን ብርሰትን ብዘየስዕብ መንገዲ ብሽግሽግ ወይ ድማ ብኢንቨስትመንት ኣብ ጥቕሚ ክውዕሉ ክግበር ይኽእል። ዝርዝር ኣፈፃፅምኡ ብደንቢ ይውሰን።

23. ብዛዕባ ኣብ ከባቢ ግድብ ዘሎ መፋሰስን ዝለምዕ መሬትን ኣጠቓቕማን ሽግሽግን

1. ብምኽንያት ህንፀት ልምዓት መስኖ ካብ መሬቶም ንዝፈናቐሉን መሬቶም በቲ መስኖ ዝለምዕን ሓረስቶት ቀዳምነት ብምሃብ ኣብ መስኖ መሬት ክሸጋሸጉ ይግበር ፣
2. በዚ መስኖ ክለምዕ ዝኽእል ዝውሃብ መጠን ትሕዝቶ መሬት ኣብዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ዝተጠቐሱ ካብ ዝግበኦም ንላዕሊ ኮይኑ ክርከብ ከሎ ኣብቲ መስኖ ከባቢ ብቑረባ ዝርከቡ ክጥቀሙ ዝግበኦም ሓረስቶት ብቕደም ሰዓብ ብመሬት መቐሎ ወይ ብሽግሽግ ዝተውሃቦም ትሕዝቶ መሬቶም ወሲኹ ብሓባር ክሸጋሸጉ ይግበር ፣
3. ንልምዓት መስኖ ምችው ኣብ ዝኾነ ከባቢታት ትሕዝቶ መሬት ዘለዎ ሰብ ብመስኖ ተጠቒሙ መሬቱ ናይ ምልማዕ ግቡእ ኣለዎ ፣

4. ንብረቱን ክሚገኝበት መሬት ወደሌላ መሬት በመዛወር እንደገና ሊተክልና እንደነበረ ኣገልግሎት ለመስጠት የሚችል ንብረት ንብረቱን የማንሻ፣ የማጓጓዣና መልሶ የመትከያ ወጪና በዚህ የሚወጣ ጉዳት ሲኖር ይህንኑ የሚሸፍን ካሳ ይከፈላል፣
5. የመፈናቀያ ካሳና የተለያዩ ንብረቶች ካሳ ቀመር በሚመለከት የወጣውን የፌዴራል አዋጅ ቁጥር 455/97፣ ደንብ ቁጥር 135/99 እንዲሁም በክልሉ በሚወጣ መመሪያ መሰረት ተፈፃሚ ይሆናል።

22. የገጠር መሬት ሽግሽግ

የገጠር መሬት ሽግሽግ በተመለከተ የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ መንግስት የገጠር መሬት አስተዳደርና አጠቃቀም አዋጅ ቁጥር 56/97 አንቀጽ 9 ላይ የተደነገገው እንዳለ ሆኖ፡-

1. በሰፈራ ወይም በሌላ ምክንያት በፍላጎታቸው ቀበሌያቸውን ከሁለት ዓመት በላይ ለቀው የሄዱትን መሬታቸው በሚመለከተው አካል እንዲተዳደር ተደርጎ መሬት ለሌላቸው ወይም ላነሳቸው በሽግሽግ እንዲሰጥ ይደረጋል፣
2. ተራሮችና ቦረቦሮች የመሬት መሸርሸርና መራቆትን በማያስከትል መንገድ በሽግሽግ ወይም በኢንቨስትመንት ጥቅም ላይ እንዲውሉ ሊደረግ ይችላል። ዝርዝር አፈፃፀሙ በደንብ ይወሰናል።

23. በግድቦች አከባቢ ያለውን ተፋሰስና የሚለማ መሬት አጠቃቀምና ሽግሽግ

1. በመስኖ ልማት ሰራ ግንባታ ምክንያት ለሚፈናቀሉና መሬታቸው በግድቡ የሚለማ አርሶ አደሮች ቅድሚያ በመስጠት በመስኖ መሬቱ እንዲሸጋገሩ ይደረጋል ፣
2. በመስኖ ሊለማ የሚችል የመሬት ስፋት ድርሻ የሚሰጠው በዚህ አንቀጽ ንኡስ አንቀጽ 1 ለተጠቀሱት ከሚገባቸው በላይ ሆኖ ሲገኝ በመስኖው አከባቢ የሚኖሩ አርሶ አደሮች ለመስኖ ካላቸው ቀረቤታ በቅደም ተከተል እየታየ በመሬት ክፍፍል ወይም በሽግሽግ የተሰጣቸውን መሬት ጨምሮ በጋራ እንዲከፋፈሉ ይደረጋል ፣
3. ለመስኖ ልማት አመቺ በሆኑ ቦታዎች የመሬት ይዞታ ያለው ሰው በመስኖ ተጠቅሞ መሬቱን የማልማት ግዴታ አለበት፣

4. ናይቲ ግድብ ህልውናን ግልጋሎትን ንምሕላውን ቀፃልነት ክህልዎ ንምግባርን ናይቲ ግድብ መፋሰስ ምዕቃብ ስራሕ በቲ ናይቲ ከባቢ ሕብረተሰብ ብሓባር ክስራሕ ኣለዎ ፣
5. ኣብ ግድብ መፋሰስ ዝህሉ ኣጠቓቕማ መሬት በቲ ዝምልከቶ ኣካል ተፀኒዑ ብዝቐርብ መሪሕ ትልሚ ኣጠቓቕማ መሬት መሰረት ግይሩ ንሕርሻ፣ ንሕዛእቲ፣ ንመንበሪ ገዛ መስርሒ፣ ንደኒ፣ ከምኡ'ውን ካብ ሰብን እንስሳን ነፃ ዝኸውን መሬት ክኸለል ይኽእል'ዩ፡፡ ተጠቀምቲ ነቲ ዝወፅእ መሪሕ ትልሚ ኣጠቓቕማ መሬት ተግባራዊ ናይ ምግባር ግቡእ ኣለዎም፣
6. በቲ ግድብ ዝዓቐረ ማይ ተጠቀምቲ ዝኾኑ ሓረስቶት እቲ ግድብን መትረባትን ቀፃልነት ንክህልዎም ናይ ምፅጋንን ምክንካንን፣ ከምኡ'ውን ዝተዓቀበ/ዝተገደበ/ መፋሰስ ኣድላዪ ሓለዋን ፅገናን ናይ ምግባር ግቡእ ኣለዎም፣
7. በቲ ግድብ ዝዓቐረ ማይ ተጠቀምቲ ዝኾኑ ሓረስቶት ብዝምልከቶ ኣካል ንቐድሚት ተነፂሩ ብዝወፅእ ታሪፍ መሰረት ክፍሊት ግልጋሎት ክኸፍሉ ግቡእ ኣለዎም፡፡ ዝርዝሩ ብደንቢ ይውሰን፣
8. ብምኽንያት ኣብ ግድብ ዝዓቐረ ማይ ክኸሰቱ ዝኽእሉ ማይ ወለድ ሕማማት ናይ ምክልኻል ግቡእ ናይቲ ከባቢ ህዝቢ፣ ምምሕዳርን ቢሮ ሓለዋ ጥዕናን'ዩ፣
9. ግድብ ኣብ ዝስርሐሉ ከባቢ ካብ መንበሪ ቦትኦም ንዝፈናቐሉ ሓረስቶት በዚ ኣዋጅ ዝተደንገገ ናይ መንበሪ ገዛ መሰርሒ ኣተዓዳድላ ኣግባብ ቀዳምነት ተዋሂብዎም ንመንበሪ ገዛ መስርሒ ዝኸውን ቦታ ክረኽቡ ይግበር፣ ዝርዝሩ ብደንቢ ይውሰን፡፡

10. ዝኾነ ናይ መስኖ ተጠቃሚ በዓል ትሕዝቶ መሬት ንክልተ ተኸታታሊ ዓመታት ብመስኖ ተጠቒሙ እንተዘየልሚዑ መሬቱ ተሓዲጉ ንካሊእ ክሸጋሸግ ይኽእል፣ ኣግባብ ምሕዳግ መሬት ብዝምልከት ስዒቡ ብዝወፅእ ደንቢ ዝውሰን ይኸውን፣

24. ብዛዕባ ዘይሕረስ መሬት

1. ዘይሕረስ መሬት ንገዛውትን ንኻልኦት ዝተፈላለዩ ማሕበራዊ፣ ኢኮኖሚያውን ስነ-ከባቢያውን ስራሕቲ ዘድልዩ ህንፃታትን ቦታታትን፣ ካልኦት መንግስቲ

4. የግድቡ ህልውናና ግልጋሎት ለመጠበቅና ቀጣይ አገልግሎት እንዲሰጥ የግድቡ ተፋሰስ ጥበቃ በአከባቢው ህዝብ በጋራ መከናወን አለበት፣

5. በግድብ ተፋሰስ የሚደረግ የመሬት አጠቃቀም በሚመለከተው አካል ተጠንቶ በሚቀርብ የመሬት አጠቃቀም መሪ ዕቅድ መሰረት ለእርሻ፣ ግጦሽ፣ ለመኖሪያ ቤት መስሪያ፣ ለደን እንዲሁም ከሰውና እንስሳ ነፃ ሊሆን የሚችል መሬት ሊከለል ይችላል፡፡ ተጠቃሚዎቹ የሚወጣውን የመሬት አጠቃቀም መሪ እቅድ ተግባራዊ የማድረግ ግዴታ አለባቸው፣
6. በግድቡ የታቀበ ውሃ ተጠቃሚ የሆኑት አርሶ አደሮች ግድቡንና ቦዮቹን በቀጣይነት አገልግሎት እንዲሰጡ የመጠገን፣ የመንከባከብ፣ እንዲሁም የተገደበውን ተፋሰስ አስፈላጊውን ጥበቃና ጥገና የማድረግ ግዴታ አለባቸው፡፡
7. በሚመለከተው አካል ለወደፊት ተለይቶ በሚወጣ ታሪፍ መሰረት በግድቡ ውሃ ተጠቃሚ አርሶ አደሮች ለሚጠቀሙበት ውሃ የአገልግሎት ክፍያ እንዲከፍሉ ግዴታ አለባቸው፣ ዝርዝሩ በደንብ ይወሰናል፡፡
8. በግድቡ ያቆረ ውሃ ምክንያት ሊከሰቱ የሚችሉ ውሃ ወለድ በሽታዎች የመከላከል ግዴታ የአከባቢው ህዝብ፣ መስተዳድርና የጤና ጥበቃ ቢሮ ነው፣
9. ግድቡ በሚሰራበት አካባቢ ከመኖሪያቸው ለሚፈናቀሉ አርሶ አደሮች በዚህ አዋጅ የተደነገገው የመኖሪያ ቤት መስሪያ አሰጣጥ መሰረት ቅድሚያ ተሰጥቷቸው ለመኖሪያ ቤት መስሪያ ቦታ እንዲያገኙ ይደረጋል፣ ዝርዝሩ ደንብ ይወሰናል
10. ማንኛውም በመስኖ የሚጠቀም የመሬት ባለይዞታ መሬት ለሁለት ተከታታይ ዓመታት በመስኖ ተጠቅሞ ካላለማ መሬቱ ተወስዶ ለሌላ ሊሸጋሸግ ይችላል፡፡ የመሬቱ አወሳሰድ በተመለከተ ቀጥሎ በሚወጣው ደንብ የሚወሰን ይሆናል ፣

24. ስለማይታረስ መሬት

1. የማይታረስ መሬት ለቤቶች እና ለተለያዩ የማህበራዊ፣ ኢኮኖሚያዊና ስነ-አከባቢያዊ ክንዋኔዎች የሚያስፈልጉትን ህንፃዎችና ቦታዎች፣

ንመንግስታውን ዘይመንግስታውን ስራሕቲ ዝኽልሎም ቦታታት የጠቓልል። ዝርዝር ኣፈፃፅምኡ ብደንቢ ይውሰን፣

2. ንዝተፈላለዩ ማሕበራዊ ግልጋሎት ንዝሰርሑ ስራሕቲ ዝወሃብ መሬት ብዝተኽኣለ መጠን ንተሓራሳይ መሬት ክሻመ የብሉን።

25. ብዛዕባ ንመጠሻ ዝወሃብ ቦታ

1. 18 ዓመትን ካብኡ ንላዕልን ዕድመ ዘለዎም መጠሻ ዘይብሎም ነበርቲ እቲ ጣብያ፣ ኣብ ስደት ዝነበሩ ከምኡ'ውን ብዝተፈላለየ ምኽንያት መጠሻ ዝሰኣኑ በዚ ኣዋጅ ዓንቀፅ 12 ንኡስ ዓንቀፅ 3 ፊደል "ሀ" መሰረት ናብ ገጠር ጣብያ ዝምለሱ ንመጠሻ ዝኽውን ቦታ ዘይብሎም ሓረስቶት ቅድም ክብል ኣብ ዝተገበረ መሬት መቐሎ ንመጠሻ ኣብ ዝተኽለለ ቦታ ይውሃቦም፣ ዝርዝርሩ ብደንቢ ይውሰን።

2. ንመጠሻ ዝተኽለለ ቦታ ኣብ ዘይብሎም ከባቢታት እቲ ናይ ጣብያ ምምሕዳር ምስ ናይቲ ወረዳ ዴስክ ብምኽን ተሓራሳይ ኣብዘይኾነ ንመጠሻ ክኽውን ዝኽእል መሬት ክወሃቦም ይግበር፣ ዝርዝሩ ብደንቢ ይውሰን፣

3. ንመጠሻ ዝውሃብ ቦታ መጠን 20 x 20 ሜትሮ ይኽውን፣

4. ኣዋሃህባ ንመጠሻ ዝኽውን ቦታ ኣብ ስደት ንዝነበሩ ሓረስቶት ቀዳምነት ብምሃብ ይፍፀም ። ቀሚሉ ዕድሜኡም ኣብዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ዝተጠቐሱ መናእሰይ ካብ ዝዓበየ ዕድመ ጀሚሩ ብዕድሜኡም ቅደም ሰዓብ መሰረት ይወሃቦም። ኣብ ውሽጢ ሐደ መዓልቲ ንዝተወለዱ መናእሰይ ብዕፃ ብምፍላይ ይወሃቦም፣

5. ንመጠሻ ዝኽውን ዝተኽለለ ወይ ክኽለል ዝኽእል መሬት ኣብዘይብሎም ከባቢታት ወለዲ ኣብናይ ባዕሎም ትሕዝቶ መጠሻ ንውላዶም መስርሒ ገዛ ብፍቓዶም ክህቡ ይኽእሉ፣

6. ንመጠሻ ዝውሃብ ቦታ፡-
   ሀ. ዝተለቐቐ መጠሻ፣
   ለ. መቶሓላለፊ መንገዲ ዘይዓቡ፣
   ሐ. ካብ ግልጋሎት መውሃቢ ትካላት ከም ክሊኒክ፣ ቤት ትምህርቲ፣ መንገዲ ዘይረሓቐ፣
   መ. ንቐፃላይ ብመጠሻነት ክገልግልን ክሰፍሕን ኣብ ዝኽእል ከባቢ፣

ሌሎች መንግስት ለመንግስታዊ እና መንግስታዊ ያልሆኑ ስራዎች የከለላቸው ቦታዎችን ያጠቃልላል። ዝርዝር አፈጻጸሙ በደንብ ይወሰናል፣

2. ለተለያዩ ማሕበራዊ አገልግሎቶች ለየሚሰሩ ስራዎች የሚሰጥ መሬት በተቻለ መጠን የሚታረስ መሬትን መሻማት የለበትም፣

25. ለጎጆ መውጫ ስለሚሰጥ ቦታ

1. ጎጆ መውጫ ያላገኙ 18 ዓመትና ከዛ በላይ ዕድሜ ያላቸው የቀበሌው ነዋሪዎች፣ በስደት የነበሩ እንዲሁም በተለያየ ምክንያት ጎጆ መውጫ ያጡ በዚህ አዋጅ አንቀጽ 12 ንኡስ አንቀጽ 3 ፊደል "ሀ" መሰረት ወደ ገጠር ቀበሌያቸው የሚመለሱ የጎጆ መውጫ የሚሆን ቦታ የሌላቸው ገበሬዎች ቀደም ሲል በተደረገው የመሬት ክፍፍል ለጎጆ መውጫ ተብሎ በተከለለ መሬት ይሰጣቸዋል፣ ዝርዝሩ በደንብ ይወሰናል።

2. መኖሪያ ቤት ማሰሪያ ተብሎ የተከለለ መሬት የሌላቸው አከባቢዎች የቀበሌው አስተዳደር ከወረዳው ዴስክ ጋር በመሆን በማይታረስ መሬት ለጎጆ መውጫ ሊሆን የሚችል መሬት ሊሰጥ ይችላል፣ ዝርዝሩ በደንብ ይወሰናል፣

3. ለጎጆ ማውጫ የሚሰጥ ቦታ 20X20 ሜትር ይሆናል፣

4. ለጎጆ መውጫ መሬት አሰጣጥ በተመለከተ በበስደት ለነበሩት በቅድሚያ ይሰጣል፣ በመቀጠል እድሜያቸው በዚህ አንቀፅ ንኡስ አንቀፅ 1 የተጠቀሱት ወጣቶች እድሜያቸው ቅደም ተከተል መሰረት በዕድሜ የበለጡትን በማስቀደም ይሰጣቸዋል፣ በአንድ ቀን ውስጥ የተወለዱ ወጣቶች በእጣ በመለየት ይሰጣቸዋል፣

5. ለጎጆ መውጫ የተከለለ ወይም ሊከለል የሚችል መሬት በሌለባቸው አከባቢዎች፣ ወላጆች በፈቃዳቸው ለልጆቻቸው ከራሳቸው ጎጆ መውጫ ቤት መስሪያ ሊሰጡ ይችላሉ፣

6. ለጎጆ መውጫ የሚሰጥ ቦታ፡-
   ሀ. የተለቀቀ ጎጆ መውጫ፣
   ለ. መተላለፍያ መንገድ የማይዘጋ፣
   ሐ. ከግልጋሎት ሰጪ ድርጅቶች እንደ ክሊኒክ፣ ትምህርት ቤት፣ መንገድ ያልራቀ፣
   መ. ለቀጣይ ጎጆ መውጫ ሊያገለግልና ሊሰፋ በሚችል አከባቢ፣

ረ. ብቐንዲልነት ስሩዕ ዝኾነ መጠሻ ጥላን ዝወፀሉን ንዝቕዕል ንምኽታም ዘመቹን ግልጋሎት መስረቱ ልምዓት ብቐሊሉ ክበፅሑሉ ዝኽእልን፣

ሰ. ካብ ንማሕረሰ፣ ንሕፃትን፣ ንደንጎን ዝተኸለለ መሬት ወፃኢ ዝኾነ፣

26. ሕዛእቲ መሬት

1. ንሕዛእቲ ዝኾውነ መሬት ዝኽለል ቅድም ክብል ብዝተገበረ መሬት መቕሰ ተኽሊሉ ዝነበረን ሕዚ ድማ በቲ ክባቢ ህዝብን ጣብያ ምምሕዳርን ስምምነት ብዝኽልልዎ መሰረት ይኸውን፣

2. ኣመሓዳድራ ሕዛእቲ ቅድም ክብል እቲ ክባቢ ይመሓዳደረሉ ብዝነበረ ልማድ ' መሰረት ይኸውን። ናይቲ ክባቢ ሕብረተሰብ በቲ ጣብያ ቤት ምኽሪ አቢሉ መተሓዳደሪ ደንቢ /ስሪት/ ከውፅእን ክተግብርን አለዎ።

27. ኣጠቓቕማ መሬት ንጠር

1. ዝኾነ ሰብ ብሕጊ ካብ ዝተውሃቦ ብፅሒት ትሕዝቶ መሬት ወፃኢ ካብ ዘሎ ክፍቲ መሬት ደሪብካ ወይ ብሓይሊ ወሪርካ ምሓዝ፣ ምሕራስ፣ ምጥቃም፣ መንበሪ ገዛ ምስራሕ፣ ወይ ብዝኾነ ምኽንያት ህወከት ምፍጣር ዝተኸልከለ እዩ፣ ዝርዝሩ ብደንቢ ይውሰን።

2. ኣብዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ዝተደንገገ ጥሒሱ ዝተረኽበ ሰብ ብገበን ተሓታቲ ኮይኑ ብተወሳኺ፦

ሀ. ብክይኣግባብ ዝተሰርሐ ገዛ ብጣብያ ኮሚቴ ምምሕዳር መሬት ንጠር ይፈርስ ፣

ለ. ብሓይሊ ወሪሩ ዝሓዞ መሬትን ብዘይ ኣግባብ ዝረኽቦ ጥቕምን እንተሃልዩ ክምልስ ከምኡውን ዘብፀሐ ጉድኣት እንተሃልዩ ካሕሳ ክኽፍል ይግደድ፣

3. ካብ ውልቀ ሰብ ዓቕሚ ንላዕሊ ኣብ ዝኾኑ ገፋሕቲ ጎቦታትን ጉህሚታትን ብሓባር ስራሕቲ ዕቀባ ይስረሐሎም ወይ ድማ ክም ኣድላይነቱ ብውልቀን ብውዳበን ተመቒሎም ክለምዑ ይግበር፣

4. ዝኾነ ውልቀ ሰብ ይኹን ትካል ናይ መሬት ማዕድን ንምጥቃም ዝደሊ እቲ መሬት ዝዕቀበሉን ተመሊሱ ዝለምዐሉን ኣግባብ መሰረት ገይሩ ኣግባብ ብዘለዎ በዓል መዚ ብዝውሃቦ ፍቓድ መሰረት ዝፍፀም ይኸውን።

ሠ. በቀጣይነት መደበኛ የጎጂ ኦዉጫ ፕላን የሚወጣለትና ለወደፊትም ለመከተም ኣመቺ የሆነና የመሰረተ ልማት ኣገልግሎት ሊደርስበት የሚችል፣

ረ. ለኣርሻ፣ ለግጦሽና፣ ለደን፣ ከተከለለ መሬት ውጪ የሆነ፣

26. የግጦሽ መሬት

1. ለግጦሽ የሚሆን መሬት የሚከለለው ቀደም ብሎ በተደረገ የመሬት መክፋፈል ተከልሎ የነበረና አሁንም የአከባቢው ሕዝብና በቀበሌ አስተዳደር ስምምነት በሚከለሉት መሰረት ይሆናል።

2. የግጦሽ መሬት አጠቃቀም በተመለከተ ቀደም ሲል አከባቢው ይተዳደርበት በነበረው ልማድ መሰረት ይሆናል። የአከባቢው ሕብረተሰብ በቀበሌው ምክር ቤት በኩል የመተዳደሪያ ደንብ ኣውጥቶ በተግባር ላይ ያውላል።

27. የገጠር መሬት አጠቃቀም

1. ማንኛውም ሰው በህግ ከተሰጠው የመሬት ይዞታ ድርሻ ውጪ ካለው ክፍት መሬት ደርቦ ወይም በሃይል ወሮ መያዝ፣ ማረስ፣ መጠቀም፣ የመኖሪያ ቤት መስራት ወይም በማንኛውም ምክንያት ሁከት መፍጠር የተከለከለ ነው፣ ዝርዝሩ በደንብ ይወሰናል።

2. በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተደነገገውን ተላልፎ የተገኘ ሰው በወንጀል ተጠያቂ ሆኖ በተጨማሪም፦

ሀ. ያለአግባብ የተሰራው ቤት በቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ ይፈርሳል፣

ለ. በሃይል ወርሮ የያዘው መሬትና፣ ያለአግባብ ያገኘው ጥቅም ካለ እንዲመልስ እንዲሁም ያደረሰው ጉዳት ካለ ካሳ እንዲከፍል ይገደዳል፣

3. ከግለሰብ አቅም በላይ የሆኑ ሰፋፊ ተራሮችና ቦረቦር መሬቶችን በጋራ የዕቀባ ስራ ይሰራላቸዋል ወይም እንደ አስፈላጊነቱ በግልና በቡድን ተከፋፍለው እንዲለሙ ይደረጋል፣

4. ማንኛውም ግለሰብም ሆነ ድርጅት በመሬት ማዕድን ለመጠቀም የሚፈልግ መሬቱ መልሶ የሚያገግምበትና የሚለማበት መንገድ ተከትሎ አግባብነት ካለው ባለስልጣን በሚሰጠው ፈቃድ መሰረት የሚፈፀም ይሆናል።

28. ኣወሳስና ክርክራት

1. ኣብ መሰል ትሕዝቶ መሬት ገጠር ክርክር እንትልዓል ተኸራኸርቲ ወገናት ተመያይጦም ብስምምዕነት ንክፈትሕዎ ዓፅሪ ይግበር፣ ባዕሎም ክሰማምዑ እንተዘይኪኢሎም በቲ ከባቢ ዝተለመደ ኣግባብ ኣፈታትሓ ጎንፂ ብሽምግልና ወይ ብዕርቂ ክውድኡ ይኽእሉ፣
2. በዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ብዝተቐመጠ መማረፂ ንምፍታሕ ሓዲኡም ወይ ክልቲኦም ተኸራኸርቲ ወገናት ፍቓደኛታት ኣብ ዘይኮኑሉ እዋን ቀፂሉ ብዘሎ ኣግባብ ይውሰን፣
   ሀ. መጀመሪያ ናብ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ቀሪቡ ይውሰን ፣
   ለ. በቲ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ውሳነ ዘይተሰማመዐ ወገን ኣብ ውሽጢ 15 መዓልቲ ይግበኣኒ ናብ ወረዳ ቤት ፍርዲ የቕርብ፣ ወረዳ ቤት ፍርዲ ኣብ ውሽጢ 30 መዓልቲ ውሳነ ይህብ፣
   ሐ. ወረዳ ቤት ፍርዲ ነቲ ናይ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ውሳነ እንተፅኒዕዎ ናይ መወዳእታ ይኽውን፣ እንተማሓይሽዎ ወይ እንተሲዒርዎ ግን ዘይተስማምዐ ወገን ይግበኣኒ ናብ ዞባ ማእኸላይ ቤት ፍርዲ የቕርብ፣ እቲ ማእኸላይ ቤት ፍርዲ ዝህቦ ውሳነ ናይ መወዳእታ ይኽውን፡፡
3. ብዕርቂ ወይ ብሽምግልና ዝተወደአን ከምኡ'ውን ብጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ብዝወሃብ ውሳነ ከም ውሳነ ስሩዕ ቤት ፍርዲ ተቆፂሩ ይፍፀም፣
4. ብጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ዝውሃብ ውሳነ ብይግበኣኒ ኣፈፃፅማኡ እንተዘይተኣጊዱ ኣብ ውሽጢ 30 መዓልቲ ይፍፀም፣
5. ውሳነ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር ንምፍፃም ዝመሓላለፉ ትእዛዛት ብሚሊሻ ወይ ብፖሊስ ይፍፀሙ፣
6. ኣብዚ ዓንቀፅ ዝተደንገገ ኣግባብ ኣወሳስና ክርክር ኣግባብ ኣጠይሻ፣ ኣሰራርሓን ኮሚቴ ከምኡ'ውን ኣግባብ ኣሸፋፍና ወፃኢ ዝምልከት ዝርዝሩ ብደንቢ ይውሰን፡፡

28. የክርክሮች አወሳሰን

1. በገጠር መሬት ይዞታ ላይ ክርክር ሲነሳ ተከራካሪ ወገኖች ተወያይተው በስምምነት እንዲፈቱ ጥረት ይደረጋል፣ በራሳቸው ሊስማሙ ካልቻሉ በአከባቢው በተለመደው የግጭት አፈታት ዘዴ በሽማግሌዎች ወይም በዕርቅ ሊጨርሱ ይችላሉ፣
2. በዚህ አንቀጽ ንኡስ አንቀጽ 1 በተቀመጠው አማራጭ ለመፍታት አንዱ ወይም ሁለቱም ተከታካሪ ወገኖች ፍቃደኞች በማይሆንበት ጊዜ ቀጥሎ ባለው አገባብ ይወሰናል፡-
   ሀ. መጀመሪያ ወደ ቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ ቀርቦ ይወሰናል፣
   ለ. በቀበሌው የገጠር መሬት አስተዳደር ኮሚቴ ውሳኔ ያልተስማማው ወገን በ15 ቀናት ውስጥ ይግባኝ ወደ ወረዳ ፍርድ ቤት ያቀርባል፣ የወረዳው ፍርድ ቤት በ30 ቀናት ውስጥ ውሳኔ ይሰጣል፣
   ሐ. የወረዳው ፍርድ ቤት የቀበሌውን የመሬት አስተዳደር ኮሚቴ ውሳኔ ካጸናው የመጨረሻ ይሆናል፣ ካሻሻለው ወይም ከለወጠው ግን ያልተስማማው ወገን ወደ ዞን ከፍተኛ ፍርድ ቤት ይግባኝ ያቀርባል፣ ከፍተኛው ፍርድ ቤት የሚሰጠው ውሳኔ የመጨረሻ ይሆናል፡፡
3. በእርቅ ወይ በሽምግልና ያለቀና እንዲሁም በቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ የሚሰጥ ውሳኔ እንደ መደበኛ ፍርድ ቤት ውሳኔ ተቆጥሮ ይፈፀማል፣
4. በቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ የተሰጠው ውሳኔ ኣፈፃፀሙ በይግባኝ ካልታገደ በስተቀር በ 30 ቀናት ውስጥ ይፈፀማል፣
5. የቀበሌ የገጠር መሬት አስተዳደር ኮሚቴ ውሳኔ ለማስፈፀም የሚተላለፉ ትእዛዞች በሚሊሻ ወይም በፖሊስ ይፈፀማሉ፣
6. በዚህ አንቀጽ የተደነገገው የክርክር አወሳሰን፣ የኮሚቴ አቋቋምና አሰራር እንዲሁም የወጪ አሸፋፈን አገባብ በሚመለከት ዝርዝሩ በደንብ ይወሰናል፡፡

29. ብዛዕባ ቅዕዳት

1. ዝኾነ ሰብ ነዚ ኣዋጅ ወይ ነዚ ኣዋጅ መፈፀሚ ተባሂሎም ዝወፁ ደንብታትን መምርሒታትን ዝጠሓሰ ኣግባብ ብዘለዎ ሕጊ ገበን መሰረት ይቕፃዕ፣
2. ኣብዚ ዓንቀፅ ንኡስ ዓንቀፅ 1 ዝተደንገገ ሕሉው ኮይኑ ዝኾነ ብመሬት ገጠር ናይ ምጥቃም መሰል ዘለዎ ሰብ፡-
   ሀ. ትሕዝቶ መሬቱ ብሕጊ ካብ ዝተፈቕደ ግዘ ንላዕሊ ወይ ንዘይተወሰነ ግዘ ዘካረየ ወይ ዝተኻረየ ካብ ብር 100 ክሳብ 300 /ሓደ ሚኢቲ ክሳብ ሰለስተ ሚኢቲ ብር/ ይቕፃዕ፣
   ለ. ብዘይብቑዕ ምኽንያት ኣብ ውልቀ ትሕዝቶ መሬቱ ይኹን ኣብ ሓባር መሬት ዕቀባ ሓመድን ማይን ስራሕቲ ዘይሰርሐ ካብ ብር 20 ክሳብ 50 / ካብ ሚስራ ክሳብ ሓምሳ ብር/ ተቐጢዑ ዘይተሰርሐ ስራሕ ይፍፅም፣
   ሐ. ኣብ ተሓራሳይ መሬቱ ገዛ ዝሰርሐ ንዝሰርሐ ገዛ ኣፍሪሱ ብር 50 / ሓምሳ ብር / ይቕፃዕ፣
   መ. ካብቲ ዝወፀ ኣጠቓቕማ መሪሕ ትልሚ ወፃኢ ዝተጠቐመ ወይ ነቲ ትልሚ ዘይተግበረ ሓረስታይ ንመጀመሪያ እዋን ካብ ብር 100 ክሳብ 300 /ካብ ሓደ ሚኢቲ ክሳብ ሰለስተ ሚእቲ ብር/ ተቐጢዑ በቲ ትልሚ መሰረት ክሰርሕ ይግበር እቲ ጥፍኣት ዝደጋግም እንተኾይኑ ናይ ምጥቃም መሰሉ ክስእን ይኽእል፣
   ረ. ኣብ ናይ ባዕሉ መሬት ይኹን ኣብ ካሊእ ዝተሰርሑ ስነ ሂወታውን ደረቕ ዕቀባ ሓመድን ማይን ስራሕቲ ዘፍረሰ ከለም ኩነታቱ ካብ ብር 100 ክሳብ 200 /ካብ ሓደ ሚእቲ ክሳብ ክልተ ሚእቲ ብር/ ተቐጢዑ ንዘፍረሰ መሊሱ ክሰርሕ ይግደድ፣
   ሰ. ኣብዚ ኣዋጅ ዓንቀፅ 11 ንኡስ ዓንቀፅ 1 ፊደል /ሀ ክሳብ መ/ ከምኡ'ውን ዓንቀፅ 17/3/ ንዝተደንገጉ ግቡኣት ዝጠሓሰ /ዝተመሓላለፈ/ ካብ ብር 200 /ክልተ ሚእቲ ብር / ዘይነኣሰ ካብ ብር 1000 /ሓደ ሽሕ ብር/ ዘይበለፀ ይቕፃዕ ፣
   ሸ. ኣብዚ ኣዋጅ ዓንቀፅ 13 ንኡስ ዓንቀፅ 2፣ 3ን 5ን ጥሒሱ ኣብ ተሓራሳይ መሬት ልሙዕነት መሬት ዝዓብኡ ተግባራት ዝፈፀመ ካብ ብር

29. ስለ ቅጣት

1. ማንኛውም ሰው ይህን አዋጅ ወይም ይህን አዋጅ ለማስፈፀም ተብለው የሚወጡ ደንቦችንና መመሪያዎችን የተላለፈ አግባብ ባለው የወንጀል ህግ መሰረት ይቀጣል፣
2. በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተደነገገው እንደተጠበቀ ሆኖ ማንኛውም በገጠር መሬት የመጠቀም መብት ያለው ሰው፡-
   ሀ. የመሬት ይዞታው በህግ ከተፈቀደው ጊዜ በላይ ወይም ላልተወሰነ ጊዜ ያካረየ ወይም የተከራየ ከብር 100 እስከ 300 /አንድ መቶ እስከ ሶስት መቶ / ይቀጣል፣
   ለ. ያለ በቂ ምክንያት በግል ይዞታውም ሆነ በወል መሬት የአፈርና ውኃ ዕቀባ ያልሰራ ከብር 20 እስከ 50 /ከሃያ እስከ አምሳ ብር/ ተቀጥቶ ያልተሰራውን ስራ ይፈፅማል፣
   ሐ. በሚታረስ የእርሻ መሬቱ ላይ ቤት የሰራ የሰራውን ቤት አፍርሶ ብር 50 / ሃምሳ ብር/ ይቀጣል፣
   መ. ከወጣው የመሬት አጠቃቀም መሪ ዕቅድ ውጪ የተጠቀመ ወይም ዕቅዱን ተግባራዊ ያላደረገ ለመጀመሪያ ጊዜ ከብር 100 እስከ 300 /ከአንድ መቶ እስከ ሶስት መቶ ብር/ ተቀጥቶ በእቅዱ መሰረት እንዲሰራ ይደረጋል፡፡ ጥፋቱ የሚደጋግም ከሆነ የመጠቀም መብቱ ሊያጣ ይችላል፣
   ሠ. በራሱ መሬትም ሆነ በሌላው የተሰሩ ህይወታዊና ፊዚካላዊ የአፈርና ውሃ ዕቀባ ስራዎች ያፈረሰ እንደሁኔታው ከብር 100 እስከ 200 /ከአንድ መቶ እስከ ሁለት መቶ ብር/ ተቀጥቶ ያፈረሰውን መልሶ እንዲሰራ ይገደዳል ፣
   ረ. በዚህ አዋጅ አንቀጽ 11 ንኡስ አንቀጽ 1 ፊደል /ሀ እስከ መ/ እንዲሁም አንቀጽ 17/3/ የተደነገጉት ግዴታዎች የጣሰ/ የተላለፈ ከብር 200 /ሁለት መቶ ብር/ ያላነሰ ከብር 1000 /አንድ ሺህ ብር/ ያልበለጠ ይቀጣል ፣
   ሰ. በዚህ አዋጅ አንቀጽ 13 ንኡስ አንቀጽ 2፣ 3፣ እና 5ን በመጣስ በሚታረስ እርሻ የመሬት ለምነትን የሚፃረሩ ተግባራት የፈጸመ ከብር

100 ክሳብ 1000 /ካብ ሓደ ሚእቲ ክሳብ ሓደ ሽሕ ብር/ ተቐፂው ብዘይኣግባብ ንዝተኽሎም ኣግራብ ክልዕል ይግደድ፣

ቀ. ካብ መንግስቲ ወይ ክብ ሓረስታይ መሬት ዝተኻረየ በዓል ሃፍቲ ነዚ ኣዋጅ መፈፀሚ ተባሂሉ ብዘውፅእ ደንቢ መሰረት ኣብ ግራቱ ዝተወሰነ በዝሒ ኣግራብ ዘይተኽለ ካብ ብር 500 ክሳብ 5000 /ካብ ሓሙሽተ ሚእቲ ክሳብ ሓሙሽተ ሽሕ ብር/ ይቕፃዕ፣

በ. ካብ መንግስቲ መሬት ዝተኻረየ በዓል ሃፍቲ መሬቱ ብክፋል ወይ ብሙሉእ ንካሊእ ሰብ ዘካረየ ካብ ብር 500 ክሳብ 5000 /ካብ ሓሙሽተ ሚእቲ ክሳብ ሓሙሽተ ሺሕ ብር/ ተቐፂው ዝኣተዎ ውዕሊ ኪራይ መሬት ይፈርስ፣ ዝረኸቦ ጥቕሚ'ውን ናብ መንግስቲ ክኣቱ ይገብር፣

ተ. ብሕጋዊ መንገዲ ካብ ዝተውሃቦ መሬት ወፃኢ ካብ ዘሎ ትርፊ መሬት ወይ ናይ ካሊእ ሰብ ትሕዝቶ ብሓይሊ ወሪሩ ወይ ደፊኡ ዝሓዘ፣ ዝሓረሰ፣ ገዛ ዝሰርሐ፣ ብዘይኣግባብ ዝተገልገለ ወይ ብዝኾነ ካሊእ ምኽንያት ህውከት ዝፈጠረ ካብ ብር 500 ክሳብ 5000 /ካብ ሓሙሽተ ሚእቲ ክሳብ ሓሙሽተ ሽሕ ብር / ተቐፂው ብዘይ ኣግባብ ዝሓዞ መሬት ይሕደግ፣ዝሰርሐ ገዛ ክፈርስ ይግበር፣ ብዘይኣግባብ ካብ ዝሓዞ መሬት ዝረኸቦ ጥቕሚ'ውን ክምልስ ይግደድ።

3. ዝኾነ በዚ ኣዋጅን ኣግባብነት ብዘለዎ ካሊእ ሕግን ኣብ ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ስልጣን ዝተውሃቦ ሰብ ኣብዚ ኣዋጅ ንዝተቐመጡ መግደድቲ ድንጋገታት ብምጥሓስ /ብምትሕልላፍ/ መጠሻ፣ ላወጣ፣ ውህብቶ፣ ኪራይ፣ ውርስን ሽግሽግን ዝፈቐደ እንተኾይኑ ብገበን ሕጊ ዝበለፀ ዘቕፅየ እንተዘይኮይኑ ክሳብ ክልተ ዓመት ዝበፅሕ እስራት ወይ ካብ ብር 300 ክሳብ 2000/ ካብ ሰለስተ ሚእቲ ክሳብ ክልተ ሽሕ ብር/ ዝበፅሕ መቕፃዕቲ ወይ ብክልቲኡ ይቕፃዕ፣

4. በዚ ዓንቀፅ ንኡስ ዓንቀፅ 2 ፊደል "ሀ ክሳብ ረ" ንዘሲዉ ናይ ገበን ተግባራት ኣብ ጣብያ ማሕበራዊ ቤት ፍርዲ ዝርኣዩ ኮይኖም ካብ ፊደል "ሰ ክሳብ ተ" ክምኡ'ውን ኣብ ንኡስ ዓንቀፅ 3 ዝተዘርዘሩ ተግባራት ገበን ኣብ ወረዳ ቤት ፍርዲ ዝረኣዩ'ዮም።

100 እስከ 1000 / ከአንድ መቶ እስከ አንድ ሺህ ብር/ ተቀጥቶ ያላግባብ የተከላቸውን ዕፅዋት እንዲያነሳ ይገደዳል፣

ሸ. ከመንግስት ወይም ከአርሶ አደር መሬት የተከራየ ባለሃብት ይህን ኣዋጅ ማስፈፀሚያ ተብሎ በሚወጣ ደንብ መሰረት የተወሰነው ተክሎች ብዛት ያልተከለ ከብር 500 እስከ 5000 /ከአምስት መቶ እስከ አምስት ሺህ ብር/ ይቀጣል ፣

ቀ. ከመንግሰት መሬት የተከራየ ባለሃብት የተከራውን መሬት በከፊል ወይም በሙሉ ለሌላ ሰው ያካረየ ከብር 500 እስከ 5000 ብር / ከአምስት መቶ እስከ አምስት ሺህ ብር/ ተቀጥቶ የገባው የመሬት የኪራይ ውል ይፈርሳል፣ ያገኘው ጥቅምም ለመንግስት ገቢ ያደርጋል፣

በ. በሕጋዊ መንገድ ከተሰጠው መሬት ውጪ ካለ ትርፍ መሬት ወይም የሌላ ሰው ይዞታ በኃይል ወርሮ ወይም ገፍቶ የያዘ፣ ያረሰ፣ ቤት የሰራ፣ ያለ አግባብ የተገለገለ ወይም በማንኛውም ሌላ ምክንያት ሁከት የፈጠረ ከብር 500 እስከ 5000 /ከአምስት መቶ እስከ አምስት ሺህ ብር/ ተቀጥቶ ያለአግባብ የያዘውን መሬት ይነጠቃል።። የሰራው ቤት እንዲፈርስ ይደረጋል፣ ያላግባብ ከያዘው መሬት ያገኘውን ጥቅምም እንዲ መልስ ይገደዳል።

3. ማንኛውም በዚህ አዋጅና አግባብነት በለው ሌላ ህግ ገጠር መሬት አስተዳደርና አጠቃቀም የሚመለከት ስልጣን የተሰጠው ሰው በዚህ አዋጅ የተቀመጡትን አስገዳጅ ድንጋጌዎች በመጣስ /በመተላለፍ/ የጎጆ መውጫ፣ ልውውጥ፣ ውርስ፣ ስጦታ፣ ኪራይና ሽግሽግ የፈቀደ እንደሆነ በወንጀል ህጉ የበለጠ የሚያስቀጣው ካልሆነ በስተቀር እስከ ሁለት ዓመት ሊደርስ በሚችል እስራት ወይም ከብር 300 እስከ 2000 /ከሶስት መቶ እስከ ሁለት ሺህ ብር / በሚደርስ መቀጮ ወይም በሁለቱም ይቀጣል ፣

4. በዚህ አንቀጽ ንኡስ አንቀጽ 2 ፊደል "ሀ እሰከ ሠ" ለተዘረዘሩት የወንጀል ተግባራት በቀበሌ ማሕበራዊ ፍርድ ቤት የሚታዩ ሲሆኑ ከፊደል ሸ እስከ ቐ እንዲሁም በንኡስ ዓንቀፅ 3 የተዘረዘሩት የወንጀል ተግባራት ደግሞ በወረዳ ፍርድ ቤት የሚታዩ ናቸው።

30. ዝተፈላለዩ ድንጋገታት

1. ብዝፍጠር ለውጥን ምዕባለን ዝህሉ ዝተመሓየሸ ኣጠቓቕማ መሬት ገጠር ኣብ ግምት ዘእተወን በብእዋኑ ዝመሓየሸን መሪሕ ትልሚ ኣጠቓቕማ መሬት ገጠር ይህሉ፣
2. ካብቲ ዝሕንፀፅ መሪሕ ትልሚ (ማስተር ፕላን) ወፃኢ ኣጠቓቕማ መሬት ምልዋጥ ኣይከኣልን፣
3. ቢሮ ሕርሻን ልምዓት ገጠርን ብዝምልከቶ ኣካል ኣቢሉ ኣብ ዝተፈላለየ ቦታ ዝርከቡ ኮሚቴታት ምምሕዳር መሬት ገጠርን ዴስክን ብምትሕብባር ዘድሊ ሙያዊ ደገፍ ብምሃብ ኣዋጅ ፌዴራልን ነዚ ኣዋጅን ናይ ምፍፃም ሓላፍነት ኣለዎ።

31. ብዛዕባ ምውፃእ ደንብን መምርሕን

1. ቤት ምኽሪ ስራሕ ፈፃሚ ክልል ትግራይ ነዚ ኣዋጅ መፈፀምን እዚ ኣዋጅ ተግባራዊ ዝኾነሎም ዞባ ምዕራብን ካልኦት ተመሳሳሊ ክባቢታትን ዝምልከት ዝርዝር ደንቢ የውፅእ፣
2. ዝምልከቶ ኣካል ንኣፈፃፅማ እዚ ኣዋጅን ስዒቡ ዝወፅእ ደንቢን ዝርዝር መምርሒ ከውፅእ ይኽእል።

32. ዝተሰዓሩን ተፈፃምነት ዘይብሎምን ሕግታት

1. ኣጠቓቕማ መሬት ገጠር ብሄራዊ ክልላዊ መንግሰቲ ትግራይ ንምውሳን ዝወፀ ኣዋጅ ቁፅሪ 23/ 1989፣ ኣጠቓቕማ መሬት ገጠር ንምውሳን ዝወፀ ኣዋጅ ቁፅሪ 23/1989 ንምምሕያሽ ዝወፀ ኣዋጅ ቁፅሪ 55/1994 ዓ/ም ከምኡ'ውን ምምሕዳርን ኣጠቓቕማን መሬት ገጠር ንምውሳን ዝወፀ ኣዋጅ ቁፅሪ 97/98 በዚ ኣዋጅ ተሳዒሩ ኣሎ፣
2. ነዚ ኣዋጅ ዝፃረር ዝኾነ ኣዋጅ፣ ደንቢ፣ መምርሒ ወይ ድማ ናይ ኣሰራርሓ ልምዲ ኣብዚ ኣዋጅ ንዝተደንገጉ ጉዳያት ብዝተመልከት ተፈፃምነት ኣይህልዎን።

33. መሰጋገሪ ድንጋጌ

እዚ ኣዋጅ ቅድሚ ምውፅኡ፡-

1. ዝተገበሩ ውዕላት ላውጣን ክራይ መሬት ገጠርን በዚ ኣዋጅ ከምዝተፈፀሙ ይቑፀሩ፣

30. ልዩ ልዩ ድንጋጌዎች

1. በሚከሰት ለውጥና እድገት የሚኖር የተሻሻለ የገጠር መሬት አጠቃቀም ግምት ውስጥ ያስገባና በየጊዜው የሚሻሻል የገጠር መሬት አጠቃቀም መሪ ዕቅድ ይኖራል፣
2. ከሚዘጋጀው መሪ ዕቅድ (ማስተር ፕላን) ውጪ የመሬት አጠቃቀም መለወጥ አይቻልም፣
3. የግብርናና የገጠር ልማት ቢሮ በሚመለከተው አካል አማካኝነት በተለያየ ቦታ የሚገኙ የገጠር መሬት አስተዳደር ኮሚቴዎችና ዴስኮች በማስተባበር አስፈላጊውን የሙያ ድጋፍ በመስጠት የፌዴራል አዋጅና ይህን አዋጅ የማስፈፀም ሓላፍነት አለው።

31. ደንብና መመሪያ ስለማውጣት

1. የትግራይ ክልል የስራ አስፈጻሚ ምክር ቤት ይህን አዋጅ ለማስፈጸምና ይህ አዋጅ ተግባራዊ የሚሆንባቸው የምዕራባዊ ዞንና በሌሎች ተመሳሳይ አከባቢዎች በተመለከተ ዝርዝር ደንብ ያወጣል፣
2. የሚመለከተው አካል ለዚህ አዋጅና ቀጥሎ ለሚወጣ ደንብ ማስፈጸሚያ ዝርዝር መመሪያ ሊያወጣ ይችላል።

32. የተሻሩና ተፈፃሚ ስለማይሆኑ ሕጎች

1. የትግራይ ክልላዊ ብሄራዊ መንግስት የገጠር መሬት አጠቃቀም ለመወሰን የወጣ አዋጅ ቁጥር 23/1989 ፣ የገጠር መሬት አጠቃቀም ለመወሰን የወጣውን አዋጅ ቁጥር 23/1989 ለማሻሻል የወጣ አዋጅ ቁጥር 55/1994 እንዲሁም የገጠር መሬት አስተዳደርና አጠቃቀምን ለመወሰን የወጣ አዋጅ ቁጥር 97/98 በዚህ አዋጅ ተሽሯል።
2. ይህን አዋጅ የሚቃረን ማንኛውም አዋጅ፣ ደንብ፣ መመሪያ ወይም የአሰራር ልምድ በዚህ አዋጅ የተደነገጉትን ጉዳዮች በተመለከተ ተፈፃሚነት አይኖረውም።

33. የመሸጋገሪያ ድንጋጌ

ይህ አዋጅ ከመውጣቱ በፊት፡-

1. የተደረጉ የገጠር መሬት ልውውጥና የኪራይ ውሎች በዚህ አዋጅ እንደተፈፀሙ ይቆጠራሉ፣

2. ክሳብ ሕዚ ኣብ ጣብያ ኮሚቴ ምምሕዳር መሬት ገጠር፣ ወረዳ ዴስክን ስሩዕ ኣብያተ ፍርድን ኣብ ከይዲ ዝርከቡ ውሳነ ዘይረኸቡ ናይ መሬት ገጠር፣ ተንከፍ ክትዓት ወይ ክርክራት ይግበኣኒ ሓዊሱ በዚ ኣዋጅ ስልጣን ንዝተውሃቦም ኣካላት ዳይነት ተዛዊሮም እናተርኣዩ ዝውሰኑ ይኾኑ።

34. እዚ ኣዋጅ ዝፀንዐሉ ግዘ

እዚ ኣዋጅ ካብ 5 ታሕሳስ 2000 ዓ/ም ጀሚሩ ዝፀንዐ ይኸውን።

መቐለ

ፀጋይ በርሀ
ፕሬዚዳንት ብሄራዊ ክልላዊ
መንግስቲ ትግራይ

2. እስክ ኣሁን በቀበሌ የገጠር መሬት ኣስተዳደር ኮሚቴ፣ በወረዳ ዴስክ እና በመደበኛ ፍርድ ቤቶች ላይ በሂደት ያሉ ውሳኔ ያላገኙ የገጠር መሬት ነክ ክርክሮች ይግባኝን ጨምሮ በዚህ አዋጅ ስልጣን ለተሰጣቸው የዳኝነት አካላት ተዛውረው እየታዩ የሚወሰኑ ይሆናሉ ።

34. አዋጁ የሚፀናበት ጊዜ

ይህ አዋጅ ከታህሣሥ 5/2000 ዓ/ም ጀምሮ የፀና ይሆናል።

መቐለ

ፀጋይ በርሀ
የትግራይ ብሄራዊ ክልላዊ
መንግስቲ ፕሬዚዳንት