

*IMPACT OF SECURITY OF RURAL LAND TENURE
ON DEVELOPMENT AND ENVIRONMENT
IN ETHIOPIA*



*By
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May 2005

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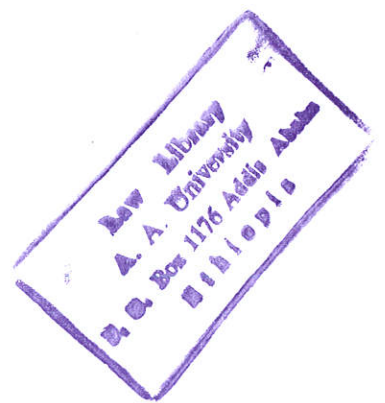
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DEDICATION

*To my wife, Fessesework G. Hiwot and
to the memory of my father, Antoine Gebre,
my mother, Atsede G. Mariam, and
my brother, Amare Antoine*



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As ever, the real and deepest thanks are due to my wife Fessesework, who has borne the brunt of all my travails and endured the inevitable pressures, in a caring and loving manner.

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ABSTRACT

Ethiopia being predominantly an agrarian country, the performance of agricultural sector significantly influences the performance of other sectors of the economy. There is an agreement that Ethiopian agriculture is in a very bad shape. It is still as vulnerable as it was 20 or 30 years ago. The country is listed among the food deficit countries of the world. The traditional farming practices with little or no soil conservation measures have significantly eroded the fertility of the soil.

Environmental degradation in Ethiopia is enormous and increasing at an alarming rate. The major environmental problem in our country today is land degradation. The problem is mainly caused by lack of investment on indigenous land conservation techniques and abandoning land improvement and management practices such as terracing, bunding, mulching, fallowing, crop rotation, planting nutrient-fixing crops, etc.

In light of the foregoing this paper attempts to examine the relationship between environmental condition and land tenure. The paper maintains that land tenure can promote land use practices that serve to enhance the environment or it can harm the environment. Insecure land tenure is linked to poor land use which in turn leads to land degradation. Lack of clear rights to land can reduce the incentive to implement long-term conservation measures. It discourages peasants to use such long-term measures and instead leads them to concentrate on getting whatever they can now without looking into the future. The paper argues that in the Ethiopian context tenure insecurity is to a large extent attributable to periodic land redistribution which is carried out from time to time. The paper further argues that the underlying cause of tenure insecurity is the policy of public ownership of rural lands, which policy makes land redistribution possible and suggests that the practice of land redistribution should be halted immediately.



INTRODUCTION

This research paper examines and analyzes the existing land tenure policy and the legal regime in light of its impact on the country's development endeavour and on the environment, in particular on the land resource base.

Although the topic refers to development and environment more focus, however, is on the environment, for the simple reason that the research is related with the Course of the Law of Natural Resources and Environment. But this does not mean that the 'development' aspect will not be treated at all, as environmental protection is more or less concerned with the sustainable development of natural resources. For countries like Ethiopia where the majority of the population (about 85% in our case) earns its livelihood from agriculture the proper utilization of land, which is one of the natural resources and the major input in the productive activity, is very essential and hence the concern of the paper.

Environment is not protected for its own sake. It is for the sake of the people (the well-being of human beings) that environment is protected from degradation. Environmental degradation in our case is more or less the degradation of land. It is from this perspective that we discuss the issue of development and environment with reference to land tenure policy.

But the reader should not expect all aspects of development -- rural and urban, industrial and agricultural, social and political, etc. -- to be treated in the paper.

Research Objectives

The general objective of the study is to review and analyse Ethiopian land tenure systems in as much as they constrain tenure security and sustainable use of land-based resources, and to suggest recommendations to address the land tenure issues within the context of sustainable development.

The specific objectives of the paper include, among other things, to:

- assess the impact of different land tenure systems on farmers' attitude towards investment on land.
- examine the relationship between land tenure systems and sustainable development
- identify ways and means of ensuring tenure security.

Scope of the Research

As can be seen from the title the paper is concerned only with rural land tenure. That means urban land tenure is out of the purview of the research. Even from rural land issues those related to pastoral lands are out of the scope of the research. The research is concerned with tenure policy and the legal regime as it applies to agricultural land, specifically as it

applies to farmlands held by farmers. The other limitation in scope is that the paper does not discuss all legal and policy issues related to land tenure system but only the insecurity (security) aspect of the policy and law.

Research Method

The method adopted in this research is document analysis. Initially, when I wrote the research proposal, in addition to literature review, I was thinking of conducting a field study. But, when I made further reading, I came to recognize that a lot of field studies have been undertaken on the subject-matter in every part of the country especially in the Region I was planning to carry out the field study - the Amhara Region. Because of this I dropped my initial plan of undertaking field study. Instead, I considered it more appropriate to closely and thoroughly investigate and critically analyse and synthesize the researches already done.

Organization of the Paper

The paper is organized in five chapters. In the first Chapter, which immediately follows this introduction, two points which I think are essential as background information are highlighted. The first part highlights the relationship or the interdependence of development and environment, and the second part gives a brief account of the country's economic and ecological situation. Chapter 2 deals with theoretical and conceptual framework, and concepts such as property rights and land tenure, are defined and elaborated. In addition, the land tenure system that existed prior to the

1975 land reform and land tenure system that existed during the Derg regime are briefly outlined. Chapter 3 is dedicated to the current land tenure situation. The Chapter has three parts. The first part outlines the major features of the current land tenure system; then follows the justifications given or arguments forwarded in favour of the existing tenure arrangement by advocates of the legal and policy regime; and the third part gives an overview of the consequences of the current tenure arrangement. Chapter 4, which is the main part of the Paper, discusses the impacts of tenure insecurity on agricultural development and on the environment. The last chapter (Chapter 5) attempts to describe some ways and means of ensuring tenure security. And finally comes the conclusion and a few recommendations.

CHAPTER 1

BACKGROUND

1.1 Development and Environment: Their Relationship

Development involves a progressive transformation of economy and society. Development is more than economic growth or quantitative change. It is also a change in quality; an improvement in the quality of life, an increase in the standard of living. The World Conservation Strategy defined development as:

“the modification of the biosphere and the application of human, financial, living and non-living resources to satisfy human needs and improve the quality of human life.”¹

Economic Growth

The major objective of development is the satisfaction of human needs and aspirations. To satisfy human needs and aspirations development requires economic growth. But human aspirations are not one and the same in every society. It varies from country to country depending on the level of development of each country. For the poor developing countries the aspiration of the society is to meet the essential means of survival, the basic necessities -- food, clothing, and shelter. When it comes to the developed wealthy nations, since these basic needs are almost fulfilled, their aspiration is enhancing the standard of living mostly through increased consumption in goods and

services. In these wealthy nations increased production no longer serves primarily to satisfy needs; rather the creation of needs serves to increase production.² A more elaborate definition of development given by the 1992 World Bank Development Report, which I think is worth quoting, runs as follows:

*“Development is about improving the well-being of people. Raising living standards and improving education, health, and equality of opportunity are all essential components of economic development. Ensuring political and civil rights is a broader development goal. Economic growth is an essential means of enabling development.”*³

To meet these human needs, in both developed and developing countries, productive activity is required. This means human intervention in natural systems through cultivation, fishing, logging, manufacturing and many other activities. As a result of human intervention through productive activities the life-support systems, the natural systems that support life on earth: the atmosphere, the waters, the soils, may be affected. Economic growth and development obviously involve changes in the physical ecosystem; they always bring risks of environmental damage, as they put increased pressure on environmental resources. However, this does not mean that every ecosystem everywhere should be preserved. It can not. Of course, renewable resources like forests and fish stocks need not be depleted provided the rate of exploitation is within the limits of regeneration and natural growth. As for non-renewable resources, like fossil fuels

and minerals, their use inevitably reduces the stock available and may finally be depleted.

Until recently the environmental effects of such interventions were not so large in scale to be felt as a threat to the life-support systems both locally and globally. In the international level environmental problems were for the first time discussed in the 1972 UN Conference on the Human Environment held in Stockholm, Sweden. Though many environmental problems were raised in the Conference the focus, however, was on the depletion of natural resources and pollution which were the concerns of the industrialized nations which proposed the Conference.⁴

Despite some degree of international consensus on the existence of environmental problems, there were however differences concerning the causes of the problem between the industrialized North and the developing South. The outstanding issue for the developed countries was mainly pollution, which according to them was caused by economic growth. The developing countries, on the other hand, were primarily concerned with the environment as a medium for, and a factor in, development. Their main concern was poverty – how to lift themselves from this scourge through more intensive use of resources. Stating that no country wants pollution at all, they, however, argued that each country must evolve its own plans, exploit its own resources as it thinks suitable, and define its own environmental standards.⁵ The developing countries further argued that poverty posed a greater threat to both human welfare and the

environment by reducing people's capacity to use resources in a sustainable manner, and asserted that economic growth in their case was not the problem but the solution.⁶ They stressed that growth must be revived in developing countries because that is where the links between economic growth, poverty alleviation, and environmental conditions operate most directly.⁷ For them the assertion that less income means less pollution is nonsense, and held that the so-called '*pollution of poverty*' can be corrected only through higher income, or more precisely through economic development.⁸

There was widespread agreement among the so called Third World governments at the Stockholm Conference on the following major points:

- that the North was responsible for global environmental crisis;
- that the North, having reaped the fruits of industrialization, now sought to close the door on the South;
- that the environmental problems of poverty differed fundamentally from those of affluence; and
- that solutions crafted with the North's problem in mind would be ineffective, or worse, if imposed on the South.⁹

The South's unity in Stockholm made it clear that a global response to environmental problems would require linking the environmental debate to the development concerns of the South.¹⁰ The Stockholm Conference was a seminal event in the history of global environmental politics. It was the first broad international effort

to evaluate and discuss the environment in systematic and comprehensive manner, and it helped to establish the trajectory of future efforts. It was a watershed event in the international environmental law which summed up the awakened conscience and marked the beginning of a truly ecological era. ¹¹

However, the tension between the developed and developing nations persisted for long. It was only after a decade and a half that these conflicting objectives appeared to reconcile. It was when the World Commission for Development and Environment (WCDE) – better known as the Brundtland Commission after its chairperson, former Norwegian Prime Minister Gro Harlem Brundtland – published its influential report *Our Common Future* in 1987 that a consensus was reached that the protection of the environment and economic growth are not incompatible, but rather complementary.

The Report accepts that economic growth always brings risk of environmental damage, as it puts increased pressure on environmental resources. It, however, holds that policy makers can avert the problem. The Report states:

*"Policy makers guided by the concept of sustainable development will necessarily work to assure that growing economies remain firmly attached to their ecological roots and that these roots are protected and nurtured so that they may support growth over the long-term..."*¹²

The concept "*sustainable development*", which began to evolve at the Stockholm Conference and came into prominence in 1980 when the International Union for the Conservation of Nature and Natural Resource (IUCN) presented its World Conservation Strategy (WCS)¹³, was for the first time endorsed explicitly in this Report. 'Sustainable development' was defined in the Report as "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*".¹⁴ And this is made possible through sound economic development and environmental management policies. These are complementary aspects of the same agenda -- without adequate environmental protection development will be undermined and, without development environmental protection will fail. In the few years after the publication of the Brundtland Report a dramatic transformation in the environment-development debate has been exhibited. The question being asked was no longer "*Do development and environmental concerns contradict each other?*", but rather "*How can sustainable development be achieved?*" All of a sudden the phrase Sustainable Development has become pervasive.¹⁵ The basic premise of sustainable development is that poverty is largely responsible for environmental degradation. Therefore, removal of poverty (i.e., development) is necessary for environmental protection. The 1992 World Bank Report emphasizes the existence of a substantial synergy between alleviating poverty and protecting the environment and demonstrates that "*the poor are both victims and agents of environmental damage.*"¹⁶ Allan Durning has the following to say in this connection:

“Dispossessed peasants slash-and-burn their way into the rain forests of Latin America, hungry nomads turn their herds out into fragile African rangeland, reducing it to desert, and small farmers in India and the Philippines cultivate steep slopes, exposing them to erosive powers of rain. Perhaps half the World’s billion-plus absolute poor are caught in a downward spiral of ecological and economic impoverishment. In desperation, they knowingly abuse the land, salvaging the present by savaging the future.”¹⁷

The concept “*sustainable development*” provides a framework for the integration of environmental policies and development strategies and its pervasiveness is demonstrated by Sharachchandra in the following manner:

“Sustainable development is a ‘metafix’ that will unite everybody from the profit-minded industrialist and risk-minimizing subsistence farmer to the equity-seeking social worker, the pollution-concerned or wildlife-loving First Worlder, the growth-maximizing policy-maker, the goal-oriented bureaucrat, and therefore, the vote-seeking politician.”¹⁸

In 1992, five years after the publication of the Brundtland Report another international conference, the United Nations Conference on Environment and Development (UNCED), popularly

dubbed the Earth Summit was held in Rio de Janeiro in Brazil. The Rio Conference, which lasted for twelve days, was attended by representatives of 178 nations (including Ethiopia). In the Conference diplomats debated the causes of environmental problems, the nature of the linkage between the environment and economic development, and the appropriateness of various policy responses. By the end of the Conference, they produced an international agreement on climate change and biological diversity, and the Brundtland Report's central message: *"socio-economic development and environmental protection are intimately linked and effective policy-making must tackle them together"* was reaffirmed in Agenda 21, an action plan of UNCED.¹⁹ The previously controversial concept of *"the right to development"* was for the first time fully endorsed by the international community in Principle 3 of the Rio Declaration.²⁰ Principle 3 of the Rio Declaration notes that *"the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations"*, while Principle 4 states that *"in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it"*. As the 1997 report of the UN Secretary General remarks:

*"Solving environmental problems requires resources which only economic growth can provide, while economic growth will falter if human health and natural resources are damaged by environmental degradation."*²¹

1.2 A Brief Account of the Country's Situation

Ethiopia is predominantly an agrarian country. Agriculture accounts for about 50% of the GDP, 80% of employment, and about 90% of the country's export earning.* The performance of agricultural sector, therefore, significantly influences the performance of other sectors of the economy.²³

There is an agreement that Ethiopian agriculture is in a very bad shape. It is still as vulnerable as it was 20 or 30 years ago. Agricultural output has fallen short of population growth for over two decades. According to the 1999/2000 annual report of the Ethiopian Economic Association one of the consequences of the poor performance of the sector is widespread food-insecurity. It is estimated that about 50 to 60 percent of the country's population is food insecure, or live below the poverty line. According to this report annual food-deficit increased from 0.75 million tons in 1979/80 to over 5 million tons in 1993/94, more than a six-fold increase in just 14 years.²⁴ Even during good harvest years the survival of some 4 to 6 million Ethiopians still depend on the generosity of international donors. Kinfe stated that even under normal climatic conditions the country experienced a shortfall in food production to the tune of 25% of the need.^{** 25}

* Figures, however, differ. For instance, Dr. Kinfe Abreha says that agriculture accounts for virtually all export earning.²²

** Kinfe, however, says: "*Ethiopia will achieve food-security very soon*" (p.273), and in page 277: "*Ethiopia is nearly self-sufficient in food production*".

overgrazing, and deforestation are the major causes of environmental degradation. Particularly the continuous cutting of trees for fuel wood and for construction, as well as for the expansion of cultivation due to an increase in agricultural population has led to deforestation. It is estimated that from 80,000 to 200,000 hectares of forest are lost every year.* And as a result the forest cover at present is below 2.7%.³³

On the other hand the scarcity of fuel wood compels rural people to use crop residues and dung as sources of household energy. This in turn leads to the deterioration in soil structure, decline in soil fertility, moisture storages and infiltration capacity, and decline in the humus content of the soil.³⁴

Due to the factors mentioned above environmental degradation in Ethiopia is enormous and increasing at an alarming rate. Land degradation through soil erosion and loss of fertility as a result of nutrient mining has become horrendous. Deforestation rates have, for too long, been outweighing the sustainable yield rates. The loss of biodiversity has also been and continues to be rampant.³⁵ The gradual but steady removal of the vegetation cover reinforced a relentless process of degradation, causing agricultural yields to fall. With the natural cover gone, the soil has become drier and drier, erosion more rapid, and droughts more severe and frequent. This in turn induced further deforestation, as more forest lands were needed and cleared for feeding a growing population. Ermias demonstrates the magnitude

* According to the Ethiopian Forestry Action Plan (1994) the rate was estimated to be from 150,000 to 200,000 hectares per year.³²

of the problem and the urgency required to tackle the problem in the following manner:

*"... Ethiopia is facing an environmental deterioration unparalleled in its long history. It would and at best be described not only as an EMERGENCY situation but also calls for decisive ACTION, on the part of all concerned, as of immediate."*³⁶

Notes
Chapter 1

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CHAPTER 2

THEORETICAL AND CONCEPTUAL FRAMEWORK

2.1 Land Tenure Regimes

2.1.1 Property Rights

The concept of property rights has grown out of the law of property. The law of property is concerned with conferring on us legal powers in relation to a thing.¹ It is a legal concept whose significance changes in consonance with the changes in the legal system, which in turn is conditioned by the stage of the development of society. Society at different stages of development has given its own content to the notion of property. But at whatever phase of development the society might be, the institution of property remained vital to human existence. The presence of the institution of property in society is necessary for order and stability. It is this simple and primitive fact that Bentham expressed in his oft-quoted dictum: *"Property and law are born together and die together. Before laws were made there was no property; take away laws, and property ceases."*²

Property rights are social conventions backed up by the power of the state or the community (at various levels) that allow individuals or groups to lay a claim to a benefit or income stream that the state will agree to protect through the assignment of duty to others who may covet, or somehow interfere with, the benefit stream, i.e., with

the peaceful enjoyment of the right. Governments play an important role by determining how property rights are defined, how they can be enforced, and how they evolve in line with changing economic conditions. Property is not merely the assets or things themselves, but consensus between people about how these assets or things should be held, used, and disposed of.³ The Ethiopian Civil Code, however, seems to use the concept 'property' interchangeably with the objects or things themselves. Using expressions such as "property privately owned" (Art 1444), enumerating assets such as roads, port installations, railways, buildings, etc. as 'property' (Art. 1446), can serve as examples. The section dealing with 'Property' in the Code (Book III) is entitled 'Goods' not, say, 'Law of Property', 'Property Law', 'Property', or the like. Conceptually speaking one does not own a property, rather owns an asset or an object, and it is this owning that is called property. Property being a legal concept, not an asset in itself, it is conceptually incorrect to use expressions such as 'take possession of property', 'own property', etc. as the Kenyan Constitution under Art. 75(1) states: "*No property of any description shall be compulsorily taken possession of*".

More conceptually, a 'property regime' may be said to consist of two components - 'property rights', which are bundle of entitlements defining rights in the use of a particular asset (benefit stream), and 'property rules', which are the rules under which those rights are exercised.⁴

In practice, multiple rights can be held by several persons or groups. This has given rise to the concept "*bundle of rights*". These rights are listed as (1) the right to the physical use of a thing; (2) the right to the income from the thing, in money, in kind, or in service; and (3) the power of management, including that of alienation, of the thing.⁵

Property rights can be broadly categorized into 'ownership right' and 'usufruct right'. Some writers, however, distinguish three categories: (1) the right to use an asset; (2) the right to earn income from an asset; and (3) the right to transfer ownership right over an asset.⁶ But, I do not subscribe to such categorization, for these are rather elements of property right usually known as "bundle of rights" and each element of the right can be pictured as "sticks in the bundle".⁷

In the literature it is not uncommon to see the term 'property' used as synonymous to 'ownership'. Develin and Grafton, for instance, use such expressions as "*property rights are defined in terms of owners and their relationship with others regarding the asset*".⁸ But property rights are not defined in terms of owners only; they may also be defined in terms of users (usufructuaries). 'Ownership' is only one category of property rights. There are a host of other property rights such as usufruct right, the right of servitude, leasehold right, etc. Andarkweh makes the same mistake when he says:

to occupy and use the house for an agreed period of time, whilst the landlord owns the right to receive the rent, re-let the house after the agreed period, or dispose of it".⁹ (emphasis added)

2.1.2 Property Rights to Land ✓

"A societal ability to define and, within a broad system of the rule of law, establish institutions that can enforce property rights to land as well as to other assets is a critical condition for social and economic development."¹⁰

Land tenure as a property right to land is the relationship, whether statutorily or customarily defined, among people as individuals or groups with respect to land.¹¹ It is the system of rules and institutions that govern access to and use of land. It can be further defined as the terms and conditions under which land is held, used, and transferred, and it is one of the principal factors determining the way in which resources are managed and used, and the manner in which benefits are distributed.¹²

– Land tenure consists of social relations established around the control and use of land. A land tenure system and its set of tenure relations are interwoven and related to other societal structures and institutions, including economic structures as well as family structures with its marriage and inheritance practices. From an institutional

perspective, land tenure consists of land rights and the institutions that determine, administer, regulate, and enforce those rights.¹³ As Hoben noted, land tenure system encompasses far more than a set of legal statutes, customary rules, and administrative practices. It also encompasses the ways land-based resources are used, how they are categorized, and the processes and strategies through which access to them is acquired, maintained, and lost.¹⁴ In simple terms, land tenure systems determine who can use, what resource, for how long, and under what conditions.¹⁵

There are different categories of property right to land. The standard literature, however, distinguishes four categories of property rights to land. These are private, communal, state, and open access, property rights. Each of these has a different owner, ownership rights, and owner's duties. To describe them briefly:

1. Private property (*res privatae*): Under this system the right to exclude others from using the resource (i.e., land) and to regulate the use of the resource is vested in an individual or a group of individuals. Private property rights are exclusive and transferable.
2. Communal property (*res communes*): Under this tenure system the resource is held by an identifiable community of interdependent users. These users exclude outsiders while regulating use by members of the community. Within the community, rights to the resource are unlikely to be exclusive, they are often rights of equal access and use. The right of the group may be legally recognized. In other cases the rights are

9 25 4 20 6 20

de facto, depending on the benign neglect of the state. In Ethiopia, prior to the 1975 Land Reform, communal property had legal recognition in the Civil Code under the designation 'Agricultural Communities'. (Article 1489)

3. State property (*res publicae*): The rights to the resource are vested exclusively in the state which in turn makes decisions concerning access to the resource and the level and nature of exploitation.¹⁶ If the state chooses not to exercise its right to manage the resource it can allow open-access. It could also limit entry and have a limited-user open access or create private "ownership"* of harvesting right to fish.¹⁷ The property regime that emerges is at the forbearance of the owner of the resource, i.e., the state.
4. Open-access (*res nullius*) is the absence of a well defined property right. Access to the resource is unregulated and is free and open to every one. It is where no property rights exist over the resource. It is also referred to as "*a state of non-property*", a case where 'everybody's access is nobody's property'.¹⁸ More accurately, we can describe open access as a "*free for all*" where people are able to exploit the resource as they see fit. Open-access, therefore, leads to over exploitation of natural resources.¹⁹

* It is not as such *ownership* of harvesting right, rather it is use (usufruct) right. Ownership right is on the fish caught.

2.2 Land Tenure in the Ethiopian Context

2.2.1 The Pre - 1975 Land Tenure System

Land tenure system prior to the 1974 revolution was not uniform throughout the country. There was a broad contrast between the northern highlands, the recently incorporated regions of the south and west highlands, and areas located in the periphery. Even within regions various tenure systems existed. These differentiated forms of tenure were attributed to the country's geographical, ethnic, and cultural diversity.

In the northern highlands, especially in Amhara and Tigray regions, communal form of land tenure was prevalent. Under this tenure system members of the community have the right to a share of the land held by the community. The right does not refer to a specific plot, but to a portion of the land. It is the right that is inherited, not an identifiable plot of land. This does not, however, mean that a person does not inherit his parents specific plots.²⁰

The right over land which is derived from kinship is called rist. *Rist* refers to a hereditary usufruct right in land. It is a right to a share of a larger historically and residentially defined tract of land.²¹ The *rist* holder, however, was not entitled to sell the land under his possession, since the land was a common property of the community, not a private property of the individual holder. Otherwise, the *rist*

holder had almost absolute use right over his holding.²² There was no tenure insecurity or fear of being evicted, as there was no government intervention. Although there were periodic land redistributions these were very rare, and hence could not pose as a threat to tenure security. Absence from the locality does not result in the loss of such hereditary right. The only thing required of a claimant of rist right is to establish and prove his kinship (i.e. his lineage) to a common ancestor. Markakis asserts that tenure security was quasi-absolute.²³

The other tenure system that was prevalent in the northern highlands was gult system. *Gult* is defined by Hoben as "*a non-transferable right of benefice to a complex of tributary, judicial and administrative rights over land granted by a higher authority*".²⁴ The higher authority, according to Hoben, grants gult right either to his supporters as a reward of past services and in anticipation of future loyalty, or to a religious institution as an endowment. The *gult* holder cannot transfer his right by any means, not even bequeath it to his heirs. But there is a variant of the *gult* system, which was known as *rist-gult* which was transferable.²⁵

There was also another tenure type which was associated with the Ethiopian Orthodox Church. The church was endowed with rights over some portion of land in its parish. Lands over which such rights were held by the church were known as semon lands. *Semon* land may not be in the immediate possession or utilization of the church or the clergy. It could be held by a non-clergy family with the obligation

to pay ^{ነገረት}tribute to the church. Such lands were not obligated to pay tribute to the state.²⁶ *duty exemption*

The land tenure system in the south was quite different from the north, where communal ownership was predominant. In the south, the predominant tenure systems were private ownership and state ownership of land. There was also *semon* land, though not as vast as the case in the north. These tenure systems in the region were the consequences of Menelik's expansion towards the end of the 19th century. Prior to this historical event the tenure systems prevailing in the region were not quite different from that of the north; communal ownership was the predominant land holding system. The new tenure systems were alien to most of these territories. As a result of the new tenure system a dominant-subordinate relationship between the northern settlers and the indigenous people emerged, and the majority of households were relegated to the status of tenants, who were forced to pay up to two-thirds of their produce to the owners of the land.²⁷ The Civil Code even condoned a more exorbitant share, up to three-fourth, of the produce. (Art. 2991)

The nobility from the south who collaborated with Menelik's army and who were subsequently governing the new provinces were rewarded with grants of *gult* and *rist-gult* rights over vast areas containing large number of peasants.²⁸

In addition to the major ones mentioned above there were a host of other tenure systems in the country, such as *maderia*, *siso-gult*,

madbet, *hudad*, *gindebel*, to name but a few.²⁹ Desalegn says there were as many as twenty. He, however, maintains that all the tenure systems could be grouped together into two broad categories, as 'usufructuary tenures' and 'private tenures'. He further states that usufruct system could be sub-divided into communal, church, and state tenures.³⁰ But, this categorization is, I am afraid, a bit misleading. * First, as to the two categories, usufruct and private tenures, it is not clear on what basis they are categorized. In case of usufruct obviously it is on the basis of the type of right on the land held, i.e. the right to use the land, which right does not include to dispose of the land. But the case of 'private tenure' is not clear. Is it to mean 'private property' right which right includes land disposal? If this is what is intended to mean, then the categorization would have been better if the term ownership were used, instead. Private tenure is usually used when classifying 'ownership rights' or 'property rights', into the four categories: private property, communal property, state property, and open access. Secondly, there are tenure systems which do not fall under any of the two categories, for instance, where can we put *gult system*? Third, as to the sub-division of usufruct tenure into communal, church, and state tenures, it is, of course, correct to say that *rist*, *madeira*, and *semon* land tenures (which are variants of communal, state, and church land tenures, respectively) are usufruct tenures. However, since not all state lands, for instance, are held as *maderia* land, it is incorrect to bring state land as a whole under usufruct tenure. If we categorize all state lands into usufruct tenure, then who has...

reversion -



state had reversionary right, which denotes that the state is the owner of the land. The state could also grant land to individuals, not only as *maderia*, but also as private property (in perpetuity) with the full right to dispose of the land if the grantee so wishes, a right not available to the usufructuary. It is not, therefore, state land as such but rather *maderia* land, one variant of state lands that comes under usufruct tenure. Similar points can be raised regarding communal and church lands. But I do not think it is necessary to dwell on this point any further.

- In an attempt to restate Desalegn's position Haile Kibret makes one additional conceptual error. He states: "*Desalegn (1984, 23) identified two major ownership patterns*" (emphasis supplied).³¹ To start with, Desalegn did not use the term 'ownership patterns', he rather said tenure patterns (to be exact 'tenure system'). In other words, Desalegn did not identify two major 'ownership' patterns, but two categories of tenure system.³² As to the conceptual error, I see a contradiction in terms in Haile's statement quoted above. If the tenure is "*usufruct*" that means it is not "ownership". Usufruct tenure and ownership tenure are distinct types, or divisions, of property rights to land. In other words, it is property rights to land that is divided into two major categories: usufruct tenure and ownership tenure (not 'private' tenure, because private tenure is only one of the four types of ownership rights). Besides, Haile is not consistent in the use of terms. Sometimes he uses the concept 'ownership' in its correct sense. This can be seen from the expressions which he used in his paper, such as

"access to use, but not to own" at page 50, and "access right (short of ownership) to a piece of land", at page 51.

To generalize, land tenure systems prior to the 1975 land reform were predominantly communal ownership in the northern highlands with the peasants having only use rights on their holdings, and government and private ownership in the recently incorporated regions, with land concentrated in the hands of a few landlords and the majority of the indigenous population reduced to the status of tenants forced to share a portion of their produce to absentee landlords.

2.2.2 The Post-1975 Land Tenure

The archaic and very exploitative land tenure system and the resultant stagnation in agricultural productivity and production and the consequent poverty of the country precipitated into the 1974 popular uprising and the over-throw of the imperial regime, and the coming into power of the junta under the name, the Provisional Military Administrative Council (PMAC), shortly known as Derg.

• Following the assumption of power the Derg took many progressive steps to change the feudal socio-economic relations and to break the resistance of the feudal forces. One of the major steps of the Derg was the nationalization of all rural lands, which was a decisive and final blow to the feudal system. The proclamation that brought all rural lands under state (public) ownership was promulgated in March,

1975 under the name Public Ownership of Rural Land Proclamation, No. 31/1975. There were also subsequent legislations regarding rural lands, but none of them made any major alterations to the first proclamation. Proc. No. 31/1975 thus remained the basic legal document of the country's agrarian reform until the 1990 Mixed Economic Policy of the Derg.

It is provided under Art. 3 that: "*all rural lands shall be the collective property of the Ethiopian people*" which in essence means that rural lands were brought under state control. According to this provision, the ultimate power over the disposition of land rests on the state, and the authority of peasant associations to administer land in their respective localities is an authority delegated to them by the central government.

Under Art. 4 it is provided that land could not be owned by individuals or organizations. Farmers have only usufruct right over the lands they cultivate. It was also expressly provided in the same provision that no land could be transferred by sale, exchange, mortgage, lease, succession, antichresis or by any other means, with the exception of inheritance by the families of deceased holders. The family members who could inherit the land are also specified in the provision, and they are the deceased's spouse, minor children, and if no minor children, majority attained child. In the case of majority instead of the plural 'children' the singular 'child' is used. Whether this is deliberate or not is not clear from the provision.

Another major provision in the Land Reform Proclamation is that stipulated under Art. 4(5) which prohibited the use of hired labour to cultivate one's holdings. This was perhaps an attempt on the part of the Derg to abolish tenancy relationship. It is in other words to give emphasis to owner-cultivation. The underlying assumption seems to be that since any person willing to cultivate land was entitled to get land sufficient for his maintenance and that of his family there was no need for him to enter into a tenant-landlord relationship. The ideological inclination towards the left (i.e. socialism), which was the order of the day at that time, must have inspired the Derg to include such provision. However, women with no other adequate livelihood could use hired-labour. The other exception was in case when the landholder dies or where he/she is incapable of farming due to sickness or old age. In such cases, according to the provision, the wife or husband, or children who have not attained majority, could use hired labour. But what if the husband (whose wife died) is capable of cultivating? An answer cannot be found from the provision. But since the legislature's intention is to make distinction based on gender (affirmative action) there seems to be no reason to allow the capable or physically fit husband to use hired-labour

The Proclamation also provides for the establishment of peasant associations within every 20 *gasha* (800 hectares) for administrative and judicial functions, the most important of which, at the initial stage, was land distribution. However, from 1977 on-wards the central government increasingly usurped the peasant associations' power through the creation of hierarchical structures and

Accordingly, membership of cooperatives was made voluntary, grain-quota was lifted, further redistribution of land was brought to an end, etc. This policy change of the then government was hailed by Dr. Kinfe Abraham in the following manner:

"But the logjam of the reform was broken in May by important decisions made at the 11th Plenum of the Central Committee of the Workers Party of the Derg." ³⁴*

The final phase of the reform covers the period from the assumption of power by EPRDF in 1991 to the present. Initially the EPRDF government (which was then called the Transitional Government of Ethiopia-TGE) maintained the *status quo* with respect to the land tenure, except for the provision to allow land redistribution to returnee soldiers, and said that land issue would be determined by elected government. Later the government changed its position and said that it will be decided by a referendum. However, the promised referendum on land issue was not conducted; rather land tenure was made a constitutional issue and inserted in the 1995 EPRDF Constitution. ³⁵ The content of the land tenure policy as stipulated in the Constitution and subsequent legislations will be discussed in the next Chapter.

* One minor correction: It is not the Workers Party of the 'Derg'; to my knowledge such party did not exist. It must be of 'Ethiopia'.

Notes

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CHAPTER 3

THE CURRENT SITUATION

3.1 The Land Tenure Policy and the Legal Regime

The current land tenure policy is in fundamental ways similar to the land tenure policy of the Derg. Like the Derg's land reform legislation (Proc. No. 31/1975) the 1995 Constitution has declared under Art. 40(3) that the "*ownership of land (rural and urban) is exclusively vested in the State and in the peoples of Ethiopia*"*. (Under Art. 40(4) the Constitution guarantees the Ethiopian peasants the right to obtain land without any payment and the right against eviction.) Whether the peasants' right on the land is "*ownership*" right or only "*use*" right is not expressly declared in the provision. There are some confusing expressions here and there in the Constitution. For instance, under Art.(5) "*their own lands*" is used; the Amharic version of Art. 40(4) uses the term 'ከመሬታቸው', a word for word English translation of which is "*from their lands.*" Both "*from their possession*" and "*from their own lands*" are translated into Amharic as 'ከመሬታቸው' ("from their lands"). However, since the preceding sub-article (Art.(40(3)) expressly declares that ownership right is exclusively vested in the State, it becomes clear that the peasants' right is only use right, and the confusing expressions are the results of

* One may rightly ask if there is any distinction between the State and the Peoples of Ethiopia. Since the State is an agent of the people it would be sufficient to mention the principal (the peoples) as owners of land.

poor draftsmanship (that pervades the Constitution and many other legislations).

☞ One major feature of the current land tenure policy is that concerning land transfer. Under the Constitution it is provided that land “*shall not be subject to sale or to other means of exchange*” (Art. 40(3)). The sweeping statement of the Constitution apparently seems to prohibit any kind of land transfer including transfers like land-lease and land inheritance. But a closer look at the provision shows that what is intended to prohibit is land transfer or disposal for consideration. Sale is obviously a disposal for consideration. It is one *means of exchange*, i.e., exchanging land for money; money is serving as a medium of exchange. Bartering is another means of exchange. You can, for instance, barter a plot of land for another commodity or for another plot of land. And there may be many other means of exchange through which one can dispose of land. And what is intended to prohibit is, I think, such kinds of transactions. Besides, that this (i.e., prohibiting land transfers such as lease and inheritance) is not the intended result is made clear by the subsequent Federal legislation (Rural Land Administration Proclamation No. 89/1997). These land transfer arrangements (i.e., land lease and land inheritance) can be found in the provision dealing with the definition of words or concepts (Article 2), under sub-article 3, which sub-article is meant to define “*holding right*”. No separate article dealing with “*land lease*” or “*land inheritance*” can be found in the Proclamation. “*Holding right*” is defined as a “*right any peasant shall have to use rural land for agricultural purposes as well as to lease and, while the right*

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remains in effect, bequeath it to his family member". In this definitional provision many substantial rights and privileges, which would merit separate treatment, are jumbled together. In the provision, it is stipulated that the right peasants have on their holdings is "*use right*", and as mentioned above, the *right to lease and bequeath land* are also stipulated in this same provision. And this opens a room for confusion. Besides, whether it is "a duty" or "a right" to use rural land is not clear, as the terms 'right' and 'shall', which have quite different meanings -- one denoting discretion and the other obligation, respectively -- have been used in a single statement. In the stipulation dealing with land bequest the singular "family member" instead of family members is used. Is the intention of the legislature to bequeath one's holding to only one member of the family so as to avoid land fragmentation? It is difficult to tell, more than just conjecture. The AmharaLand Administration Proclamation similarly says family member (Art. 2(4)). The provision utilizes even more confusing phrases such as "*heirs of any family member*" If this statement is to be taken for granted, the land holder has to bequeath his land not to "*his heirs*" or "*his family member*" but rather to the "*heirs of his family member*". But, I don't think this is the intention of the legislature. Perhaps it is a translation error as the Amharic version does not have such statement. The Oromia Land Administration Law, on the other hand, is free from such ambiguous statement and uses the expression "*bequeath it to his family member/s*" (Art. 6(1)).

The other major feature of the current land tenure policy is the policy of periodic land redistribution. Although land redistribution is

not mentioned in the Constitution, it is expressly provided for in the Federal Land Administration Proclamation. In the Proclamation “distribution* of holdings” is defined under Art. 2(4) as:

“a rural land allocation measure taken at intervals, upon the decision of the community, with a view to assigning holding right in a fair and proportionate manner as well as to demarcating land for communal use by peasants.”

* According to this definition, it is upon the decision of the community that a rural land allocation measure can be taken at intervals. However, in this same Proclamation there is a provision that vests the decision making power on another entity, i.e., the Regional Council (Art. 6(1)). There is an apparent contradiction between these two provisions, and it is only if the following questions are answered in the affirmative that the contradiction can be reconciled:

- Is the “community” of Art. 2(4) the whole people of a Region, represented by Regional Council? Or
- Is it to mean that the decision of the community (as per Art. 2(4)) has to be approved (as approval itself is a decision) by Regional Council (as per Art. 6(1))? Or
- Is the decision of any one of them sufficient to effect redistribution? In other words, Do they have parallel powers (the one independent of the other) as regards redistribution?

* The Proclamation does not use the term “redistribution”. Whether the choice is deliberate or not, this writer does not know.

The Amhara Rural Land Administration and Use Proclamation (NO. 46/2000) has a similar stipulation regarding land redistribution, with one technical difference, in that the stipulations of Art. 2(4) and Art. 6(1) of the Federal Proclamation are combined and provided under a single Article, i.e., Art 10. In addition to this, an attempt seems to have been made by the legislature of the Amhara Region to elaborate the stipulation of these articles (Art. 2(4) and 6(1)). For instance, the phrase “*decision of the Regional Council*” is replaced by the phrase “*decided by law*”. Provisions such as “*redistribution should not affect productive capacity*”, and “*redistribution should be supported by study*” are additional stipulations by way of elaboration. However, there is discrepancy between the Amharic and English versions. For instance, while the Amharic version states that redistribution should be “*supported*” by the community the English version says it should be “*requested*” by the community.

The Amhara Proclamation has also a provision to the effect that land users shall be deprived of their land use rights where they use their lands in an improper and destructive manner (Art. 7(2)), or where they do not utilize the land according to the established rules (Art. 6(3)). These stipulations contravene the basic principles of the Federal Proclamation which prohibits deprivations or evictions from one’s holdings on any other grounds other than redistribution.

In the Amhara Region land redistribution was officially conducted in 1996/97. Although it was clearly stipulated in Art.

52(2)d of the Federal Constitution that States must administer land in accordance with Federal laws land redistribution, which is one of the elements of land administration as per Art. 2(6) of the Federal Land Administration Proclamation, was carried out before the said Federal law was enacted. Under the Constitutional provision (Art. 51) dealing with the powers and functions of the Federal Government, it is provided that the Government shall enact laws for the utilization of land, and the power of the Regional States vis-a-vis land utilization is to "*administer land in accordance with Federal laws*" (Art. 52(2)d). Land administration according to the Federal Land Administration Proclamation is defined as "*the assignment of holding rights and the execution of distribution of holdings*". And this is what the Amhara Regional State has exactly done. It has assigned holding rights and executed distribution of holdings, which measure it should have waited the promulgation of the Federal law. Regional land administration laws should follow, not precede, Federal land administration law. Not only the Constitution but also the Federal Land Administration Proclamation has a provision to this effect, which states "*any Region shall administer rural land in accordance with the general provisions of this Proclamation*". This and other conditions are stipulated in Art.5 (Conditions of Land Administration) which conditions shall be observed by all Regional States in administering land under their specific jurisdictions.

Not only the Amhara Regional State but also Tigray Region published its Rural Land Use Decrees in March 1997 about three months ahead of the Federal legislation, which was published in June



1997. In the law there are two stipulations which indicate that there will be no more land redistribution in the Region. One is Art. 6 which endorses TPLF's last land redistribution of 1990 as valid, and the other is Art. 16 which recognizes the right of lifelong utilization and the right of inheritance of holdings. If land use right is for life and if, in case of death, it can be bequeathed to heirs that means there will be no more land redistribution. The provision of Art. 17 which provides for the allocation of marginal lands to the landless or land poor is an additional indication of the phasing out of redistribution in the Region. That is to say, if redistribution were not phased out in the Region the State would not resort to allocating marginal lands which is detrimental to the environment. Of course, the law does not expressly rule out periodic redistribution,¹ although Deininger et al state that "*in fact Tigray declared an end to land redistribution*".² If the term "*in fact*" is used in the statement to mean "*in essence*" the assertion is correct.

Oromia Regional State too has issued land-use and administration proclamation in 2002 (Oromia Rural Land Use and Administration Proclamation No. 56/2002). The Proclamation has a relatively detail, clear and consistent provisions as regards land redistribution. The Proclamation even makes a distinction between the terms '*redistribution*' and '*distribution*'. According to the Proclamation "redistribution" refers to the reallocation of land already held by individuals (Art. 2(1)), whereas "distribution" refers to the allocation of unoccupied land (Art.2(8)).*

* The Amhara Land Administration Proclamation uses the terms interchangeably

Land redistribution in Oromia Region is applicable only to irrigation land. This is expressly provided in Art. 14(1) that “*except an irrigation land, redistribution shall not be carried out in the Region*”. This stipulation is further strengthened by Art. 6(1) which recognizes life-long right to use land, and by Art. 15(1) which provides for the issuance of a “life-long certificate of holding right.”* Permanent residence in the Kebele (locality) where the land is situate is no more a requirement for land entitlement in the Region (Art. 15(5)). And there are many other commendable stipulations in this Regional Proclamation. But this does not mean that the law is in every aspect defectless. For instance, the provision which prohibits peasants to lease more than 50% of their holdings (Art. 11(5)), and the provision which restricts lease period to three years (Art. 11(2)) are not to be recommended.

A cursory look at these legislations indicates that there is no uniformity among Regions in issues of land administration. One may argue that as long as the Regions have been Constitutionally mandated to administer the land within their respective jurisdictions they are not obliged to act uniformly. But, since the Regions are not isolated entities, but integral parts of the Federal set-up, they have the duty and responsibility to observe the general provisions of Federal laws. Besides, as any region is not an island in itself, what happens in one region can be a cause of insecurity to the people in other regions.

* The Amhara Land Administration Proclamation calls this certificate as “ownership” Book, which is a misleading expression

3.2 Justifications for the Land Tenure Policy and Law

The land tenure policy and the legal framework outlined above has both supporters and opponents. In the forefront of the advocates of the current tenure system is the EPRDF Government. As stated above the land tenure policy of the Government is not fundamentally different from that of its predecessor, the Derg, except the fact that at present the policy has been enshrined in the Constitution. This is not, of course, commendable, for it makes it difficult to amend it, as the amendment procedure of the Constitution is very rigorous (Arts. 104 and 105). And seeing the dynamic nature of land as an economic factor the measure is ill-advised. The government itself believes that land tenure in most countries is not a Constitutional issue and admits, of course in a roundabout way, that the motive for making it one in our case is political.³

⊗ As a justification for public ownership of land, one point that is often raised is that it enables the state to allocate land to those who want to make a living by farming. According to them every Ethiopian has the right to obtain land and this is possible only if land is owned by the State. They extend this justification by arguing that if land is allocated to the whole rural population this will create employment opportunity, and hence efficient utilization of land and labour.⁴

Of course, initially if it were not for the Land Reform Proclamation (NO. 31/1975), which brought all rural land under state control through nationalization, the State would not be able to allocate

land to the peasants ('land to the tiller') as it was monopolized by feudal land lords. But the question now is, does the same justification still apply for the situation existing at present? Should land reform necessarily result in public ownership? Is it not possible to distribute land to the tillers, including ownership right, instead of vesting ownership right on the state? The controversy concerning land tenure is not on the issue of the necessity of land reform, it is rather on the issue of the investment of ownership right (whether it is to be invested on the state or the individual who tills the land). The efficiency argument which Haile raises and tries to substantiate by citing certain writers is not relevant to the discussion, as the issue is not "*whether land reform in general is essential or not*" but rather "*whether land should be privately owned or publicly owned*" (i.e. after it is distributed through land reform).⁵

The other justification in favour of public ownership of land is that such tenure arrangement prevents land concentration by a few individuals. The argument is that since land is state property and since peasants have only usufruct right they will not be able to sell their holdings. The rationale, they argue, is to prohibit land sale. If land is privatized poor farmers will be forced to sell their holdings and become landless. This is the equity aspect of the justification. The efficiency aspect of the justification, according to the advocates of the policy, is that if land is concentrated on a few hands it will result in inefficiency as a result of underutilization of land resource. But some argue that land concentration will not necessarily result in inefficiency. Tefferi, for instance, states:

*“Land concentration may not necessarily constrain agrarian productivity, if one looks at it in terms of its functions in distributing and balancing land and other key factors of production according to specific capacities and needs of different production units. It may, however, sharpen social stratification among farmers, if that has any bad effect at all....”*⁶

There are some writers who seem to condemn any kind of social stratification among peasants. Hussein Jemma, for instance, opposes land privatization from this ground when he asserts *“land privatization will lead to social stratification, the eviction of a wide spectrum of poor farmers and the resurgence of tenancy institution”*.⁷ What Hussein does not want to see is any difference in the standard of living among peasants. If the whole peasantry remains poor that does not matter as long as they are equal. But such attitude is not to be supported. It is not even beneficial to the peasants themselves; it kills entrepreneurial spirit, discourages initiative. It is in general anti-progress, anti-development attitude. Regarding social stratification Desalegn states his belief as follows:

“... I believe social differentiation that emerges through hard work, initiative, risk taking, and enterprise, should be encouraged because peasants who achieve a higher status through such means will be

the driving force of dynamic rural economy. The land market helps to encourage this kind of positive differentiation."⁸ (emphasis mine)

As to the 'resurgence of tenancy', I just want to inform Hussein that tenancy at present is a lawful (legally recognized) tenure arrangement. For that matter it is not only in case of private ownership that tenancy relationship exists. It is also possible in case of usufruct tenure.

One other thing that should be borne in mind is that it is not always the poor who enters into a tenancy relationship. There are situations where the richer stratum of the peasantry enters into such a relation by renting-in the land of poor households.⁹ Such statements as "land tenancy presupposes land ownership",¹⁰ and "since the peasants did not own the land, they would not give it to another peasant on tenancy basis"¹¹ are, therefore, conceptually erroneous assertions.

Hussein further states:

*"... The land question was a key political issue, which the Addis Ababa University students struggled for under the motto 'land to the tiller' that was aimed at getting rid of problems associated with private ownership of land...."*¹² (emphasis mine)

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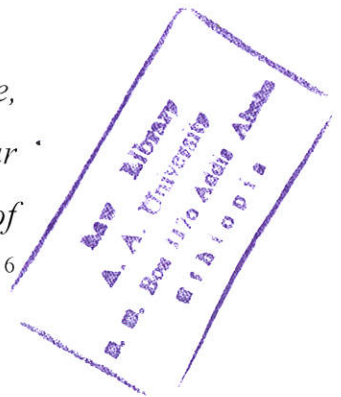
I don't think the peasants and the students struggled to get rid of private ownership of land. They did not fight for public ownership of land. The peasants fought to own the land they till which they were illegally dispossessed of. So did the students. Besides, if the objective situation demands a change in position, what is wrong with doing so? I rather share Bekele's idea which states: "*[s]ome of the reforms that followed the 1974 revolution, like 'land to the tiller', were later liquidated by misguided policies and ardent socialist orientation.*"¹³

The other argument forwarded by advocates of the current land tenure is that land privatization will lead to massive rural-urban migration. The argument is that such land tenure will force the peasants, who are more or less getting some income by farming, to leave their locality and make them lead a miserable life in the cities, earning their livelihood by begging or reduced to the status of vagabond. Public ownership of land, according to the advocates of the policy, protects the farmers from leading such miserable life, protects the farmers from resorting to such "anti-development migration"¹⁴ They further argue that the current land tenure does not discourage migration. They state that if the farmer believes that he will get more income than he would get from farming his land, he will migrate all the same. They cite the current migration to the cities as evidence to substantiate their assertion.¹⁵ But the argument sees only one side of the issue, the issue of getting job as hired labourer. How about selling his land (or a portion of it) to get some cash to engage in such off-farm activities as petty trades and handicrafts, etc?

Some supporters of the current land tenure go to the extent of saying that even peasants who would lose a portion of their holdings are in favour of land redistribution. Degeffa Tollosa, for instance, states that:

“the result of the assessment of peasants’ perceptions and aspirations regarding redistribution of land shows that all case study farmers and focus groups, and PA officials in the three communities were in favour of land redistribution”

*“... The land holders sympathetically state, ‘We do not want to see the suffering of our children, our brothers and sisters because of landlessness and the resultant poverty’”*¹⁶
(emphasis added).



According to Degeffa the farmers themselves are begging for land redistribution which will inevitably result in taking a portion of their land to be distributed to the landless or the land- poor. What we are being told is that not one farmer, not two farmers, but “all case study farmers”, “all people”¹⁷ are willing to relinquish a portion of their holdings. The Munessa* people seem to me very unique.

* Munessa is a woreda where Degeffa conducted his field study.

3.3 Consequences of the Current Land Tenure: An Overview

Tenure insecurity, the impact of which will be discussed separately at some length in the next Chapter, is one of the consequences of the current land tenure policy. According to Frank Place et al:

“Land tenure security can be defined to exist when an individual perceives that he or she has rights to a piece of land on a continuous basis, free from imposition or interference from outside sources, as well as ability to reap the benefits of labour and capital invested in the land, either in use or upon transfer to another holder.”¹⁸

This definition has three components: duration, assurance, and breadth (or robustness) of rights. “Duration” refers to the period of time land holding right lasts. In order to be secure the duration should be long enough to enable the landholder to reap the benefits of his investment by way of labour or capital. “Assurance” refers to the legal protection, or degree of certainty; it is when the land holder feels that he will not be arbitrarily dispossessed of his rights. “Breadth” refers to the extent of right the land holder has on his land. It refers to the bundle of rights, the freedom to use or dispose of the land free from interference by others.¹⁹

Security of tenure, in short, is the certainty that a person's right to land will be recognized by others and protected in cases of specific challenges. Security of tenure can not be measured directly and to a large extent it is what people perceive it to be. The attributes of security may change from context to context.²⁰

In the Ethiopian context tenure insecurity is to a large extent attributable to periodic redistribution of rural land which is carried out from time to time in many parts of the country. And where it has not been carried out the threat of redistribution has been the cause of tenure insecurity. However, there does not seem to be consensus among writers as to whether land redistribution is a cause of insecurity. Based on a field study he conducted in three communities in Munessa Woreda, Degeffa says that the group of land holder male farmers and case female in the three communities, female groups and cases of intermediate farmers in three PA, and case households of rich farmers in Damu and Senbaro PAs "feel secure of land holding." He further says that "the farmers stressed that regardless of the fear of land redistribution, as a result of which they might lose some of their plots, they put the maximum effort to improve the quality of their land." (emphasis added)²¹

Degeffa's statement contains contradictory assertions. At one place he says the peasants 'feel secure of land holding', at another place he alludes to the existence of insecurity ('fear of land redistribution') One can not at the same time "fear" and "feel secure" of something.

How can they put maximum effort regardless of the fear that they might lose a portion of their plot which they have enriched by investing efforts and resources? This is by no means a realistic assessment. Let me quote one final statement from Degeffa's "findings":

"... [I]rrespective of their current access to land and size of holding, all people are in favour of land redistribution, and a policy of land reallocation has been expected by the farmers in Munessa for the last several years. The so-called 'anticipated land redistribution' by the people had adversely affected tenure security among the landholder farmers, because they have been expecting land redistribution almost after every harvest.

... „22

How can all people (the land-rich and the land-poor) be in favour of redistribution? As I have said earlier the Munessa people must be extraordinarily philanthropic.

However, if we look at Degeffa's statements very closely it is in effect saying that the existence of the policy of land redistribution has become a source of insecurity. That is to say, if there were no land redistribution policy, farmers would not expect (and 'anticipate') redistribution, and then their security would not be affected. To put it

differently, if land redistribution were not adopted as a policy, redistribution would not be anticipated, and if not anticipated there would not be insecurity of tenure.

The causes of insecurity is the existence of the policy of land redistribution and the policy of land redistribution is possible because of the existence of the policy of public ownership of land. There is a chain of causality. Tesfaye Teklu has the following to say in this connection:

“The current problem of insecurity of land tenure has its origin in the 1975 land reform proclamation and the subsequent legislations. These laws provide use rights with no defined time bound. Since land is state owned, it can be reclaimed through declaration of eminent domain without prior knowledge and consent of individual land holders.”²³

Land redistribution is not, however, an inevitable consequence of public ownership of land. In other words, public ownership of land can exist without periodic redistribution of holdings. Farmers can have fully transferable (through sale, inheritance, or other means) usufruct rights on their holdings with land ownership still vested in the state. The Vietnamese Land Law of 1993, for instance, allows transfers of land-use rights, such as sale even though state ownership is maintained. But land redistribution is unthinkable in the absence of public ownership of land. If land is privately owned there will be no

such thing as land redistribution, for the state can not distribute land which does not belong to it. As a result there will be no fear of dispossession; no insecurity.

The other consequence of the current land tenure policy is diminution of farm size and fragmentation of plots. In a study he conducted in Aba Selamma Kebele Administration (in Wollo Zone) Teferi Abate claims to have met one farmer who has his six timad arable and grass land located in 30 places, and dispersed over a wide area. The average land fragmentation in the community is reported to be from 9 – 16 plots.²⁴ This fact is even confirmed by supporters of the policy. Abebe H/Gabriel, for one, states:

*“An inevitable outcome of executing such a practice on a repeated scale is that it diminishes size of holdings over time. Official statistics indicate that ... 46.7% of the total households command holdings whose sizes were 0.5 hectare or less. The national average per household holding size is estimated to be 0.8 hectare.”*²⁵

As a result of frequent redistribution to level down peasants holdings the land size is “*approaching uneconomical size*”²⁶ which Desalegn calls “*starvation plots*”. According to the 1999/2000 Annual Report of the Ethiopian Economic Association the actual result of this policy was “*to make every one poorer with each redivision*”.²⁷ Such a

policy is dubbed by Hoben as “*a policy of shared-poverty*”²⁸, and by a certain Yujuri Hayami, as “*uniformly increased poverty*”.²⁹

According to a recently conducted survey the minimum size requirement ranges from 0.56 hectare in the *inset* producing areas of the South to a little over 1 hectare in Oromia region. But thanks to the land policy the country’s agriculture is gradually being converted from “*small-scale agriculture to micro-agriculture that is unable to support a life free from poverty for the rural people.*”³⁰

The current land tenure policy also has an impact on migration. As permanent residence in a locality where the farmer claims land is required for land entitlement this situation has discouraged farmers from migrating to cities and to sparsely populated regions of the country. This has resulted in swelling the rural population. According to one research estimate the number of people living in the rural areas have increased from 37.8 million in 1984 to 45.8 million in 1994, and when the research was conducted, it was expected to reach 54 million by the year 2000.³¹ By now the figure will surely be more than 60 million (as the country’s population at present is more than 70 million).

Taking family size as the basis for land share is another factor for an increase in rural population, by encouraging fertility, for an increase in the number of the family (through birth) entitles the household an additional plot.³² As mentioned above, any person who wants to make a living by farming is entitled to obtain land when he

Notes

Chapter 3

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CHAPTER 4

IMPACTS OF TENURE INSECURITY

As we have seen in the preceding section the consequence of the land tenure policy is, among other things, the insecurity peasants feel regarding their land holdings. In this chapter we will try to see how tenure insecurity affects the country's developmental effort (in particular agricultural development) and the impact it has on the environment.

As we have indicated at the outset Ethiopia being an agrarian nation and agriculture being the predominant sector of the economy, the country's development endeavor highly depends on this sector. As a result this paper will be limited to discussing the impact of land tenure on this sector.

4.1 Impact of Tenure Insecurity on Agriculture ✓

One major impact of tenure insecurity is that it discourages investment. By investment I mean the effort the farmer exerts and the resources he puts on his land to enhance the productivity of the land, and increase his income as a result.

So long as the peasant earns his livelihood by farming it is a must for him to exert some effort and use some inputs (such as seeds) on his land. This is the minimum required of any peasant who makes a living by farming. However, efforts and resources invested on a farm

differ from person to person, and from time to time for various reasons. There may be factors or situations that instigate the farmer's working spirit and diligence, or that kill his initiative and enthusiasm. Factors that encourage or discourage may be man-made or natural. Among the man-made factors or causes comes government policy in the forefront. It is from this perspective that we discuss investment in agriculture, particularly household agriculture.

Peasants' investment on land can be seen from two aspects, from subjective and objective aspects. By the subjective aspect I mean the perception of the farmer towards the policy of the government regarding land tenure; that is the feeling of the farmer, whether he feels secure or insecure about his holding. His investment initiative to a large extent depends on the perception or the feeling he has about the policy. By the objective aspect, I mean the resource (physical and financial) the farmer has to invest on the land. The farmer may have the willingness (i.e., subjective aspect) to invest on his land, but he may not be endowed with the necessary resources (the objective aspect)

Insecurity is mostly related with the subjective aspect of investment. That is to say if the farmer feels insecure about his landholding right, even if he is endowed with resources he will be discouraged from investing. This is the disincentive effect of tenure insecurity. A paper (based on a nationwide survey conducted in 2001) analyzing the impact of tenure insecurity on land-related investment states:

“[O]ur results highlight not only that land rights in Ethiopia are highly insecure but also that higher tenure security and transferability could enhance investment and agricultural productivity. Trying to identify and implement measures to increase producers' tenure security could have a large pay-off in terms of productivity and poverty reduction.”¹

As a result of investment on land by way of conservation activities such as building terraces, mulching, manuring, crop-rotation, burning soil etc., which require a lot of effort (energy), it is possible to obtain a 100% increase in yield, some writers maintain.² But, the holder of the land engages in such energy and time consuming activities only if he is certain that the land which he so enriched will remain his to reap the fruit of his labour.

Based on field study he conducted in two communities in Gojam, Yigremew cites three immediate effects of the 1996/97 land redistribution on agricultural production : (1) farming activities of the 1996/97 cropping season, particularly land preparation, were delayed and led to planting less-valued crops; (2) resource-poor peasants with new plots kept their plots idle or underutilized; and (3) due to shortage of resources of new possessors, 52.2% of the total plots and 78% of women's plots were cultivated by tenants, which arrangement,

productivity due to its disincentive effects on agricultural investment, there are, however, certain writers who do not seem to concur with this opinion. Bruce et al, for instance, do not seem to agree with the assertion that tenure insecurity is a constraint to investment that will raise productivity. In a paper written in 1993, they stated that they are doubtful if insecure land tenure is a "serious" constraint on investment. They said it is far from clear "to what extent" and "in what context" it applies on peasant agriculture in Ethiopia. But they do not reject the assertion categorically. This can be seen from certain qualifying terms such as "serious" and "to what extent", which they use in their statements, and from the following argument: "*Even in circumstances where perceived insecurity is a potential constraint on investment it may not be the binding constraint*" (emphases added).⁵

Insecurity should not necessarily be experienced. It is sufficient to be perceived by the person feeling insecure; "perceived insecurity" is all the same insecurity. There is always a subjective element. Security of tenure is not something that you can measure directly; it is, to a large extent, what people perceive it to be. That is why Desalegn says:

" ... Evictions were not common but the threat of eviction, rather than the act itself, was the potent weapon in the hands of land lords, and the tenant over whom the danger of unemployment and destitution hung like the sword of Damocles had no

*alternative but to accommodate all the demands of his land lord."*⁶

After remarking that insecure land tenure is not a "*binding constraint*" on investment, the writers hasten to add other factors "*which may in themselves preclude investment*". What we understand from this last statement is that when they say 'not a binding constraint' they mean a constraint that does not in itself preclude investment.

In my opinion, the authors do not seem to consider empirical evidence seriously. The following statements based on their findings may serve to prove my allegation:*

"...Tenure insecurity does not, however, seem to be preventing peasants from planting trees on and around their homestead in any area we visited... Improvement techniques are generally used on fields close to the homestead. While many farmers said they would be reluctant to invest in improving their outlying fields because of insecurity, there are many other practical reasons why farmers prefer to grow higher value crops near their homestead...." (emphasis mine)⁷

* By the way, Dessalegn is one of the co-authors of this book.

In my opinion, if one states that tenure insecurity does not prevent planting trees 'on and around homestead,' the logical corollary of such statement would be that 'it does prevent on outlying fields'. As we can see from the second quotation, not only planting trees but also other improvement techniques are used on fields close to the homestead, because farmers are reluctant to invest in outlying fields. But, the authors do not want to take peasants perception into consideration. They are disregarding their own findings in formulating opinions.

As to the existence of other reasons, of course there may be - indeed there are. But the question is, does the existence of other reasons rule out 'tenure insecurity' from being one?

This assertion (of the writers') directly contradicts the recently published World Bank Report which states:

"[L]and rights are not only key elements of the social fabric of most societies, but also critical determinant of investment, and thus of economic growth. The nature and characteristics of rights and enforcement institutions together define the perceived security of property rights to land, and it is this security that will affect decisions about land use, land-related investments..."⁸ (emphasis supplied)

The Report stresses that tenure security is very critical for economic development by providing incentives for households and entrepreneurs to undertake land-related investments. But if they feel insecure, if they are not certain that they will be able to keep the benefits from investments, they are unlikely to invest or exert effort. It should be borne in mind that the Report does not make the assertion from theoretical generalization or mere conjectures, but it is based on empirical findings including from Ethiopia.⁹

4.2 Environmental Impact

“The well-being of the Ethiopians by and large depends on the well-being of the biophysical environment (air, water, land, flora and fauna). This is due to the dependence of the majority of the Ethiopian people on subsistence agriculture, which in turn has a heavy dependence on land, water and climatic resource. ...”¹⁰

The above statement by Gedion Asfaw succinctly depicts the interdependence of development and environment especially in backward and poor countries like Ethiopia where the overwhelming majority of the people eke out their living directly from natural resources.

Sustainable use of natural resources is an important area of development policy in Ethiopia. As land is the most widely used

natural resource in the country, top priority should obviously be given to this resource base in policy formulation. One major issue any land policy should address is clearly defining property rights to land – a policy of allocation and utilization of land.

Land tenure and environmental conditions are closely related: land tenure can promote land use practices that can harm the environment or it can serve to enhance the environment. Insecure land tenure is linked to poor land use which in turn leads to environmental degradation. Lack of clear rights can reduce the incentive to implement long-term conservation measures.

The major environmental problem in Ethiopia today is land degradation. Land degradation has been defined as a reduction in the land's actual or potential uses. This refers to a temporary or permanent decline in the productive capacity of the land, or a decline in its potential for environmental management.¹¹ Land degradation takes many forms: top soil (fertile soil) removal by water or wind erosion; loss of nutrients through removal of crop residues and animal manure; loss of soil structure through repeated tillage, etc.¹² Land degradation can be attributed to several factors: poverty, population pressure, misguided policies, drought, tenure insecurity, and many others.¹³

In the Ethiopian context, shortage of good land in the highlands coupled with population pressure have forced cultivation of a large part of the steep hillsides (especially in the areas of heavy land

pressure), and these have highly degraded the land because of erosion. Compounding the problem of degradation on such terrain is the current farming practice which rarely includes terracing and other soil conservation measures. The problem is thus mainly caused by lack of investment on land conservation techniques such as terracing, bunding, mulching, etc., and abandoning indigenous land improvement and management practices such as fallowing, crop rotation, planting nutrient fixing crops. And this is in turn explained by lack of tenure security.¹⁴

Tenure insecurity has forced many peasants to abandon these land improvement practices, and instead led them to concentrate on getting whatever they can now without looking into the future. The obvious effect of this is that land is continuously tilled without a break, thus increasingly losing its important nutrient, eventually leading to soil exhaustion. Other environmental protection measures such as planting trees is now virtually abandoned because of insecurity.¹⁵

Tenure insecurity is, as we have mentioned earlier, is the result of the current land policy. And of the many causes of tenure insecurity (in the land tenure policy) which adversely affect land conservation investment periodic land redistribution is the major one. As Mulat states:

“Given the absence of any contractual or lease agreement with the government (owner of land) and the general belief that

*the next round of land redistribution will take place any time, the incentive to investment on land improvement is minimal. ...*¹⁶

The 1996/97 land redistribution of the Amhara Killil clearly demonstrates how the policy of land distribution discourages farmers from investing on land improvement and land conservation techniques. According to Hoben even before the actual distribution, the expectation that it would sooner or later be distributed discouraged the farmers from investing in indigenous land management techniques such as fallowing, mulching, and terracing. And after the redistribution the immediate effect was the destruction of erosion control structures such as earthen ridges, grass strips, and diversion ditches.¹⁷

Tefferi's comparative study conducted in communities in Northern Ethiopia clearly shows the impact of land redistribution on environmental degradation. According to the study, in Tawa (the name of the community) where land redistribution was repeatedly carried out the practice engendered tenure insecurity and as a consequence less interest in investing on land is manifested. The focus was only on immediate returns. The practice of crop rotation, planting nitrogen fixing crops such as beans, peas, and the like, were abandoned. He further clarifies:

“... The Tawans are highly uncertain: they tend to cultivate only teff and wheat year after year and their preference is on high-yielding varieties. ... No farmer wants to take the risk of losing his plots in redistribution before earning the maximum possible. The harmful effect of uncertainty is even more pronounced in respect of manuring, tree planting, terracing, and other similar conservation measures.”¹⁸

In Wayu (the name of the other community), on the other hand, where land redistribution was officially phased out as early as 1980, the situation seems to have enhanced tenure security among households. As a result land conservation techniques including manuring, fallowing, crop rotation, terracing, etc., are practiced widely.¹⁹

Researchers, however, are not unanimous concerning the impact of land redistribution on tenure security. Yared Amare, for one, argues that the Amhara Killil land redistribution measure has enhanced tenure security. For him it is the expectation of distribution, not actual distribution, that affects farmers security. He puts the argument as follows:

“Once the land redistribution took place, however, tenure security seems to have

improved. Another land redistribution was thought to be unlikely, and few people therefore expected to lose land in the near future. The birocra^{}cies were likely to feel that no one would touch the remainder of their holdings. Infact, the provision of certificates ... may have strengthened people's sense that their holdings would remain their own."*

"Perhaps, more importantly tenure security is the function of the history of land allocation in a certain area. The fact that since the land reform of the mid-seventies, extensive land redistribution, apart from some limited readjustments, was uncommon in Wagda and other parts of Tegulat Awraja, led to a greater degree of stability of tenure. In view of this type of experience, the 1997 land redistribution was more likely to be seen as a one-time experience as opposed to a first of a series of redistributions'

Birocracies is the name given to individuals who worked in Peasant Association during the Derg regime. Its English equivalent is "bureaucrats". The term has acquired a derogatory connotation among peasants in the region.

“Although woreda officials had told them there would be no more land redistribution, some birocraci did hope for another redistribution that would compensate them for the land they thought they had lost unfairly. ... One former kebele chairman felt that land could be reallocated from those who had relatively substantial landholdings in relation to their family size...”²⁰

I have quoted at length in order to enable readers to follow my comment vis-à-vis the assertions made by the writer. To start with, it is very difficult to accept the assertion that security improved after the redistribution. Theoretically and from many experiences land redistribution policy is a cause of insecurity. Tenure insecurity is an inherent nature of such policy. It makes farmers to expect distribution any time in the future. Whether distribution is actually conducted in a certain locality or not as long as it is recognized as a policy the insecurity exists. Actual redistribution may make the threat of insecurity eminent. It is not only the rumor of land redistribution that causes a sense of insecurity. If the rumor that the policy is going to be implemented is going round the insecurity (which was always there) becomes a fear, that means the degree of the threat increases. When the rumor is actualized (became a reality) the fear ceases to exist as the farmers have known their fate; but the insecurity persists. They may not expect another redistribution in the near future, say, within a

year or two. But is this the insecurity we are talking about? Or is this what Yared had in mind when writing this paper? Seeing expressions like “unlikely in the near future” would give such an impression. But a few lines down he uses a diametrically opposite expression, “*their holdings would remain their own*”. These are contradictory phrases as the ‘near future’ denotes temporariness, whereas “remain their own” denotes perpetuity.

Another inconsistency in his argument is that concerning the feeling of the birocraci. At one place he states that the birocraci think that the distribution is final (“*no one would touch their holdings*”), and at another he states that some birocraci “*hope for another distribution*”. ‘Hope for redistribution’ is the same as “*expectation of redistribution*” In other words, if there is a hope for redistribution then there is an expectation of redistribution; hence no tenure security. Besides, if there is a ‘hope’ for redistribution why shouldn’t there be a ‘fear’ (as one’s ‘hope’ is another’s ‘fear’, or vice versa).

As to the argument concerning the function of the history of distribution vis-à-vis tenure security I do not think it is a logical argument. If a history of land redistribution is a cause of insecurity then the 1997 redistribution, as a historical event, can not be anything but a source of insecurity. In other words, if it is the non-existence of redistribution that led to stability how can its opposite (the existence of redistribution) have the same result? They felt secure because they did not experience such major land redistribution. But if they

experienced one now the logical derivation of this would be that they feel insecure hereafter.

Or, should an event necessarily be repeated to constitute a history? If so, how many times?

One thing that I have observed from the paper is that the findings of the research (the empirical facts) and the conclusion (assessment) do not tally. In the quoted passage and elsewhere in this paper the expectation of farmers ('some birocracy', 'former kebele chairman', etc') for land distribution is mentioned and yet it is asserted that 'security has improved'.

As to the impact of the history of land redistribution Deininger et al aptly remark:

*"[I]t is safe to assume that having had land redistribution in the past increases the likelihood of having another in the future."*²¹

Workineh Negatu's observation of the 1996/97 land redistribution of the Amhara Killil is quite different from Yared's, as was Hoben's mentioned above. Let us see what he says:

"The land distributed was taken from farm households who were claimed to be farmer-beaurocrats of the previous

regime, Derg, and feudal remnants and the like. This has triggered a greater feeling of land tenure insecurity among peasant farmers and a spread of fear among peasant farmers of the country suspecting that such redistribution could occur any time in the future... ”²²

Based on a study he conducted in two kebelles in West Gojam to assess the impact of the 1996/97 land distribution, Yegremew Adal holds that the result of the distribution, among other things, was tenure insecurity. Though different official reports stated that security of tenure has been enhanced by the distribution, Yegremew declares that the results of the field study disprove the official statements. Based on the focus group discussion he held with peasants, officials, and individuals regarding the duration of tenure (one element that goes into the definition of tenure security) he stated that no one was sure what will happen in the future. Yegremew further demonstrates that the redistribution has exhibited a serious neglect of sustainable land use. Land conservation measures, such as crop rotation, fallowing, and planting legumes were abandoned. As one woreda official is reported to have commented, the 1996/97 redistribution has made injustice to the environment by maintaining peasants in the area, encouraging them to marry and have children on small plot economy.

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However, after vividly depicting the impacts of the 1996/97 distribution on agricultural production and on environmental protection Yegremew in his conclusion makes a remark which in essence demolishes whatever he has constructed through out his paper. His concluding remark runs as follows:

“... Land redistribution by itself is not a cursed phenomenon. But the motive behind it and the way it is done makes it appear so. Redistribution is not necessarily the source of tenure insecurity and subdivision of holdings. For instance, such problems existed long before the redistribution policy, and stopping redistribution will not eliminate such problems in the future.”²⁴

But, why should we look for the motive of the redistribution? In my opinion, the motive behind the distribution does not make it good or bad. The consequence is either good or bad irrespective of the motive. Besides, the objective of a field research I think is not to look for the motive behind a policy but rather to investigate the effect of the policy. That is what empirical study is all about.

Redistribution may not be the only source of insecurity. There may be other sources as well. However, the existence of other sources of insecurity does not rule out redistribution from being one source of insecurity.

As to sub-division of holdings, I could not envisage a situation whereby land distribution will not result in subdivision of holdings. I mean, if it is redistributed, it is necessarily subdivided; it cannot be otherwise.

Yegremew even seems to prescribe redistribution as a remedy for land shortage or landlessness. What he is not sure of is whether it is a 'panacea' to all land problems.

Hoben, on the contrary, emphatically rejects land redistribution:

*"I do not believe any process of periodic redistribution by government will contribute to agricultural and rural development. Rather it will continue to support a de facto policy of shared poverty in which there are no winners."*²⁵

There are also writers who seem to take no stance or whose position is ambiguous. Workineh, for instance, after succinctly describing the impact of tenure insecurity by citing Feder and Feny as authorities, he makes a shift in position and holds a different stance, now citing another author. Here is his statement:

"With insecure land tenure, households operating farm plot may have less incentive to invest on land management. (Feder and Feny, 1993), as investment on sustainable land management

practices takes relatively longer time to reap the benefits expected from the investment. On the other hand, however, the household can increase investment if the investment can in turn increase security of tenure (Besley, 1995). Thus there may be more investment on plots with insecure land tenure.”²⁶

It is not clear from the passage what position the author has adopted concerning the relation between tenure security and investment on land? Or, is he simply restating what different writers have stated on the subject-matter without bothering to take any position? Well, it is not at all wrong to acquaint readers with the position of different authors on the issue. But, if that is the intention, it should be expressly stated to save readers from all sorts of conjecture.

Based on a field work conducted in six rural kebelles in Gondar Zuria Woreda, Yohannes Berhanu reflects the perceptions of the peasants concerning landholding rights after the 1996/97 land distributon in the Killil as follows:

“... Any one who was born during the Imperial regime, and who lived in rural areas has grown up with the sense of ‘This land is my land’. This perception was sick during the Derg era. Now, it is stumbling to die [sic]. There is no tenure

security among the rural people. Even though regional government officials tried to assure the farmers that the 1996/97 land distribution will be the final allotment, farmers never took their words for granted and still expect redistribution."²⁷

According to Yohannes, farmers are not sure about what is going to happen after sometime. They are not sure what will happen to their holdings if any new form of government's structural change becomes a reality. Landless peasants are still waiting for redistribution.²⁸

The readers can see for themselves how one and the same event has been interpreted by different researchers in different ways. The difference partially is, as I have hinted at elsewhere, ideological (political) inclination. This drives researchers to gear their research towards their preconceived ideas.

Notes

Chapter 4

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CHAPTER 5

WAYS OF ENSURING TENURE SECURITY

Although there are many causes of tenure insecurity, one of the major ones in the Ethiopian context is periodic land redistribution which is adopted as a policy and carried out in many parts of the country from time to time in varying degrees.

If periodic land redistribution is the cause of the insecurity, as this writer believes it is, then the solution for or the way to ensuring tenure security is obviously stopping the practice.

How can land redistribution be brought to an end? Is it possible without changing the existing tenure regime (i.e, public ownership of land), as it is the underlying cause of land redistribution? Are land redistribution and public ownership inseparable? In other words, does public ownership of land inevitably entail periodic land redistribution?

In theory and as empirical evidence demonstrate, public ownership of land does not necessarily entail periodic redistribution. In many countries even where land ownership is vested in the state the practice of land redistribution does not exist. In VietNam, for instance, according to the 1993 Land Law, land is given to farmers for a period of 20 years for annual crops and 50 years for perennial crops, which is renewable automatically. The land-use right is fully transferable; the holder can even sell his land-use right.¹ The Land

Law does not provide for any kind of periodic land reallocation. Efficient readjustment in operational farm size corresponding to demographic changes in farm households will become possible through land purchase and leasing. As Yujiro Hayami recommends land allocations for reaching optimum farm size corresponding to respective households' labour endowments are better left to the market mechanism.²

In Israel, where land is state property, land is leased to farmers for a period of 49 and 99 years. In China too tenure security has to a large extent improved as a result of a change in her land tenure policy. To increase tenure security, in 1999 the Chinese government revised its former land management law of 1986 and as a result farmers receive written 30 years land use contracts and the scope for reallocation is circumscribed or completely eliminated. This has had considerable, though regionally differentiated, impacts on farmer's perception. Building on this, in 2002 the government adopted a new land law that strengthens individuals' right, frees rental markets, protects households against arbitrary expropriation by village cadres by requiring that even small reallocations be approved by a two-thirds majority of village members.³

In Ethiopia although land redistribution policy is not abrogated there seems to be a trend in Regional states to stop the practice. Regional states, however, are not addressing the problem uniformly. Some regional states are totally ruling out the practice of land redistribution. The Oromia State, for instance, declares that there will

be no more land redistribution in the region, with the exception of irrigated plots. *(Irrigable plots)*

The Amhara and the Tigray Regional States did not explicitly rule out land redistribution in their respective land administration proclamations. But subsequent policy initiatives give sufficient hints that the practice of periodic land redistribution is not favoured by the Regions. And there is a new policy initiative in the Regions in the issuance of land user documentation (or user certification).⁴

In Oromia Region, the issuance of land holding certificate is provided in the Oromia Rural Land Use and Administration Proclamation No. 56/2002 under Art. 15(1) as *“any peasant or pastoralist, with a holding right of land, shall be provided with a life long certificate of holding right by the responsible organ.”*

But, is this new policy initiative a sufficient measure to ensure tenure security? With the policy of land redistribution intact in the Federal Land Administration Proclamation (89/97), is the new initiative reliable? Is it lawful? For one thing, this document does not certify ownership right, but only user rights. The certificate, for instance, can not be used as collateral because the holders of the certificate do not have ownership right as the Constitution and Federal law prohibit land sale, and hence banks can not sell the land to recover their loan.⁵

This does not, however, mean that the initiative has no effect on tenure security. As Desalegn maintains issuing the certificate may help develop a sense of ownership by the land holders. It may also discourage future redistribution because that will undo all the work of plot identification, demarcation and measurement , and make the records compiled for the purpose virtually useless. Desalegn says that this development is to be welcomed because it is an improvement on the existing conditions and a step in the right direction.⁶

But in my opinion, it may appear to be a step in the right direction, but not a sincere move on the part of the Government. If the intention of the policy makers is to do away with periodic redistribution, why don't they put it in black and white? Why don't they amend the laws which provide for redistribution? The initiative has to come from the Federal Government, by repealing the proclamation (Proclamation No. 89/97), since it is this Federal law that Regional States are required to follow in administering the lands within their respective jurisdictions.

But if the intended objective (i.e. to ensure security of tenure) is to be achieved the initiative should not stop by prohibiting land redistribution. It should go one further step and recognize the right of landholder to transfer their use rights, including the right to sell their rights on the land, as is the case in VietNmese law cited above.

This policy initiative is to be welcomed. But this should not be taken to mean that this is the best option, let alone the only option, for

the land tenure problem. It is only in comparison with the existing policies that the new initiative is to be welcomed.

In my opinion the best land tenure system for our country is private ownership of land if the intended security of tenure and as a result more investment on land to enhance productivity and environmental protection is to be a reality. So long as ownership of land remains in the hands of the governments, especially in countries like Ethiopia where governments do not usually give due attention to public interests and heed public opinions, farmers by no means feel secure. We should not compare ourselves with countries like Israel where governments come and go by the will of the people and during their tenure strictly consider the interest of the country (the people as a whole), not the narrow political interests of a group (party). Let us see what Grafton and Quentin have pointed out in this connection, by comparing the situation that existed in East and West Germany before they united, and the situation in the former Soviet Union:

“The principal weakness of state rights is that they tend to be inflexible to changes in both the environment and society. This inflexibility is exacerbated when citizens are denied the right to express their views through control of the media, state intimidation or even a lack of political democracy. Inflexible rights can also mean that socially undesirable projects that

*would never arise if land were privately owned may occur where land is state owned.*⁷

In a final report of a Symposium on Rehabilitating the Ethiopian Economy, organized by Inter-Africa Group 1992, the argument in favour of private ownership of land was summed up in the following manner:

*“Only private ownership will ensure security of tenure and provide the peasant with the incentive necessary to make investments and long-term improvements on the land. One can not move towards a market economy while keeping land -- the most vital means of production in an agricultural economy – outside the operation of the market.”*⁸

In the symposium even the opponents of this view, who thought privatization and land markets would lead to landlessness on a massive scale, agreed that the current system, because it does not guarantee security of tenure and undermines incentives, has detrimental effects on agricultural productivity and resource conservation.⁹

There may be different alternatives in different countries to ensure security of tenure depending on their level of development, their social and political structures, their form of governance. In the case of Israel, which is cited above, long-term and secure lease rights that are fully transferable have become virtually indistinguishable from private ownership, that is due to the confidence of land users that government will honour contracts or similar arrangements.¹⁰ In the Ethiopian context, where it is difficult to be confident on governments, the only tenure arrangement that best serves the interests of the rural population is private ownership of land. The other alternatives mentioned above are to be recommended only if this best option is not attainable for various reasons or, if government is not willing to relinquish its right of control over land which right enables it to control the rural population.

I do not think the government is unaware of the fact that the current land tenure adversely affects investments on land and that private ownership is a viable alternative. In many policy documents of the Federal government and regional states it is now and then stated that the intention is to create 'sense of ownership' by peasants. This is in essence recognizing that private ownership of land is the best tenure system.¹¹ In the Environmental Policy of the Federal government, in the section dealing with Soil Husbandry and Sustainable Agricultures, it is stated that one of the policies is "*to foster a feeling of assured, uninterrupted and continuing access to the same land and natural resources on the farmers and pastoralists so as to remove the existing artificial constraints to the widespread*

adoption of, and investment in, sustainable land management technologies” (emphasis added) (Art.3(1)a) As can be seen from the policy statement the importance of ‘uninterrupted access to the same land’ seems to be recognized by the policy-makers (the government). Dr. Kinfe, for instance, even prior to the above mentioned initiative, stated that:

*“Land ownership by individual farmer would definitely boost the improvement of peasant holdings and arrest land degradation by encouraging long-term investment.”*¹²

The World Development Report (1992) clearly states that, of the different tenure arrangements the one that provides the greatest incentives for efficient utilization of land is individual ownership of property rights.¹³ Based on empirical evidence the World Bank Policy Research Report declares that comparing plots planted with the same crop by the same household, but under different tenure regimes, it is found that farmers tend to apply more manure and labour, and obtain significantly higher yields, on plots that are privately owned and are therefore more secure.¹⁴ Deninger (et al) too claim that there is evidence that transition to private ownership would lead to significantly higher levels of investment.¹⁵

But there are some researchers who do not subscribe to the idea of private ownership of land, although they are very much opposed to

public ownership of land too. Prominent among such researchers is Desalegn Rahmato, who is a renowned land tenure researcher. In a recently held interview with IRIN, he even says that he sees dangers in private ownership, though he did not say expressly what the danger exactly is. In the interview, he claims to exist other arrangements, other than private ownership, that should be explored to improve security of tenure, and suggests a system which he calls “associated ownership” which he says is a combination of free-hold and community responsibility.¹⁶ In his article written in 1994 in a section dealing with this tenure arrangement under a sub-heading entitled “Associative ownership”, among the proposals he stated, one is that “*the old landlord, or landlordism in a new guise, must not be allowed to return*”¹⁷ Perhaps this is what he calls ‘dangers’ which he did not explain in his interview. In this article he states his theory partly like this:

“The underlying premise behind associative ownership is that land belongs to the community and the individual land users in it; ... Rights of use and transfer therefore reside in the individual user, and management and regulation in the community. Individual land is to be held in freehold, with all the rights this involves; land not in individual hands is to be managed by the community. ... The community, through the PA, serves as a guarantor of rights of individual

ownership; ...The community may intervene if there is the threat of land falling into the hands of outsiders, or the development of monopolies leading to the eviction of community farmers. The community may also hold repository rights [sic] to the land of individuals who are unable to manage it.

Freehold here includes the right of transfer to co-residents or fellow peasants from neighboring communities.... [L]and belonging to small holder will remain with small holders and in the community...¹⁸
(emphases supplied)

Seeing the words ‘belong to’ and from the very expression “associative ownership” one would think that both individuals holding the lands and the community are co-owners of every plot in the community, that is to say every specific plot is owned by the individual holding the plot and the community together. But that this is not the case becomes evident only after reading the whole text. According to the article I have quoted above and from the interview he gave to IRIN, the individual holding the land has ‘full rights’ over the land. It is clearly stated that the individual has a “freehold right”, an “individual ownership right.” Although the term “associated ownership’ is utilized, what is actually associated or combined is the “right” of the individual and the “duty” or responsibility of the

community which is expressed by himself as “*a combination of freehold and community responsibility*”. In explaining his favoured tenure system he says that it is freehold in the sense that the individual user has the right to dispose of the land, but the community should also have a say if its interest so demands. He further says that the community should be given the first choice of sale [priority] so that the land is kept within the community. In the article ‘repository right’ is used instead of ‘the first choice of sale’ of the interview. What exactly is ‘repository right’ in the circumstance is not clear to me.

There seems to be one restriction in the right of the freeholder, that he can not sell his land to ‘outsiders’, but only to co-residents or fellow peasants from neighboring communities. The rationale behind the restriction is to “*safeguard against land speculation or land grabbing by urban elites or their rural surrogates*”.¹⁹

But, how does this “associated ownership” protect the peasants from eviction? In my part, I do not see any protection either in the interview or in his article. In an interview he gave to the Reporter (an English weekly) he expounded how the interests of the peasant is protected through his ‘associative ownership’ formula:

“... And the individual peasant may not have the power to resist or fight back against outside forces, which are much stronger than the peasant. So the community becomes the defensive shield to

protect the rights of the peasant. And this is also designed to meet the concerns of some, including the government officials, who argued that if we are to give the peasant the freedom to do whatever he or she wants with land, he or she might be quickly wheedled out of it by such outside forces as capitalists or urban businessmen and so forth. So in order to meet this concern, we need to give the community some role in defending the rights of the individual and in ensuring that resources within the community are not abused or misused by outside forces.”²⁰

The role of the community (as envisaged by Desalegn) in this regard is to see to it that land is not sold to outsiders, so that it remains within the community.* As long as the lands are bought by co-residents or fellow farmers, even, if this results in eviction, it does not matter. What Desalegn does not want to see is the eviction of peasants by ‘outsiders’ or as a result of land monopoly. What is important is that land remains in the hands of small holders; otherwise it is ok. What I gather from all this is that it is the interest of the community that is given priority in this new tenure system of Desalegn’s, if it is at

* Whoever buys the land the land remains within the community. Perhaps it is to say the management of the land remains within the community

all to the interest of the community. And the community's interest is protected by being given "the first choice of sale".²¹ That is to say the community is given the right of preemption. Preemptive right is not as such a new concept. If this is what Desalegn envisages, "associated ownership" is not in my opinion, the appropriate expression. The community does not have any right as an 'owner', it has only responsibility to see to it that "as far as possible" the freeholder does not sell his land to an entity having interests "hostile" to the interests of the community.²²

If this is the case, I do not see any difference between the rights of the freeholder (individual land user) in this tenure arrangement and a 'freeholder' in the ordinary sense of the word, because giving preemptive right to the community does not affect the individual's right of ownership. Even in the most individualistic systems, the rights enjoyed by individual owners are never absolute. He may even be dispossessed of his land if public interest so requires, for instance, for building roads, fortresses, or other essential infrastructures, of course with compensation.

There are many ambiguous assertions in his interview. For instance, at one place he says, "*I have not fully supported privatization; I see dangers in it*".* At another place he states: "*Peasants are very strongly attached to the land; they are reluctant to*

* This means that he partially supports privatization despite the 'dangers'.

sell it". If so, where then is the danger? After stating the reluctance of the peasants he hastens to add that a few peasants might sell their land, and says that "*this is a good thing*". But, I may ask, what is "*the good thing*"? selling land in general or if only a few engage in land sale?

What I gather from all these statements is that Desalegn is a prominent supporter of land sale (though "unfortunately" peasants are reluctant to do so), and hence an ardent supporter of private ownership of land, as only ownership entitles all the bundles of right (including sale) to land. This, in other words, is 'privatization' (which he claims to have not supported it).

Obviously private ownership of land is the best tenure system that ensures security of tenure and encourages land holders to invest on land and to care for it. Land investment is greater on land holdings with stable tenure, and own-operated land attracts more investment. Hence, the government should take a courageous step to privatize land for the sake of economic growth and environmental protection.



Notes

Chapter 5

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22. Ibid

fallowing, mulching, manuring, crop rotation and many others are not being practiced nowadays in many parts of the country.

As a result agricultural productivity and production has sharply declined. It is long since the country has been unable to feed its population. Ethiopia is one of the food-deficit countries in the world. Food-insecurity is very chronic; almost half the population is food insecure, and is below the poverty line.

The major cause of all this is the existing land tenure policy. Lack of tenure security, which is in the most part caused by periodic land redistribution, is the source of all this problem; and the underlying cause is public ownership of land. This has discouraged farmers to invest on land improvement and management techniques.

Unless the problem, both in terms of development and environment, is urgently and squarely addressed the future of the country, especially that of the rural population, could be catastrophic.

I am, however, optimistic. If policy-makers, researchers or experts in the field, responsible and concerned citizens stand in unison, I do not think there will be any problem that is unsurmountable. With this optimism and hope in mind, let me venture to propose the following recommendations.

First, as the current land tenure system, i.e. state (public) ownership of land, is the underlying cause of the problem, improving the land tenure

system is a very urgent task on the part of the government, if the country is to come out of this dire situation, and the best alternative is to privatize land.

Second, if the Government is not bold enough to privatize land for various reasons, one of which is obviously political consideration or calculation, * it should at least stop the practice of periodic redistribution of land and amend all laws that allow the practice, and give peasants fully transferable life-long rights to their holdings.

Third, the role of intellectuals in the formulation of the country's policy is enormous. The government, therefore, should form a close relation with this section of the society and utilize their potential properly towards a common goal.

Fourth, intellectuals on their part should be free from all sorts of biases and prejudices in their researches. They should base their positions only on thoroughly researched, not on preconceived, ideas. Besides, they have to be diligent and avoid inconsistency (which is rampant in many writings) in their research works.

And all this has to be done urgently, as of immediate.

* As Harrison said "Readiness to act does not necessarily follow perception of the problem. Politics follows" in Third Revolution, p. 2523

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DECLARATION

This thesis is my original work and has not been presented for a degree in any other University and that all sources of material used for the thesis have been duly acknowledged.



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