



ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW

**CHALLENGES CONCERNING THE APPLICATION OF
PRESCRIPTIONS TO RURAL LAND DISPUTES UNDER ETHIOPIA'S
CURRENT RURAL LAND LAW**

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Disputes Under Ethiopia's Current Rural Land Law**

A Thesis Submitted in the Partial Fulfilment for the Awards of Master's Degree
of Law (LL.M) in Business Law at the College of Law and Governance Studies,
School of Law, Addis Ababa University

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Declaration

I, Markon Abate, hereby declare that the thesis titled “Challenges Concerning the Application of Prescriptions to Rural Land Disputes under Ethiopia’s Current Rural Land Law” is my original work and it has not been submitted for any degree or examination at any other university. I also pledge to duly acknowledge all sources used in any form.

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Date: October 12, 2024

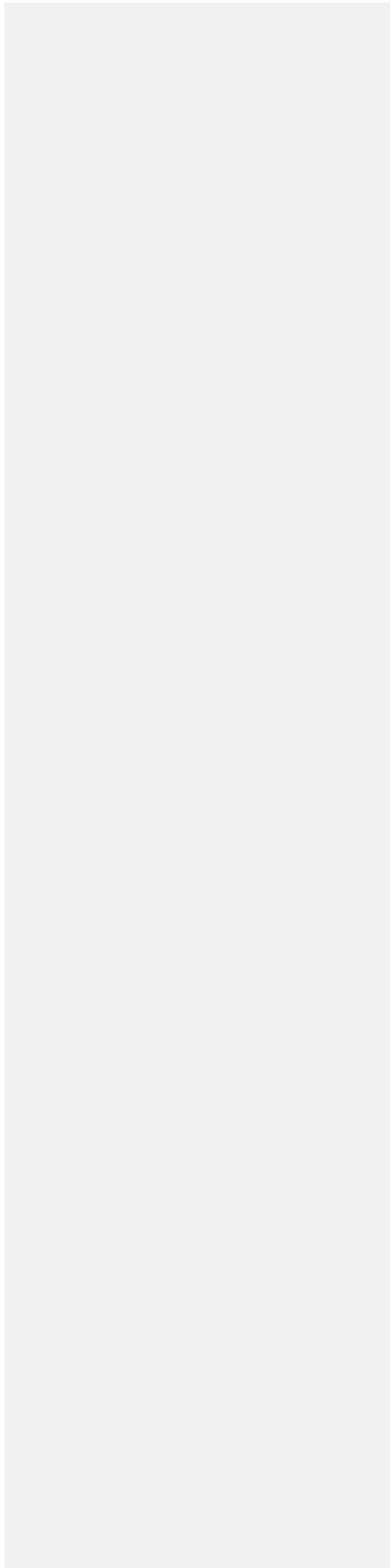
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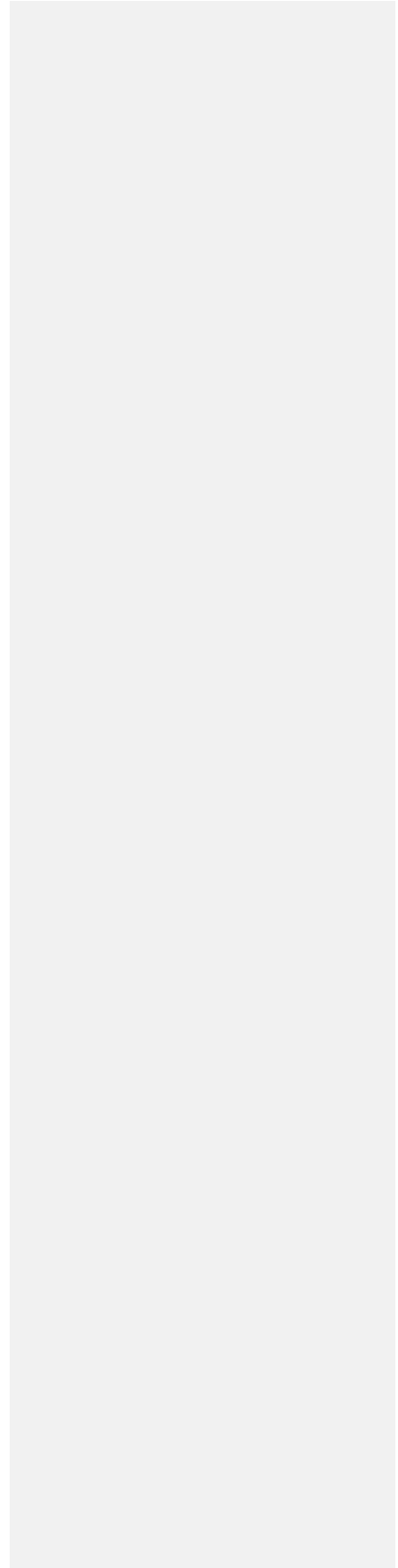
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Dedication

To my family and friends



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Acronyms

ARS:	Amhara Regional State
ARSRLUAP:	ARS Rural Land Use Administration Proclamation
FDRE:	Federal Democratic Republic of Ethiopia
FDRERLUAP:	FDRE Rural Land Use Administration Proclamation
FGD:	Focus Group Discussion
FSC:	Federal Supreme Court
FSCCD:	Federal Supreme Court Cassation Division
ORS:	Oromia Regional State
ORS:	ORS Rural Land Use Administration Proclamation

Abstract

Until recently when the FDRE Rural Land Use Proclamation No. 456/2005 was repealed by Proclamation No.1324/24, the application of the rule of prescription lacked explicit legal guidance which resulted in polarized arguments amongst legal experts. Many argued against its relevance based on the FDRE Constitution, which jointly grants land ownership to the people and the state. However, others contended that prescription is a general rule applicable to all rights, necessitating specific provisions to exclude its application in rural land cases. This study analyzed Ethiopia's current rural land legal framework and the Federal Supreme Court Cassation Division's decisions to assess the application of prescription to rural land disputes and pinpoint the associated legal and practical challenges. The study adopted doctrinal research design, supplemented by case reviews and interviews with experts. The study has found that the new FDRE Rural Land Proclamation boldly addresses some of the concerns regarding prescription that were previously raised. It establishes a 15-year prescription period for land reclamation actions between private parties. It prohibits raising this defence if the case involves the reclamation of an illegally obtained state or communal landholding. It acknowledges the application of other prescription rules from relevant laws to claims that do not involve the reclamation of landholding rights. The study has also determined that certain ambiguities persist in the new Proclamation's stance on prescription. Namely, the Proclamation provides no criterion for characterizing an action as a reclamation or other claim. It is also not clear whether prescription cannot be set up against the state and a community in relation to rural land disputes at all. In addition, the Proclamation lacks a definitive answer to the question of whether a person invoking prescription has to prove the lawfulness of the means used to hold the land in dispute even when the counterparty is a private individual. Furthermore, most importantly, the Proclamation's provisions also appear to open new avenues for rural land access through prescription, raising questions about legality. Finally, the Proclamation does not provide for or specifically borrow the application of counting and interruption of the period of limitation it sets in Art. 64(2). Thus, recognizing the far-reaching consequence of prescription rules on individuals' land rights, the study recommends the adoption of clear and comprehensive rules and guidelines for the application of prescription to rural land disputes.

Keywords: landholding right, prescription, extinctive prescription, acquisitive prescription, land reclamation action, methods of obtaining rural landholding right

Comment [MA1]: The adverb "haphazardly" is deleted to sound polite and professional.

Chapter One

Introduction

1.1. Background

Prescriptive limitation, often referred to shortly as “prescription”, is one of the oldest legal principles to have survived or been re-absorbed in most modern jurisprudence.¹ It means that certain rights are acquired or extinguished upon passage of a time as specified by local law²; and based on the effect of lapse of time upon the right prescribed; it can be either acquisitive or extinctive.³ While the former refers to the acquisition of a right by lapse of time, the latter is the extinction of a right by the nonuse of the right for a time set by the law.⁴

In recognising prescriptive rules to land, the Ethiopian Civil Code (the Civil Code) employs the term ‘usucaption’.⁵ According to the Code, ‘the possessor who has paid for fifteen consecutive years the taxes relating to the ownership of an immovable shall become the owner of such immovable’.⁶ However, in 1974, Ethiopia abolished the private land-holding system and later on constitutionally declared that land is a common property of the nation, nationalities and peoples of Ethiopia which is not subject to sale or other means of exchange.⁷ Accordingly, following the nationalization of rural and urban land in Ethiopia, it is widely held that usucaption only applies to buildings, not to land.⁸ Thus, the right that an individual has over land is a ‘use’ right, not ownership. This situation made commentators question the application of the usucaption rule as laid down under Art.1168 of the Civil Code in relation to rural land.

As alluded to before, various conundrums arise when one resorts to the application of the rule of prescription to land in Ethiopia. Since land cannot be privately owned, courts and scholars shy away from stating the applicability or otherwise of the rule of usucaption. However, it is

¹ Sherman, C., 1911, *Acquisitive Prescription: Its Existing World-Wide Uniformity* (Yale School of Law Faculty Scholarship Series, Paper 4442) p. 147.

² Muradu Abdo, *Ethiopian Property Law, A Textbook* (Addis Ababa University School of Law, September 2012) p. 218.

³ Sherman, (n 2) p.148

⁴ Ibid

⁵ The Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Neg. Gaz. Year 19th No. 2, Art. 1168(1)

⁶ Id

⁷ The FDRE Constitution, Proclamation No. 1/1995 (Year 1, No.1, Addis Ababa, 1995) Art. 40 (3)

⁸ Muradu Abdo , (n 2) p. 219

important to note that courts still resort to the application of the rules of limitation of action as put in place under Arts. 1845-1856 and 1000 of the Civil Code.

Besides, the dubious status of prescription with respect to rural land disputes resulted partly from the silence of the Federal Rural Land Administration and Use Proclamation (the old FDRE RLAUP) No. 456/2005⁹ and partly because a few regional rural land laws attempted to address the issue.¹⁰ However, a crucial shift has occurred with the replacement of the old FDRERLAUP by the FDRE Rural Land Administration and Use Proclamation No. 1324/2024 (the new FDRERLAUP).¹¹ The new Proclamation introduces a 15-year limitation period for reclaiming a landholding illegally obtained by another.¹² It explicitly excludes those who illegally hold state or communal land from using this defence.¹³

In Ethiopia, where a significant portion of the population depends on agriculture¹⁴, rural land holds immense importance. It serves as a cornerstone in the social, economic, and political fabric of the country. Land is not just a resource; it is intertwined with the identity and cultural heritage of every community all over the nation. Across generations, it symbolizes continuity and a sense of belonging. Given its critical role, well-defined and comprehensive laws are essential for administering land rights effectively.

1.2. Statement of the Problem

Despite the recognition of the doctrine of prescription in the Civil Code, its relevance to rural land disputes in Ethiopia has not been well understood. The issue of whether actions concerning rural landholding rights are time-barred had remained unaddressed until the enactment of the new FDRERLAUP. This paved the way for the persistence of polarized arguments and judicial decisions – for and against – on the status of prescription in relation to rural land disputes.¹⁵ This confusion stemmed from the paradigm shift in Ethiopia's rural land

⁹ The FDRE Rural Land Administration and Use Proclamation No.456/2005 (11th Year No. 44, Addis Ababa, 15th July 2005)

¹⁰ Fesseha Negash, *Appraising Legality Issue of Prescriptive Limitation Scheme of Access to Rural Land in Ethiopia: The Case of Oromia Regional State*, p.18 (Available at: <https://ssrn.com/abstract=3942459>) Accessed on July 20, 2023

¹¹ The FDRE Rural Land Administration and Use Proclamation No.1324/2024 (30th Year, No.58 ADDIS ABABA 14th August 2024

¹² Ibid, Art.64(2)

¹³ Ibid, Art. 64(1)

¹⁴ Agriculture contributes 35.8% of Ethiopia's GDP. 63% of the population is employed in agriculture, making land a critical asset for job creation and economic stability. World Bank Group, [Agriculture, forestry, and fishing, value added \(% of GDP\) - Ethiopia | Data \(worldbank.org\)](#), Accessed on Sep 14, 2024

¹⁵ Fesseha, (n.10) p.19

tenure system since the removal of Emperor Haile Selassie,¹⁶ coupled with the silence of the Federal rural land laws and the absence of cut-and-dried answers within the regional laws.¹⁷

The Derg's nationalization of rural land suspended the application of prescription to land disputes.¹⁸ However, the FDRE Constitution faces a delicate balance: it upholds private property rights while adopting a socialistic rural land tenure system¹⁹. Although peasants and pastoralists have rights to land, they cannot validly alienate those rights except through the means specifically laid down in the laws²⁰. This ambiguity blurred the role of prescription in rural land disputes as acknowledging it would lead to disguised land transactions.

The intricacy concerning the status of prescription also came from the fact that a few regional states attempted to resolve the issue within their rural land laws. The Oromia Regional State (ORS) and the Amhara Regional State (ARS) are the two notable examples in this regard.²¹ The ORS Rural Land Regulation No. 151/2012,²² which is enacted to give effect to the FDRERLAUP and ORS Rural Land Administration Proclamation No. 130/2007 (ORSRLAUP)²³ introduces the concept of prescriptive limitation and makes those who possess land lawful holders of rural land if they used it for twelve or more consecutive years.²⁴

On the other hand, the ARS Rural Land Administration and Use Determination Proclamation No.252/2017 (ARSRLAUP)²⁵, under Art.54, envisages the application of the provisions of the Civil Code to civil matters including prescription. However, Art. 55 introduces a critical

¹⁶ The Emperor's government codified the Civil Code, clearly recognizing the doctrine of prescription.

¹⁷ Fesseha Negash, (n.10)

¹⁸ Proclamation to Provide for the Public Ownership of Rural Lands, Proclamation No. 31/1975, Arts.3 and 32.

¹⁹ The FDRE Constitution, (n 7) Art. 40 (3)

²⁰ Id, Art. 40 (3)

²¹ Tigray, Afar, Amhara, Oromia, Benishangul, and Southern Nations, Nationalities and peoples National Regional States can be mentioned to have forged their land utilization proclamations.

²² Oromia Regional National State (ORS) Rural Land Administration and Use Regulation No.151/2012 (Addis Ababa, December 7, 2012)

²³ The ORS Rural Land Use Proclamation No. 130/2007 has recently been replaced by a new ORS Rural Land Administration and Use Proclamation No. 248/2023 (Feb 18, 2023, Addis Ababa)

²⁴ ORS Rural Land Regulation, (n 22) Art.32

²⁵ The Amhara National Regional State Revised Rural Land Administration and Use Determination Proclamation No. 252/2017 (22nd Year No. 14, October 30, 2017, Bahir Dar). The ORS Rural Land Use Regulation in Art.32 prescribes twelve years for rural land-holding rights to be acquired. This is quite contrary to the approach employed in the ARS Rural Land Proclamation (see Art.55 of the ANRS Rural Land Use Proclamation).

exception: a person who acquired land through illegal means cannot invoke period of limitation when asked to vacate by any party.²⁶

The primary consideration regarding the treatment of prescription in regional laws pertains to its constitutional validity. While the FDRE Constitution empowers regions to enact their respective rural land laws, it does not prescribe specific subject matters for regulation. The sole direction is that regional laws must align with the federal rural land framework. Consequently, the inclusion of prescription rules remains an open question, contingent upon interpretation and adherence to constitutional principles.

Comment [MA2]: In the original document, these statements sounded like the regional governments could “create” rural land use laws in their own right.

This being said, particularly, the ORS Regulation was criticized as unconstitutional as, in effect, it provided for another scheme of access to rural landholding rights that has not been recognized in primary laws.²⁷ It was also condemned for facilitating manipulated rural land transactions such as sale and land grabbing.²⁸ The law is further questioned for being against the constitutional principle of non-eviction of peasants and pastoralists from their possession.²⁹

Several questions were also asked concerning Art.55 of the ARSRLAUP. One relates to whether a total exclusion of prescription from rural land disputes is conjured up in the Proclamation.³⁰ The implementation of Art.55 of the ARSRLAUP is also questioned due to the circular definition given to the term illegal rural landholding in Art.2(39) which made it very complicated for the courts to distinguish between legal and illegal means of obtaining rural landholding rights. It is also pointed out that the Proclamation doesn't explicitly outline which prescription rules of the Civil Code may be applied in relation to a certain rural land dispute. Furthermore, the ARSRLAUP is criticized for not being clear regarding the effect of a rural land action being barred by a prescription.

Each of these concerns led to differing views as reflected in commentaries and FSCCD decisions.³¹ With respect to the applicability of prescription to rural land disputes, the

²⁶Id, Art. 55

²⁷Fesseha, (n 10)

²⁸ Id

²⁹ FDRE Constitution, (n 7) Art.40(3)

³⁰ Fekadu Andargie, (available at: <https://voiceofjudgesandprosecutors.wordpress.com>), Accessed on July 25, 2023. See also Ayalew Nebyu, (available at: <https://www.facebook.com/312916459514538/posts/733747407431439/>), Accessed on July 25, 2023.

³¹ Id

who illegally possesses state or communal holding from invoking a period of limitation as a defence.³⁹ The Proclamation also recognizes the application of other prescription rules, including those that are provided in the Civil Code, to rural land disputes other than action concerning the reclamation of illegally obtained landholding.

However, most of the concerns that were previously raised persist in this new Proclamation. Namely, per the new Proclamation, it is difficult to distinguish between legal and illegal methods of obtaining landholding. Despite being a very hot issue in the FSCCD's recent decision, the question of whether one must prove the fact that the landholding was lawfully obtained to raise prescription as a defence has not been covered therein. New questions have also emerged following the enactment of the new Proclamation, such as: what does it mean to limit the rule of prescription to cases of rural landholding reclamation; what makes Art.64 different from one that is provided in Art.1168 of the Civil Code, usucaption. The latter relates to the question of whether the prescription provided in the Proclamation is acquisitive or extinctive.

1.3. Research Objectives

With the general objective of assessing the relevance of prescription in rural land disputes and identifying the associated challenges, this work carried out two major tasks. First, it conducted a brief discussion of prescription, analyzing its application within Ethiopia's current rural land law framework. This included examining how the doctrine of prescription is treated in both the federal and regional rural land laws. Second, it examined the FSCCD's practice in applying prescriptions to rural land disputes. This aimed to determine the extent to which prescription is relevant to rural land issues and to point out practical challenges. This approach also highlights the importance of addressing the concerns raised by various stakeholders.

1.4. Research Question

All that this study has investigated revolves around the main research question: What are the challenges concerning the application of prescription to rural land disputes within Ethiopia's current rural land law framework?

The specific questions that this research has examined are:

³⁹ FDRE Rural Land Administration and Use Proclamation No. 1324/2024, (n, 11) Art.63 (1 &2)

- What is the legal framework governing the application of prescription to rural land disputes in Ethiopia’s current rural land law?
- What is the scope of application of prescription to rural land disputes in Ethiopia’s current rural land law framework?
- What is the legal effect of setting up prescription against the applicant to a rural land dispute?

1.5. Scope of the Study

This work assessed the availability and limitations of prescription as a legal recourse in rural land disputes in Ethiopia. Prescription is normally such a wide concept that has a range of applications. It is not as such limited only to rural land. In fact, it is usually set up against rights over movables, buildings, and other rights *in rem*.⁴⁰ In substance, the scope of this study, however, is restricted to the discussion of prescription and its applicability to rural land disputes as opposed to other disputes including with respect to urban land, movable, building etc.

1.6. Significance of the Study

As has been mentioned earlier, the doctrine of prescription is widely recognized in the Civil Code. Yet, for many reasons, its application to rural land disputes is not properly understood and has remained dubious for years. This is partly attributable to the dearth of writing on the subject. Considering the meagre study done on the topic, this research will first be considered a modest contribution to the knowledge in the area. Second, drawing attention to the shortcomings in the legal system and the difficulties it presents will spur more in-depth study. Lastly, it is thought to facilitate the legislature’s ability to formulate clear rules by helping it comprehend the issues with the existing laws.

1.7. Limitation of the Study

The research faced a significant time constraint, which might have impacted its depth. Additionally, arranging interview sessions with FSCCD judges—most of whom have had hectic schedules—posed an inevitable challenge. To lessen these challenges, the interviewees, discussants, and key informants were selected based on their availability, accessibility, and convenience. The researcher also conducted phone interviews. Moreover,

⁴⁰ Civil Code of Ethiopia, (n 5)

the researcher relied more on the FSCCD decisions as it is also possible to capture the positions taken by the judges of almost all levels.

1.8. Research Method and Methodology

1.8.1. Data Sources

This study adopted a doctrinal research design. Yet, it was supplemented by case review, Focus Group Discussion (FGD), and interviews with some experts and stakeholders. The study heavily relied on primary sources, including relevant legislation, namely the FDRE Constitution and the federal and regional rural land laws, such as those of the ARS and ORS. It also referenced FSCCD decisions regarding the application of prescription to rural land disputes. Secondary sources like books, journal articles and other published or unpublished research works related to the topic were also used. This approach helped to set the theoretical framework of the study and to clarify and analyse the legal and practical context of the research problem.

1.8.2. Population

Since the work aimed at finding out the relevance attached to prescription and the associated challenges in the Ethiopian rural land law regime, the population of this research were those laws that are enacted by the Federal as well as the regional governments concerning rural land. The decisions of the FSCCD and the HoF on the applicability of prescription to rural land disputes also made up the population. These cases included those which were decided between the years 1996 and 2023. This period was considered because the researcher wanted to project the findings of the study only to the cases decided by courts in their current form⁴¹ and in the same politico-legal environment. As this study also carried out interviews and FGD, land law experts, judges of the FSCCD and lawyers as well as law schools further constituted the population.

1.8.3. Sampling Technique

The sampling technique which was used to pick the sample units was purposive. Accordingly, the rural land disputes involving the issue of prescription decided by the FSCCD and the HoF (both published and unpublished) formed the sample units of the study. As regards the FSCCD decisions the researcher picked cases that were decided since

⁴¹The federal court structure of Ethiopia took its current form after Proclamation no.25/96 was enacted. See Federal Courts Proclamation, No. 25/1996 (2nd Year, No. 13, Addis Ababa, 15th February) 1996

2005 as it was after this year that the FSCCD decisions were set to be binding on the lower courts.⁴²

The decisions of the FSCCD were preferred for several reasons, among others; first, it is common knowledge that the Ethiopian judicial system has no database: it is difficult to access all decisions of every level of courts. In this regard, the decisions passed by the FSCCD are more easily accessible. Secondly, the level of importance attached to cases which reached the FSCCD is greater in that the problems in the area are more intricately reflected, and it is also possible to extract the positions of the lower courts as those cases were brought up mostly from first instance courts to the FSCCD. The interviewees, discussants, and key informants were selected on the basis of various factors such as expertise, consent, availability, accessibility, and convenience.

1.8.4. Data Collection

The researcher requested the Federal Supreme Court (the FSC) for the body of unpublished FSCCD decisions. And, as regards the published ones, by now the FSC has published 26 volumes of decisions on all areas of law. The researcher accessed these volumes from the FSC's websites or other legal databases and picked those cases of rural land disputes involving prescription.

Other primary sources such as the body of laws and regulations, and secondary sources such as books, journals and guidelines were gathered by visiting the various internet websites. Finally, the research questions framed above were further specified and posed (as interview and discussion points) to interviewees, discussants and key informants.

1.9. Literature Review

Literature on the topic of prescription is abundantly available in foreign jurisdictions. However, as this research is primarily local, this review limited itself only to studies that are conducted in Ethiopia concerning the specific topic the research carried on its investigation.

One of the studies conducted on the topic being considered is the case comment by Daniel W/Ambaye on the topic: "The Applicability of Period of Limitation in Rural Land

⁴² And it was since then that the Federal Supreme Court began to publish the decisions of the bench. See Federal Courts Proclamation Re-Amendment Proclamation, Proclamation No. 454/2005, 11th Year, No. 42, Addis Ababa, 14th June, 2005

Disputes”.⁴³ The author in this work focused only on the federal rural land laws and recognized the difficulty of determining the role of prescription to rural land disputes from these laws. Daniel’s work also appraises the decisions of the FSCCD on the topic and finds out that the FSCCD so far has adopted arbitrary positions. Per this study, while period of limitation cannot be set up against the state in rural land disputes, the FSCCD allows it to be invoked when the parties are individuals.⁴⁴ This study does not touch upon the regional rural land laws. After all, the Article was prepared in 2012, many years back now and so much has changed since then such as the FSCCD has new rulings and very recently the Federal government has updated the rural land law. As such, although not fully outdated, the work cannot properly reflect the current application of prescription in rural land disputes in the country.

Fesseha Nagash reached a similar conclusion in his study titled “Appraising the Interplay of Ethiopian Cassation Division’s and House of Federation’s Jurisprudence on (In)applicability Discourse of Period of Limitation to Rural Land: Case Analysis”⁴⁵. The study was conducted in 2021 and arguably analysed FSCCD decisions with issues applicability of prescription to rural land disputes and compared the FSCCD’s position and that of the HoF. Fesseha then concluded that the latter had adopted a clear jurisprudence while the FSCCD’s decisions follow no comprehensible formulae.

“Appraising Legality Issue of Prescriptive Limitation Scheme of Access to Rural Land in Ethiopia: The Case of Oromia Regional State”⁴⁶, research also by Fesseha Negash is the other study that has a substantial relation to the topic under consideration. The research discusses the Oromia Regional State (ORS) rural land laws in connection with prescription and finds out that the ORS Rural Land Regulation No. 151/2012⁴⁷ which is enacted to give effect to the FDRERLAUP and ORSRLAUP⁴⁸ introduces the concept of prescriptive limitation and makes those who bought rural land and squatter lawful holders of rural land if they used it for 12 or more consecutive years. The paper criticises the Regulation and labels it

⁴³ Daniel W Ambaye (PhD), *Applicability of Period of Limitation in Rural Land Disputes: Case Comment* (Bahir Dar University Journal of Law Vol.5, No.1, 2014) p. 225

⁴⁴ Id, p.223.

⁴⁵ Fesseha Negash, *Appraising the Interplay of Ethiopian Cassation Division’s and House of Federation’s Jurisprudence on (In)applicability Discourse of Period of Limitation to Rural Land: Case Analysis* (Hawassa University Journal of Law, Vol. 5, 2021)

⁴⁶ Fesseha Negash, (n 10)

⁴⁷ ORS Rural Land Regulation No. 151/2012, (n 22)

⁴⁸ The ORS Rural Land Use Proclamation No. 130/2007 has recently been replaced by a new ORS Rural Land Administration and Use Proclamation No. 248/2023 (Feb 18, 2023, Addis Ababa)

as unconstitutional as, in effect, it provides for another scheme of access to rural landholding rights that has not been recognized in primary laws.⁴⁹

Despite the various insights the paper provides regarding prescription and its indeterminate place in the Ethiopian rural land laws, this is a study per the ORS rural land laws, and therefore, doesn't appropriately reflect the current situation throughout the nation as the Federal rural land law has been replaced by a new one which has incorporated provisions that deal with the issue of prescription.

As pointed out earlier, the domestic studies are numerically small and above all, they are incomplete in that they single out and present a question or two. They didn't also follow the proper methods of doing research and lacked the required level of objectivity in their data presentation and analysis. This had been indicative of the need to conduct further research and this present study has done so.

1.10. Organization of the Study

This paper comprises four chapters. The introductory chapter provides essential context, including the study's background, research problem, questions, objectives, and methodology. Chapter Two explores the concept of prescription, covering its definition, classifications, justifications, and operational conditions. Additionally, it discusses the doctrine of prescription within the Ethiopian legal system and its relevance to rural land disputes. Chapter Three analyses data and evaluates the application of prescription in rural land disputes under Ethiopia's current laws, identifying associated challenges. Finally, Chapter Four presents the findings, conclusions, and recommendations.

⁴⁹ Fesseha Negash, (n 46) p.2.

Chapter Two

Prescription: Conceptual Overview

2.1. Chapter Introduction

Prescription is a complex doctrine involving a variety of different legal concepts. The legal parlance used to denote prescription differs across legal systems. Based on the legal doctrine that a nation is accustomed to, prescription is associated with several terms including period of limitation, statutory limitation, limitation of action, adverse possession, and usucaption. Thus, it is important to discuss the conceptual framework of the rule— prescription. Therefore, in this chapter, discussions will be made concerning the meaning of prescription, nomenclature, taxonomy of the term, justification for prescription, the conditions for the application of the rule of prescription, the relevance of the registration of property to prescription, the implication of prescription on human rights.

2.2. Understanding Prescription: Meaning, Nomenclature, and Taxonomy

2.2.1. Meaning

Prescriptive limitation, often shortly stated as “prescription”, is one of the oldest legal principles to have survived or been re-absorbed in almost all modern jurisprudences.⁵⁰ The principle has its roots in the old Roman legal term “praescriptiones” which used to represent the various preliminary objections that the Roman courts had to deal with before proceeding to the main issues.⁵¹

Prescription means that certain rights are acquired or extinguished upon passage of a period as specified by law.⁵² Based on the effect of lapse of time upon the right prescribed, two conceptions of the term have been developed by the Romans: acquisitive and extinctive.⁵³ The former refers to the acquisition of a right by lapse of time, whereas, the latter is the extinction of a right by the nonuse of the right for a time set by the law.⁵⁴ They are, however, viewed as the two sides of the same coin as extinctive prescription often eliminates the plaintiff’s ability to enforce a right and leads to the successful defendant acquiring that right.

⁵⁰ Sherman, C., (n 1)

⁵¹ Ibid p.148

⁵² Muradu Abdo (n 2)

⁵³ Sherman, C., 1911, (n 1) p.148

⁵⁴ Ibid

2.2.2. Nomenclature

Depending on the influence of the legal systems, different terminologies are used to refer to prescription. In literature and legal documents terms such as period of limitation, limitation of action and statute of limitation are used interchangeably to specifically refer to extinctive prescription which denotes the extinction of a non-exercised right up on lapse of time set by the law. On the other hand, in common law literature, adverse possession is the frequently utilized terminology,⁵⁵ while in the Roman and Civil law jurisdiction, usucapion/usucaptionis the frequently employed term, particularly to denote the mode of acquiring ownership through statutory lapse of a certain time, acquisitive prescription.⁵⁶

Likewise, the Ethiopian Civil Code prefers ‘prescription’ and ‘period of limitation’ to mean the various extinctive prescriptions set therein, and ‘usucapion’ to refer to the acquisitive prescription that sets forth the acquisition of ownership title over a thing, movable or immovable, through a continuous possession for a period of ten or fifteen years respectively. The new FDRERLAUP employs the term “period of limitation” in Art.64 but, as will be discussed in chapter three, it’s indeterminate whether this term refers to extinctive prescription or otherwise.

2.2.3. Taxonomy of Prescription: Acquisitive Prescription Vs. Extinctive

As highlighted in the foregoing paragraphs, prescription takes different forms. Based on the effect of lapse of time on the rights prescribed, prescriptions are notably classified into acquisitive and extinctive.

2.2.3.1. Acquisitive Prescription

The common mechanism of obtaining a title to a real property is through voluntary exchange.⁵⁷ However, there are certain situations where ownership is transferred through involuntary means.⁵⁸ One such mechanism is acquisitive prescription which signifies the ‘acquisition of title to a thing (especially an intangible thing such as the use of real property)

⁵⁵ The British Institute of International and Comparative Law, *Adverse Possession*, (Report for Her Majesty’s Court Service, 2006) p. 2. The term squatters’ right or squatting is also used as a synonym for adverse possession in some common law jurisdictions, particularly in the USA, squatters’ right is taken to mean ‘[t]he right to acquire title to real property by adverse possession, or by pre-emption of public lands’.

⁵⁶ Ibid

⁵⁷ Jeffrey M. Netter, *an Economic Analysis of Adverse Possession Statutes*, (International Review of Law and Economics, 1986, 6, pp. 217-227) p. 217

⁵⁸ Ibid

by open and continuous possession over a statutory period.’⁵⁹ The term acquisitive is generally taken to mean the ‘acquisition of a thing by possession thereof as if owner for the time fixed by law’.⁶⁰ It is acquisition by operation of law where courts refuse to recognize the title of the old owner.⁶¹ It is a method of creating a title to property without the "true" owner's agreement or even without payment of compensation.⁶²

Prescription is based on the idea that holding property for a longer period can eventually result in ownership.⁶³ Thus, the direct repercussion of the application of the rule of prescription is that it transfers the ownership interest from the true, absent owner to the person who is presently exploiting the property.⁶⁴ To this end, due to the application of the rule of prescription, the ‘true’ owner of a piece of property loses the capacity to regain possession from an adverse possessor, and legal title to the property is transferred to the adverse possessor.⁶⁵

Acquisitive prescriptions can be divided into ordinary and extraordinary, and the main distinction between the two is the time necessary for the lapse of the prescriptive period.⁶⁶ In this regard, ordinary prescription relatively requires a short period of time, and it is completed in three, ten or thirty years, whereas extraordinary requires thirty or forty years or more.⁶⁷

2.2.3.2. Extinctive Prescription

Extinctive prescription is a mechanism for extinguishing an obligation or right.⁶⁸ Unlike acquisitive prescription, extinctive prescription is not a mode of acquiring ownership, it rather refers to the situation where a right over a thing is extinguished by a lapse of time.⁶⁹ In this regard, extinctive prescription is founded on the principle of the limitation of actions.⁷⁰

In connection with land, extinctive prescription limits the land owner’s right to bring legal action against trespasses and nuisances and also bars the right to utilize the land in particular

⁵⁹ Black’s Law Dictionary, 9th ed, 2009

⁶⁰ Ibid

⁶¹ Ibid

⁶² Ibid

⁶³ Sally Brown Richardson, *Abandonment and Adverse Possession*, (Houston Law Review, 1385, 2015) p. 1393

⁶⁴ Jeffrey M, (n 58) p. 217

⁶⁵ Sally Brown, (n 64) p. 1394

⁶⁶ Ibid, p. 149

⁶⁷ Ibid

⁶⁸ Ibid, p. 148

⁶⁹ Ibid

⁷⁰ Ibid

ways.⁷¹ Upon the lapse of a statutory period, a property owner is barred from bringing an action to reclaim the possession of her land from its current possessor.⁷² In this regard, prescription is a legal doctrine that states, beyond the passage of a specified amount of time, that even the 'legitimate' owner of real property cannot file a lawsuit to evict an unlawful occupant.⁷³

The FSCCD on the other hand categorizes prescriptions into three: acquisitive prescription, period of limitation and extinctive prescription. The first refers to that a person acquires a right for using it for a prescribed time period, a typical example being usucaption as outlined in Art.1168(1) of the Civil Code. Whereas period of limitation relates to a person's right to enforce a claim being limited by time as is the case in Art.1845 and 1000(1) of the Civil Code. The third one, extinctive limitation is when a person loses his right (mostly over a property) owing to the non-use of the right within a period as set by the law such as Art.1192 of the Civil Code.

2.3. Justifications for Prescription

To begin with, the application of the rule of prescription enables a person to acquire a valid title to a land or other real property or quits the right of a person to claim possession of his land which is under the control of an unlawful possessor. These situations give the impression that the 'bad guy' wins.⁷⁴ In this regard, a number of people consider the adverse possessor as acting like a thief who takes land from its rightful owner.⁷⁵ Thus, in an effort to allay fears that prescription will enable the villain to triumph, scholars try to defend the rule of prescription/adverse possession by pointing out its interconnected purposes.⁷⁶

One of the 'conventional' defences to justify prescription in this regard is related to evidence, since evidence decays over time, once a significant length of time has elapsed, it becomes more difficult to try cases.⁷⁷ Other justifications of prescription include 'quieting title', 'extinguishing stale claims', 'encouraging the development of property', 'discouraging true owners from sleeping on their rights', safeguarding the reliance that the adverse possess

⁷¹ Wonnacott, M., *Adverse Possession and Prescription in Possession of Land*, (Cambridge University Press, 2006) p. 125

⁷² Jeffrey M, (n 58) p. 218

⁷³ Ibid, p. 217

⁷⁴ Sally Brown, (n 64) p. 1403

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

developed over the property, and preventing uncertainty.⁷⁸ In sum, the justification of prescription is grounded on legal, social, and economic arguments.⁷⁹

Overall, there is a vigorous debate surrounding the policy of prescription, particularly regarding the application of the period of limitation. This debate has persisted for over a century, as we continue to seek a satisfactory answer to the question: what justifies depriving an individual of their rights due to the passage of time?⁸⁰ Arguments for and against prescriptive limitation can be categorized into three main perspectives: the plaintiff's interest, the defendant's interest, and the public interest.⁸¹ The interplay among these arguments shapes the law of limitation.⁸² Additionally, the statute of limitations is influenced by the legislative goals and purposes underlying the law.⁸³ Analysing these perspectives, it becomes clear that the law of limitation should be employed only if it serves the public interest.

Like other jurisdictions, the debate over prescriptive limitation persists both practically and academically within the Ethiopian legal system. Practically, the FSCCD in the case of *Dawit Mesfin v. Governmental Housing Agency* reversed the lower court's decisions, arguing that Ethiopian law does not provide a period of limitation for certain claims over immovable property.⁸⁴ Consequently, according to this decision, some claims are exempt from the period of limitation.

Academically, scholars like Biruk argue in favour of prescriptive limitation, noting that in most countries, not only civil actions but also criminal actions—except for grave crimes such as genocide and crimes against humanity—are subject to time limitations.⁸⁵ Thus, evaluating these three arguments, one can understand that both legal and judicial jurisprudence suggest that, in the public interest, some claims should not be barred by the application of a period of limitation.

⁷⁸ Sally Brown, (n 64) p. 1403

⁷⁹ Sukhjinder Panesar & Jane Wofod, *Adverse Possession and Article 1 of the European Convention*, (Liverpool Law Rev, 2009) p. 87

⁸⁰ Tyler T. Ochea and Andrew Wistrich, *The Puzzling Purpose of Statute of Limitation*, (Pacific Law Journal, Vol.28, 1997) P. 453

⁸¹ Law Reform Commission Report, *Limitation of Actions*, (Ireland, 2011) Pp.18-22

⁸² Ochea And Wistrich, (n 85) pp.454-455

⁸³ Symone Shinton, *Pedophiles Don't Retire: Why Statute of Limitation Sex Crimes Against Children Must Be Abolished*, (Chicago-Kent Law Review, Vol. 92, 2017) P.319

⁸⁴ Federal Supreme Court Cassation Division, *Dawit Mesfin V Governmental Housing Agency*, File No. 43600, Vol.10, Pp. 225-229

⁸⁵ Biruk Haile, *Period of Limitation Applicable to Claims Over Immovable Property Under Ethiopian Law: Gateway to Hindsight Scrutiny of Legality Of Nationalization Of Immovable? Case Analysis*, (Jimma University Journal of Law, Vol. 4, No.1, 2012) P.185.

2.4. Conditions of Prescriptions

In order to claim title to a thing through adverse possession or to invoke limitation of action, there are requirements that the possessor or the person against whom the action is brought should fulfil. This topic presents some of the salient conditions necessary to establish a prescription.

Prescriptible Right: According to this requirement, to qualify for a prescription, a right should be capable of being prescribed.⁸⁶ This means, for instance, that the property should be susceptible to being privately owned, and things which are not capable of being owned privately cannot be subject to adverse possession.⁸⁷

Open and Notorious: In the case of acquisitive prescription, open and notorious possession denotes an obvious and visible possession, as opposed to a possession that is hidden.⁸⁸ The criteria that courts use to determine whether a possession is open and notorious is that it must have given rise to a reasonable possibility of informing the owner of the thing about the adverse claim.⁸⁹

Continuous and Uninterrupted Possession: Continuous and uninterrupted possession of the property for the statutory fixed period of time is one of the most important prescription requirements.⁹⁰ This condition requires that it is necessary for the adverse possessor to maintain continuous possession of the property for the whole required time.⁹¹ However, it is important to note that there are two modes of interrupting prescription: natural interruption—actual loss of the possession, and legal interruption— instituting suit against the possessor's right.⁹²

The Requisite Time: It is almost superfluous to mention that the adverse possessor needs to observe the required statutory period to claim a title over a property, in Roman law this requirement was the lapse of three years for movables and ten or twenty years for immovable property.⁹³ Thus, whatever the period of time fixed by law, the adverse possessor is required

⁸⁶ Charles P. Sherman, *Acquisitive Prescription: Its Existing World-Wide Uniformity*, (The Yale Law Journal, 1911, Vol. 21, No. 2) pp. 148-149

⁸⁷ Ibid

⁸⁸ Sally Brown, (n 64) p. 1396

⁸⁹ Ibid

⁹⁰ Charles P, (n 87) p. 151

⁹¹ Sally Brown, (n 64) p. 1397

⁹² Charles P, (n 87) p. 151

⁹³ Ibid

to possess the property for the requisite time period.⁹⁴ In this regard, it is important to understand that most current legal systems still follow the Roman periods of three years for movables and ten or twenty years for immovables; however, some jurisdictions do not maintain all three periods.⁹⁵ For instance, the prescriptive periods of France, Spain, Australia, Italy, Louisiana, Quebec, Mexico, and Japan correspond to the Roman periods.⁹⁶

Good Faith: To begin with, a number of jurisdictions do not provide good faith as a requirement to acquire a property by adverse possession, in particular, in the traditional common law doctrine, the mental state of the adverse possessor is immaterial.⁹⁷ Thus, in these jurisdictions, the focus is directed towards the possessor's activity on the land rather than her mental state on the issue.⁹⁸ In certain jurisdictions, for example, France and Spain, demonstrating the possessor's good faith will greatly shorten the statute of limitations.⁹⁹ Be this as it may, some jurisdictions are reluctant to give a title to an adverse possessor who is in bad faith.¹⁰⁰

2.5. The Relevance of Registration to Prescription

The main question under this topic is whether registration of land precludes a possessor from acquiring a title by prescription. In this regard, jurisdictions adopted different positions. In a jurisdiction where a land registration system has been implemented, there is a notable distinction in the implementation of adverse possession. Certain states, Canada for example eliminated the ability to acquire land through prescription when the land is registered, but the rule of adverse possession is retained in relation to unregistered land.¹⁰¹ Nonetheless, courts continue to acknowledge the public policy benefit of extinguishing title to registered property after a predetermined amount of time, and the majority of states—including the United States, Australia, New Zealand, and the United Kingdom—maintain the doctrine of adverse possession with regard to registered land.¹⁰²

Moreover, the study that compared the application of the rule of prescription in twenty-seven systems found that in eight systems, the right to obtain a title by length of occupation against

⁹⁴ Sally Brown, (n 64) p. 1399

⁹⁵ Charles P, (n 74) p. 154

⁹⁶ Ibid

⁹⁷ Sally Brown, (n 64) p. 1400

⁹⁸ Ibid

⁹⁹ The British Institute of International and Comparative Law, (n 56) p. 3.

¹⁰⁰ Sally Brown, (n 64) p. 1401

¹⁰¹ The British Institute of International and Comparative Law, (n 56) p. 3.

¹⁰² Ibid

the registered owner is expressly recognized by a law, in nine systems, right to obtain title through possession is specifically revoked and the registered owner is protected,¹⁰³ and in ten systems, the consequence of adverse possession is not addressed by the legislation.¹⁰⁴

In sum, as alluded to before, one of the rationales for the application of the rule of prescription is preventing uncertainty. Thus, the policy difference observed upon the land registration is that the uncertainty is eliminated or weakened by the system of registration.¹⁰⁵

2.6. Prescription and Implication on Human Rights

In the era of human rights, the question is whether the age-old prescriptive rule applies. The issue in this regard is how the rule fares with human rights rules on the enjoyment of property. This very question was a matter of discussion in the case of *J.A. Pye (Oxford) Ltd v United Kingdom* in relation to Article 1, Protocol 1 of the European Convention.¹⁰⁶ In the case at hand, there were three arguments raised by the 'true' owner of the land:

*Firstly, that there was no justification for them to lose their right of ownership of registered land. Secondly, that there was no justification that could justify depriving them of their land without compensation. Thirdly that there was no justification in depriving them of their land without procedural protection that would allow them the opportunity to respond to any such claims. In addition, in support of their case, Pye argued that in many other European States, the limitation period was often considerably longer than the 12 years applicable in their case and many other jurisdictions required additional criteria to be satisfied, for example, a notion of good faith.*¹⁰⁷

In the case, the European Court of Human Rights decided that the automatic extinction of a registered owner's title after 12 years possession was a violation of Article 1, Protocol 1.¹⁰⁸ However, the Grand Chamber of the European Court of Human Rights reversed the European Court's ruling that a squatter's entitlement to another person's land is not disproportionate.¹⁰⁹

¹⁰³ James Edward Hogg, *The Relation of Adverse Possession to Registration of Title*, (Cambridge University Press, *Journal of the Society of Comparative Legislation*, Vol. 15, No. 2, 1915) pp. 83-89, p. 83.

¹⁰⁴ *Ibid*, pp. 83 and 84

¹⁰⁵ *The British Institute of International and Comparative Law*, (n 49) p. 3.

¹⁰⁶ Sukhinder Panesar, (n73) p. 7.

¹⁰⁷ *Ibid*, p. 84

¹⁰⁸ *Ibid*, p. 78

¹⁰⁹ *Ibid*

In sum, even though there are ample possibilities to dismiss national statutes on the basis of human rights legislations that provide more protection to the rights of the property, the rule is not developed, and the case shortly discussed above failed to establish a litmus test to the possible subsequent challenges against the rule of adverse possession.

2.7. Chapter Summary

This chapter provides a brief overview of the concept of prescription. Although it is widely applied in Ethiopia's legal system, the specific relevance of prescription to rural land-related claims has been a subject of debate until the recent update of the FDRE RLAUP. Some argued against its applicability, citing the FDRE Constitution, which grants land ownership jointly to the people and the state. Others contended that prescription is a general rule applicable to all rights, thereby requiring specific provisions to exclude its application in rural land cases. However, the new FDRE Rural Land Administration and Use Proclamation, while not entirely sufficient, attempts to address some of the complexities surrounding prescription and rural land disputes in Ethiopia. Notably, it explicitly allows for the application of prescription in Article 64(2). The next chapter critically evaluates the application of prescription to rural land disputes under this new FDRE Proclamation and identifies the associated challenges.

Chapter Three

Challenges Concerning the Application of Prescription to Rural Land Disputes in Ethiopia's Current Rural Land Law

3.1. Chapter introduction

As has been indicated in the previous chapters, until the recent amendment of the Federal Rural Land Administration and Use Proclamation, there was no clear guidance on using prescription rules as a legal remedy for rural land disputes. Consequently, questions arose about the applicability of prescription rules outlined in the Civil Code and regional land laws. However, the situation appears to have changed with the enactment of the new FDRERLAUP. This marks the Federal government's initial effort, since the adoption of the FDRE Constitution, to address prescription-related matters in rural land disputes. This chapter explores the current Ethiopian rural land laws and evaluates the FSCCD's decisions as well as expert interviews focusing specifically on the application and scope of prescription in rural land disputes. As such it examines which questions the new Proclamation has responded to, highlights unresolved issues, and considers any emerging questions, leading us to discuss the way forward.

3.2. Brief Account of the Legal Framework Governing Rural Land in Ethiopia

The legal framework governing rural land in Ethiopia is intricate, often making it challenging to indicate which law is relevant to a specific context. This is largely due to the sheer number of laws enacted both by the federal and the regional governments and their indeterminate relation with one another. At the forefront of these laws is the FDRE Constitution which sets a few fundamental principles concerning the administration of rural land rights. The Constitution provides that [all] kinds of land fall under the common ownership of the public and the state. It gives peasants and pastoralists the right to obtain land for cultivation and grazing, respectively, and protects them against eviction from their possession. The Constitution prohibits rural landholders from making any valid deal that amounts to alienating their rights except those envisaged by the Constitution itself and subordinate rural land laws.

The Constitution in Art.40 (4 & 5) reserves the implementation of the right of peasants and pastoralists to obtain rural land to subordinate legislation to be enacted by the federal and

regional governments.¹¹⁰ Accordingly, having been recently updated, the Federal Rural Land Administration and Use Proclamation No. 1324/2024 has been put in place primarily to provide regions with rural land use and administrative frameworks.

The power to administer rural land resides in the regional governments.¹¹¹ The FDRE Constitution empowers the regions to formulate and implement rural land laws in alignment with Federal land laws.¹¹² In response to this mandate, several regions have established their respective versions of rural land laws, drawing upon the Federal Rural Land Use Proclamation. To date, Afar, Amhara, Benishangul Gumz, Oromia, SNNPR and Tigray regions have put in place their rural land administration proclamations with their respective implementing regulations and directives.

The Civil Code also provides rules regulating rural land. The New Federal Rural Land Proclamation in Art.63 cross refers to the application of the provisions of the Code as regards matters not covered therein. Regional rural land laws also envisage the relevance of some of the provisions of the Civil Code, most importantly in relation to civil matters such as contracts, succession and donation.¹¹³

3.3. Rural Land Rights in Ethiopia

3.3.1. Holding Right

Anchored on the Constitutional principle that land is commonly owned by the people and the government and hence shall not be subject to sale or exchange, the new Federal Rural Land Administration Proclamation recognizes the rights of farmers and pastoralists to obtain rural landholding rights free of charge.¹¹⁴ The Proclamation guarantees rural landholders against eviction from their holding except per the eminent domain power of the government to expropriate land.¹¹⁵

The Proclamation outlines a range of rights bestowed upon rural landholders. Specifically, landholders have the right to hold land and utilize it in compliance with the Proclamation and

¹¹⁰ The FDRE Constitution, (n 7) Art.40 (4 & 5); Art. 55(2(a)) of the Constitution empowers the Federal government to enact laws on land utilization, and Art.52(2(d)) of the Constitution authorizes the states to administer land in accordance with the federal laws.

¹¹¹ Ibid

¹¹² Ibid

¹¹³ ARS Rural Land Administration and Use Proclamation No.252/2017, (n 25) Art. 54

¹¹⁴ The new FDRE Rural Land Administration and Use Proclamation No. 1324/2023, (n 11) Art. 4(1) cum 8(1). Religious institutions also do have the same rights.

¹¹⁵ Ibid, Art.6(1) cum 6(3)

other subordinate laws, and they are permitted to create assets on it.¹¹⁶ This entitlement extends to include the right to transfer any assets they have created on the land.¹¹⁷ The Proclamation also allows rural landholders to develop their holdings collaboratively.¹¹⁸

Rural landholders are provided with further entitlements. Specifically, landholders have the right to lease their holdings and mortgage them to lending organizations.¹¹⁹ They are also entitled to exchange land holdings with one another.¹²⁰ Moreover, the Proclamation allows rural landholders to transfer their land holdings through inheritance and donation.¹²¹ The forgoing entitlements are embedded in rural landholding rights with the primary objectives of accommodating holders with financial flexibility and opportunities for income generation, facilitating the redistribution of land based on the holders' needs and agreements thereby promoting more efficient use of rural land resources, and ensuring the continuity of land holding across generations.¹²²

3.3.2. Acquisition and Transfer of Rural Landholding Right

a. Distribution/Redistribution

The new FDRE Proclamation provides for three types of rural landholdings vis: private, communal, and state holdings.¹²³ A person who prefers to engage in agricultural activities may get rural land free of charge through distribution/redistribution, donation, and inheritance.¹²⁴ Rural land distribution involves giving a person a landholding right originally and presupposes that the land being distributed has no holder at the moment of the distribution. This takes place when there is free land. Particularly, it occurs when a landholder dies and there is no legal heir, or abandons his holding due to settlement or leaves his area by his consent longer than a deadline determined by law, and when cultivable mountainous and gully land is available.¹²⁵ Such extra land is distributed to the local

¹¹⁶ Ibid, Art.8(2)

¹¹⁷ Ibid, see also Art.17 The Proclamation further allows the sale of an immovable fixed on land without separating it from the land.

¹¹⁸ Ibid, see also Arts.11, 12 and 14

¹¹⁹ Art. 8(2), see also Arts. 9 and 15

¹²⁰ See Art 8(2), 16,18 and 19

¹²¹ FDRE Proclamation No. 1323/2023, Art.12

¹²² FDRE Rural Land Proclamation No. 1324/2024, *Explanatory Notes*, October 2023, pp. 12-21

¹²³ FDRE Rural Land Proclamation No. 1324/2024, (n 14), Art. 7

¹²⁴ Ibid, see Arts. 4(1), 11, 12, 25, and 26.

¹²⁵ Ibid, Art.26, see for example ARS Rural Land Proclamation No.252/2017, (n 25) Art. 14.

residents following a land use plan or study and the various prioritizing rules as set by the Proclamation and regional laws.¹²⁶

Although the Proclamation bans redistribution of rural land in the country, landholders displaced from their holdings due to irrigation development projects undertaken by the government or non-government organizations can acquire land from other irrigation user parties through allotment.¹²⁷

b. Inheritance

As indicated earlier, rural landholders are entitled to transfer their landholding rights through inheritance per the provisions of the Civil Code.¹²⁸ A landholder therefore can do so either by will or through dying intestate.¹²⁹ A landholder accordingly may make a will regarding his land-holding right to any person in a manner that wouldn't disinherit the legal heirship of his minor children or be to the detriment of the legal rights of his spouse.¹³⁰ Although not expressly provided in the Proclamation, given that all land right transfers and restrictions must be registered,¹³¹ making will shall meet the criteria of public will as outlined in the Civil Code, and should be submitted and registered by the pertinent Wereda land administration and use office.¹³²

On the other hand, when a person dies intestate, the land-holding rights will be distributed to the deceased's children, parent/parents or any legally permitted other family member respectively.¹³³ When a landholder doesn't make a will and has no one as legal heir with the framework provided in the Civil Code, his landholding will be submitted to the land bank and be distributed to applicants.¹³⁴

¹²⁶ Ibid, Art.26(5), see for example ARS Rural Land Proclamation No.252/2017, (n 25) Arts. 10(4) and 12

¹²⁷ Ibid, Art.25(1, 2). See also the ANRS Rural Land Proclamation No.252/2017,(n 25) Art. 13(1, 2 and 3)

¹²⁸ Ibid, Art.12, (1, 2)

¹²⁹ Ibid, Art. 13 (1,2) cum Civil Code, Art. 829(1)

¹³⁰ Some regional rural land laws include conditions that inheritance must not be in a manner that prejudices the rights of legal heirs and that of the spouse, and a person getting a landholding right through succession must intend to engage in agricultural activities; such a person's holding right must also not exceed the rural landholding size as set by the pertinent law. See for instance Art. 17(5, 6 and 8) of the ARS Rural Land Proclamation No.252/2017, (n 25)

¹³¹ FDRE Rural Land Administration Proclamation No. 1324/2024, (n 11) Art. 50(2)

¹³² Ibid, Art.50(2),

¹³³ Civil Code, Arts. 829 (3) cum 842ff

¹³⁴ FDRE Proclamation No. 1323/2023, (n 14) Art.12(2) cum Art.26, (1 (a)). See also the ARS Rural Land Proclamation No.252/2017, (n 25) Art.17(10).

c. Donation

Another scheme that the new FDRE Rural Land Proclamation provides farmers and pastoralists to transfer their landholdings to people around them is through donation. Rural land right holders accordingly can donate their rights to any of their relatives by consanguinity as provided in the Family Code or to anyone through a maintenance contractual agreement subject to the condition that the donation contract in both cases must not be to the detriment of the rights of minor children and persons with disabilities.¹³⁵ A contract of donation shall be made in writing and be authenticated and registered before an institution authorized by Regional Governments.¹³⁶

Finally, although not explicitly mentioned as a mode of acquisition of rural landholding rights in the Proclamation, a close look at Art. 16 reveals that the exchange of rural land between holders also makes up the list as it virtually involves a holder obtaining a new holding despite relinquishing the previous one. Moreover, persons wishing to invest in rural land development are also entitled to acquire land in the form of a lease, Art.5(5).

3.3.3. Protection and Loss of Rural Land Holding Right

The FDRE Constitution in Art. 40(4) guarantees rural landholders against eviction from their holding. This seems to have been reinforced in Art.6(1) of the new FDRE Rural Land Proclamation which provides that the landholding rights of farmers, semi-pastoralists, pastoralists and religious institutions have no time limit. The protection against eviction that is accorded to rural landholders in the Proclamation however doesn't include the eminent domain power of the government to expropriate rural land, Art.6(3).

A landholder may also lose his holding right upon transgression of some rural land-related rules to be laid down by regional governments.¹³⁷ For instance, per the ARS Rural Land Proclamation, a landholder may lose his right on one of the following grounds when: he is found to be employed in a private, government or non-governmental organization or any work of another institution for an indefinite time or in any way which is not permanent;¹³⁸ he disappeared from his residence or found to have gone abroad and stayed for five consecutive years without notifying the woreda land administration and use office who he rented his land

¹³⁵ Ibid, Art.11 (1,2 and 3)

¹³⁶ Ibid, Art.11 (5)

¹³⁷ Ibid, Art. 31

¹³⁸ The new FDRE Rural Land Proclamation doesn't seem to require that a rural landholder must not get employed permanently.

for or assigned to administer; he is found to have failed to develop the land according to the use plan if any and, caused serious damage to the land; he is found to have made the land idle for 3 consecutive years; and the pertinent authority decides that a plot of land be used for public service.¹³⁹

3.4. Prescription under Ethiopia's Current Rural Land Laws

As has been said repeatedly, the FDRE Constitution recognizes the right of individuals to hold and utilize rural land if they choose to engage in agricultural activities, but it also establishes a system of land tenure in which the people and the state jointly own land. Thus, with the exception of disposal, rural landholders enjoy these rights over the parcel of land allotted to them. Moreover, rural landholders are explicitly forbidden by the Constitution from selling, exchanging, or engaging in any other transaction that might result in the alienation of their holding rights. This may only provide a vague indication if the Constitution has considered applying prescription to issues involving rural land, as will be explored later.

The Federal rural land law that was in place until recently when it was repealed by the new FDRE Rural Land Use Proclamation didn't address the issue of prescription. Instead, a few regional governments devised their resolution within their respective rural land laws. Therefore, for nearly two decades, the courts including the FSCCD had to interpret these laws in light of the essence that is envisioned in the FDRE Constitution. Recognizing this problem the new FDRE Rural Land Proclamation has set a 15-year period for a landholding reclamation action between private parties to be brought to the court. It explicitly prohibits a person who illegally obtains state or communal holding from invoking a period of limitation as a defence. The Proclamation also recognizes the application of other prescription rules, apparently including those that are provided in the Civil Code, to rural land disputes other than reclamation action concerning illegally obtained landholding.

In doing so, the new Proclamation, among others, has attempted to address the issue of prescription at the Federal level which is believed to facilitate the seamless enforcement of the FSCCD decisions concerning the relevance of prescription to rural land disputes. It is also thought to bring about a uniform implementation of the national rural land tenure system as adopted in the FDRE Constitution. The following sections present the breakdown of the

¹³⁹ ARS Rural Land Proclamation No,252/2017, (n 25) Art.21(1 A-G), see also Art 26

provisions of the new FDRE Proclamation that have covered the issue of prescription concerning rural land disputes in light of the many decisions of the FSCCD mainly with the view to examine if the various concerns pinpointed in this study have been considered and identify those concerns which must be considered in the future.

3.4.1. Prescription in Light of the State and People's Ownership of Rural Land

Although the FDRE Constitution says nothing regarding prescription, looking into the few fundamental principles incorporated under Art.40, some writers tend to question the enforceability of prescriptive rules regarding land despite being laid down in subordinate legislations. This concern stems from the very essence of the doctrine of prescription that a right is acquired or extinguished upon passage of time in which manner the Constitution doesn't envisage for a landholding right to be acquired or extinguished.¹⁴⁰

In addition to this, the scholars who developed the concept of prescription have outlined several conditions for prescription to take effect one of which, as has been elaborated in chapter two, is that there must be a prescriptible right,¹⁴¹ according to which, to qualify for prescription, a right should be capable of being prescribed. For instance, the property should be susceptible to being privately owned, and things such as land which are not capable of being owned privately under Ethiopian law cannot be subject to prescriptive limitation.¹⁴² They further advance that if prescription is to be invoked to rural land disputes, the Constitution's commitment to protecting peasants and pastoralists against eviction from their possession would be defeated as it inevitably facilitates disguised sale and exchange of rural land.¹⁴³

Others on the other hand hold that a careful understanding of the constitutional principles of state/public ownership of land and prohibition of sale and exchange of rural land would not totally preclude the applicability of prescription.¹⁴⁴ Here two justifications are often presented. One relates to the assertion that what the state and the public own is the land and it is the land that is put beyond the reach of sale and exchange. However, farmers and pastoralists have a use right over the plots of land. It is therefore held that the fact that the use right that one has over a certain piece of land is prescribed doesn't contravene with the

¹⁴⁰ Fesseha, (n 10) pp.25-27

¹⁴¹ Sherman, (n 1)

¹⁴² Id

¹⁴³ Fesseha, (n 10)

¹⁴⁴ Discussion with Group Discussants (7 members) on Prescription in light of the FDRE Constitution's Principle of People and State Ownership of Land and the Bundle of Rights Theory of Ownership.

Constitution. This line of argument bears the question that if it is only the land that is owned by the state and is beyond commercial transactions, is it constitutional to sell one's landholding? Unfortunately, there seems no answer to this question.

The other justification relates to the theoretical foundation of prescription that it is not always true that a person invoking a prescription acquires the right.¹⁴⁵ Prescription may be extinctive that is to say the party against whom the defence is invoked becomes incompetent to bring the action. It has expired because some time has passed since he had to bring it. This doesn't mean that the party raising the defence succeeds in acquiring the right. It rather means the other person can no longer bring his action. That particular right of action has expired with the passage of time. But another person with a better right may bring the same action against the same party who raised the defence.¹⁴⁶

It is therefore proposed that it is not unconstitutional for a subordinate rural land law to provide a prescriptive limitation that bars the right of a person from bringing action of landholding reclamation upon the lapse of a specified time.¹⁴⁷ This however must be examined in light of the protection against non-eviction of rural landholders accorded to them by the Constitution. The latter prohibits peasants and pastoralists from presenting their landholdings to a sale or exchange agreement. And, it is often argued that setting prescription for actions in relation to rural land, despite not being unconstitutional in its own right, facilitates the occurrence of unconstitutional behaviour of rural landholders tacitly agreeing to fail to bring reclamation action until a period of limitation as set by the law runs against them so that another party becomes entitled to hold the land.¹⁴⁸

The counterargument to this question is that as it's been made clear prescriptive limitation that can be adopted in line with the Constitution is an extinctive prescription where the right of the dispossessed landholder to bring a reclamation action expires because of lapse of time. This doesn't make the other party the right holder. Per the new FDRERLAUP Art.2(15) a rural landholding right must be obtained legally and have the necessary documentation. A person with these requirements met but let for some reason another person use beyond the prescribed time must be considered as if he has abandoned his holding right in which case the

¹⁴⁵ Sally Brown, (n 64) p. 148

¹⁴⁶ Fesseha, (n 10)

¹⁴⁷ Id, a similar opinion was shared among interviewees: Honorable FSCCD Judges Habtamu Erqyhun and Emnet Assefa, and Mr. Berihun Adugna (Advocate, trainer of judges in land law issues, and Bahir Dar University School of Law Instructor).

¹⁴⁸ Id, Fesseha, (n 10) pp. 25-27

holding automatically becomes within the domain of the state holding. However, this becomes very complicated when it is reflected in real cases, for instance, the other party who used a land beyond the prescribed period wouldn't simply sit silent. Throughout those years he may be able to forge the necessary documents and appear to be a real right holder. And, it will inevitably be difficult for the state to oust this person from the possession on the ground that the original holder had abandoned the land.¹⁴⁹

3.4.2. Actions of Rural Landholding Reclamation Vs. Other Actions

Disputes over rural land holdings may vary depending on their cause of action. The latter may result from usurpation of rural landholding rights, or performance or non-performance of a land lease agreement, or it may also relate to the exchange of holdings, mortgage, succession, donation, etc. The new FDRE Rural Land Use Proclamation singles out rural land holding reclamation action between private parties to be barred if not brought within 15 years. Art.64(2) reads:

An action to reclaim a holding which was illegally possessed by another person shall be barred by period of limitation if not brought within 15 years after the date he should have brought the case or having become aware of his rights.

Thus, the 15-year period of limitation in the Proclamation is set only as regards rural land holding reclamation action as opposed to other rural land-related actions. Whereas prescriptions provided in other laws apply with respect to other claims.¹⁵⁰ Accordingly, a court must first address whether the action brought to it against which the prescription as laid down in this provision is invoked is a reclamation action or it relates to other rights.¹⁵¹ A reclamation action is deemed to be instituted if a person in his action claims that his rural landholding right has been usurped by another person and requests the court to get his right back. This seems plain but it indeed is difficult when it manifests in real cases as there is no explicit guidance on the determination of an action concerning a rural land right being a reclamation action or else.

¹⁴⁹ Discussion with Abdulaziz Mohammed, South Wello, Werrebabo Wereda Court Judge.

¹⁵⁰ FDRE Rural Land Administration and Use Proclamation N0,1324/24, (n 11) Art.64(3)

¹⁵¹ Federal Supreme Court Cassation Division, Mr Gammadaa Baysa V. Alamu Desisa, May 7, 2021 File No. 190267, Unpublished

Looking into the practice of the FSCCD might help in this regard as the new Proclamation seems to have followed nearly a similar approach to that one adopted by the former. The FSCCD identified rural land reclamation actions from other claims in many of its decisions but it is often observed being challenged in formulating clear criteria.

The FSCCD, in File No. 69302,¹⁵² ruled that a farmer whose rural landholding right is usurped by another through a contract or else loses his right to claim the land if he fails to bring a suit within 10 years per Art.1845 of the Civil Code.¹⁵³ In its other decision, File No. 186329,¹⁵⁴ period of limitation is set to be 3 years (per Art.1000 (1) of the Civil Code) if the dispute is between heirs. The Bench held that it's for the court to decide which period of limitation is relevant on a case-by-case basis. In File No. 190267,¹⁵⁵ the Bench strengthened its previous decisions clearly indicating that the underlying cause of the action shall be identified to determine which period of limitation to resort to.

The FSCCD in its decisions tried to rigorously differentiate between the action of reclamation of landholding right and a suit whose cause of action relates to other claims but failed to specifically pinpoint the criteria a court has to observe in the determination process. Failure to do so seems to have resulted in the Bench itself reaching inconsistent decisions as reflected in File No, 186461,¹⁵⁶ where, despite recalling its previous decisions and pressing on the need to see the cause of action in every rural land dispute to determine what period of limitation to resort to, it sets another period of limitation, that is ten years, although the dispute relates to succession.

The above FSCCD decisions show the complexity of distinguishing between the two categories of actions concerning rural land rights as provided in the new FDRE Rural Land Use Proclamation. It is therefore important to determine whether courts shall simply take what is being claimed in the statement of claim or investigate what lurks behind it. To explain this with a scenario, say that a person brought an action reclaiming his holding right which he subjected to a 5-year lease agreement to the defendant 16 years ago. The court in this case must identify what caused the action: contract or usurpation. If it is the former, the court must

¹⁵² Federal Supreme Court Cassation Division, (n 35)

¹⁵³ The FSCCD sets a ten-year period of limitation for rural land disputes but cites Arts.1677 (1) and 1845. Federal Supreme Court Cassation Division, Mr. Wakene Dinka V. Ebsa Ejigu, May 6, 2021, File No. 191968, Vol.25

¹⁵⁴ Federal Supreme Court Cassation Division, (n 37)

¹⁵⁵ Federal Supreme Court Cassation Division, (n 152)

¹⁵⁶ Federal Supreme Court Cassation Division, (n 38)

not allow the defendant to invoke Art.64(2) of the Proclamation but Art. 1845 of the Civil Code. But, if, on the other hand, it is determined as usurpation, the defendant shall be allowed to raise the Proclamation's period of limitation defence.

In File No. 187484¹⁵⁷ the applicant rented out his landholding for ETB 500 to the defendant who agreed to use the land for ten years, that was until 2015. The applicant brought a suit stating that the defendant refused to leave the land which he used for ten years based on the contract of rent. The defendant, on the other hand, among other things, objected to the suit claiming that he has been using the land for more than ten years and, therefore, the applicant's action is barred by prescription.

The FSCCD determined the time after which the applicant's right of action is to be barred starts to count, stating that 2015 marks the end of the term of the contract of rent. The period shall be calculated starting from this year, not just the moment the defendant got hold of the land and began using it. The defendant used the land until 2015 on the basis of the contract of rent. The FSCCD went on to state that the cause of action shall be considered together with the relevant prescription when calculating the period after which a person's right of action is to be barred.

The Court, however, didn't comment on whether the period of limitation could be a ground of objection had the requisite time been fulfilled. It seems that the FSCCD rejected the objection not because prescription cannot be set up against the applicant but because the latter brought the suit just before he ran out of time, ten years. The very fact that the FSCCD didn't state that prescription cannot be set up gives the impression that the defendant could successfully object to the suit if the time between 2015 and the time when the suit was brought surpassed ten years.

Another scenario would be a dispute in which the defendant took possession of a tract of land through succession but it is found out that he wasn't legally entitled to succeed the deceased and that, on the other hand, the landholding right had to go to the other party. In this case, the court must decide if the cause of the action is succession or usurpation. In this connection, the FSCCD in File No. 186329¹⁵⁸ indicated that if the dispute is between legal heirs the cause of action is deemed to be succession and thus the period of limitation shall be 3 years as

¹⁵⁷ Federal Supreme Court Cassation Division, Mr Beyene Kebede V. Mr Geremu Aynalem et al, March 4, 2022, File No. 187484, Vol.25

¹⁵⁸ Federal Supreme Court Cassation Division, (n 37)

provided in Art.1000(1) of the Civil Code. It remains unclear however if the case arose because one party inherited a landholding to which he is not legally entitled to succeed.¹⁵⁹

3.4.3. State and Communal Holding Vs. Private Holding Debate

As discussed earlier, the FDRE Rural Land Use Proclamation provides for three types of rural land holding: state, communal, and private.¹⁶⁰ The Proclamation limits the application of the 15-year prescription only to cases when the parties are private individuals. Art.64(1) provides:

[A] person who illegally possesses state or communal holding may not invoke a period of limitation as a defence.

Accordingly, the period of limitation as stipulated in Art.64(2) cannot be invoked when the landholding right in dispute originally belonged to the state or a community. This leads to a number of questions, however. Firstly, one might ask why the legislator felt the need to treat state and communal holdings differently concerning prescription. In response to this question of why the Proclamation wanted to give such unrestricted land reclamation rights to the state and rural communities, the explanatory note of the Proclamation has the following:

In cases where individuals have unlawfully taken possession of rural land holdings that originally belonged to the state or a community, courts sometimes allow them to invoke a period of limitation as a defence. However, this practice poses challenges for the government in reclaiming illegally acquired land. The intention behind Art.64(1) is thus to prevent state and communal landholdings from permanently falling into the possession of those who obtained them unlawfully, ensuring the state's ability to reclaim such land.¹⁶¹

An almost similar position has been adopted in the FSCCD's decisions only with respect to state holdings though. In File No. 93013,¹⁶² the FSCCD excluded the application of a period of limitation when one party is the state arguing that land administration power is entrusted to regional governments and this right may not be barred by limitation despite the user's control

¹⁵⁹ Id

¹⁶⁰ The FDRE Rural Land Administration and Use Proclamation No.1324/2024, (n 11) Art.7

¹⁶¹ The FDRE Rural Land Administration and Use Proclamation No.1324/2024 Explanatory Note, (n 139), p.43

¹⁶² Federal Supreme Court Cassation Division, Gíše Woreda Land Administration and use office vs. Getu Terefe, Tir 30, 2006E.C, February 7, 2014, File No. 93013, Unpublished

of the land for a longer period without any disturbance. This is further explained in File No. 96203,¹⁶³ where the Bench stated that as a land administration institution, its right of state land reclamation could not be barred by limitation. It further declared that the fact that the period of limitation concerning the reclamation of state land is not indicated under federal and state rural land laws shows that the legislator intends to provide the institution with an unlimited right. This justification of the Bench has appeared further strong in File No. 112906.¹⁶⁴ The Bench, on February 24, 2016, decided that prescription cannot be invoked as regards a landholding that is commonly owned by the state and the people.

Therefore, the new thing in the New Proclamation is that it's made clear that in addition to state holding, action of communal rural landholding reclamation shall not be barred by a period of limitation. This is similarly justified that the common property of the people shall not illegally fall into the hands of individuals and if already obtained as such, the community shall be able to reclaim its holding at any time.

However, the absence of explicit guidelines regarding what qualifies as an unlawful acquisition of landholding rights creates uncertainty. Granting the state unrestricted land reclamation authority could potentially exacerbate insecurity among individuals. Moreover, as will be discussed in the next pages, the Proclamation's failure to succinctly define legal and illegal pathways for obtaining rural landholdings further compounds these challenges.

3.4.4. Legal vs Illegal vs Unlawful Debate

In principle, the concept of prescription does not necessarily require that a person acquires a right legally. Rather, it often operates as a mechanism that transforms wrongful possession into a legally recognized right over time.¹⁶⁵ Prescription is in fact regarded as one of the means of acquisition of rights. However, the FDRE Rural Land Use Proclamation takes a different approach as regards state and communal landholdings: it states that prescription does not apply if the party invoking it illegally obtained the landholding that originally belonged to the state or if it was a communally held land.

This raises an important question: does the Proclamation completely prohibit the application of prescription in rural land disputes involving the state as one of the parties? The *acontrario*

¹⁶³ Federal Supreme Court Cassation Division, Checkol Kume vs. North Achefer Land Administration office, File No. 96203, Unpublished

¹⁶⁴ Federal Supreme Court Cassation Division, (n 32)

¹⁶⁵ Sally Brawn, (n 64) 1403

reading of Article 64(1) suggests that prescription could be invoked even against the state, provided that the person claiming the landholding did not use illegal means to obtain it. However, practically, it is difficult to identify landholding obtaining means as lawful, illegal, and unlawful based on the existing laws.

The challenge in this regard seems to stem from the circular definition given to the term ‘illegal landholding’ in Article 2(15) of the new FDRE Rural Land Use Proclamation. It characterizes illegal landholding as land acquired through illegal means and not recognized by the appropriate authorities. However, this definition lacks practical clarity. What precisely constitutes ‘recognition’ by the pertinent office remains unclear. Moreover, Ethiopia’s rural land laws do not explicitly define the various forms of illegal acquisition. While the Proclamation outlines legitimate methods for land transfer, it does not expressly label other means as illegal. This ambiguity can lead to confusion and uncertainty.

The FDRE Rural Land Use Proclamation introduces a nuanced debate. While it defines ‘illegal landholding’ as land acquired through illegal means and not recognized by the appropriate authorities, it also emphasizes that legal landholding results from adherence to the specified acquisition methods—regardless of subsequent recognition, or vice versa. Now, consider this scenario: can an individual who used communal land for 25 years based on a ten-year lease agreement, but later obtained recognition from the relevant office, raise the defence of a period of limitation against the community? The answer remains open, highlighting the need for precise legal clarity.

Looking into the FSCCD decisions can open our eyes to see and understand how complicated the issue is in real cases. The FSCCD, in File No. 96203,¹⁶⁶ denied the claimant not to invoke a period of limitation as a defence stating that the land reclamation right of the state could not be barred by limitation. In this case, the claimant pleaded to the cassation court that lower courts decided in favour of the respondent by ordering the return of land which had been under his possession for 16 years and for which he had received a land certificate. The claimant indicated that he received the land during the redistribution period and a certificate was issued for him. He therefore requested the Bench to dismiss the case on the ground that the respondent’s claim has been barred by prescription.

¹⁶⁶ Federal Supreme Court Cassation Division, (n 164)

The respondent, on the other hand, without denying the facts, said that the land was originally acquired illegally, and it has the right to reclaim and cancel the certificate. The cassation court then held that as a land administration institution, its right of state land reclamation could not be barred by limitation. It further indicated that the fact that the period of limitation concerning the reclamation of state land is not indicated under federal and state rural land laws shows that the legislator intends to provide the institution with an unlimited right. Accordingly, the reclamation right of the state cannot be barred by limitation regardless of the person acquiring the holding right following the required steps.

Understanding the challenges associated with the absence of clear rules regarding the legal/illegal means of obtaining rural landholding right, the FSCCD requires the party invoking a period of limitation to prove the fact that he lawfully obtained the landholding in question. In File No. 179827¹⁶⁷ the FSCCD decided that a person has to prove that he obtained the landholding right lawfully. Otherwise, it is presumed as if he obtained it through unlawful means and, then, he'll be precluded from setting up a prescription when he is asked to leave his possession.¹⁶⁸

In doing so the FSCCD distinguished between illegal and unlawful means of obtaining rural landholding. This relates to using a method that is against an expressly stated rule such as acquiring rural landholding through sale or exchange with another property.¹⁶⁹ These are unlawful as they are provided so in the Constitution. According to the FSCCD, a person acquiring rural land holding through a means that is prohibited by the law cannot raise a period of limitation when he's asked to leave by the other party.¹⁷⁰

This line of interpretation traces in FSCCD's own decision in File No. 43226¹⁷¹ where it held that invalidation of a contract with an unlawful object shall not be barred by a period of limitation. Adhering to this principle, the Bench argued that according to the existing federal

¹⁶⁷ Federal Supreme Court Cassation Division, (n 36)

¹⁶⁸ Id, The Court stated that this decision aims at synchronizing the decision rendered in File No.69302 with the ARS Land Administration Proclamation No.252/2017 as the latter, under Art.55, arguably excludes the application of period of limitation in relation to a dispute over illegally obtained landholding right. FSCCD Unpublished, File No. 190987: this is a case decided by seven judges. The decision was passed 4 to 3. The gist of the arguments convened in this decision is about amending the FSCCD decision it passed in Vol.24 File No. 179827 requiring a person invoking prescription to prove the lawfulness of the means she used to obtain the landholding right in dispute. Dissenting opinions were forwarded ferociously by the three judges on three grounds. Federal Supreme Court Cassation Division, File No.

¹⁶⁹ Id

¹⁷⁰ Id

¹⁷¹ Federal Supreme Court Cassation Division, Geta Trading Plc V. Commercial Bank of Ethiopia, File No. 43226, February 14, 2011, Vol. 12.

and regional rural land proclamations, land can be acquired only through distribution, donation, inheritance, or lease, and no other means.¹⁷² Also, the federal and regional constitutions equally showed that land is not subject to sale or exchange. In this case, receiving land as compensation by the respondent from ERA was declared by the court as illegal and unconstitutional. Since the object of the contract is unlawful, the contract is said to be void and the respondent could not raise the period of limitation as a defence. The FSCCD also reinforced this argument in File No. 79394 holding that prescription cannot be invoked by a person who holds land through a means that is prohibited by law. The House of Federation (HoF) has also stated that any deal that is made on land in violation of the prohibitions mentioned under the Constitution is void ab initio and, therefore, prescription cannot be invoked against it.¹⁷³

By illegal means of obtaining rural landholding, the FSCCD meant a situation where a person holds land through ways not provided in the laws but not expressly prohibited like the sale and exchange of rural land. However, this characterisation of methods of rural land-holding acquisition doesn't seem to have any practical relevance as the FSCCD failed to adhere to its own ruling in File No. 69302.¹⁷⁴ It ruled that a farmer whose rural landholding right is usurped by another loses his right to claim the land if he fails to bring a suit within 10 years per Art.1845 of the Civil Code. In this decision, the Bench allowed the invocation of period of limitation despite the unlawful source of acquisition, which was arguably a purchase agreement.

3.4.5. Procedural Implication of Prescription

The foregoing discussions have also shown that the complexity in the application of prescription has posed procedural challenges. The challenges generally stem from, first, that Art.64 (2) of the new FDRERLAUP envisages the application of prescription to a rural land dispute if the latter involves land reclamation action. It is stated in the Proclamation, Art. 64(3) that other claims are subject to other prescriptions in other relevant laws.

As has been discussed previously in analysing the FSCCD decisions, categorizing an action as land reclamation or otherwise necessitates an examination of its underlying cause. This determination significantly impacts the procedural approach courts must adopt in resolving

¹⁷² FSCCD Kutaber Woreada kebele 13 Administration vs. Habtu Molla, March 19, 2012, File No. 71204, Unpublished

¹⁷³ House of Federation, (n 34)

¹⁷⁴ Federal Supreme Court Cassation Division, (n 37)

rural land disputes.¹⁷⁵ Period of limitation, when raised as a preliminary objection, ostensibly streamlines court proceedings by allowing early dismissal of cases. The rationale is to save time and reduce litigants' costs.¹⁷⁶ Paradoxically, however, courts face heightened complexity when parties invoke prescription. Multiple factors come into play, often requiring the court to frame and settle various issues before ruling on the preliminary objection.¹⁷⁷

A similar procedural challenge in relation to the application of prescription to rural land disputes also comes from the FSCCD's precedent that requires a party invoking prescription to prove lawful acquisition of the disputed rural landholding right, particularly when the applicant is the state or a community. This holding of the FSCCD stands in contradiction to what has been contemplated in Arts. 244(1), 245(2) and 246(1) of the Ethiopian Civil Procedure Code¹⁷⁸ for two reasons. First, allowing the defendant on the condition of proving the lawfulness of the means of acquisition of the holding right defeats the very essence and justifications of preliminary objections. Second, the defendant must not be required to argue over the main issue of the case. That is to say in a reclamation landholding action the main issue is whether the defendant obtained the landholding illegally.¹⁷⁹

However, one might question the relevance of legality when prescription effectively bars a person's right to initiate legal action under the Proclamation. This procedural requirement appears at odds with the fundamental purpose of extinctive prescription, which aims to establish the lapse of the applicant's right rather than affirming the defendant's right acquisition.¹⁸⁰ The crux of this argument hinges on whether the prescription outlined in Article 64(2) should be classified as extinctive or acquisitive—a question that remains unresolved in the context of the new FDRERLAUP.

3.4.6. Prescription as A Means of Acquisition of Rural Landholding Right

Recalling our discussions in chapter two, prescription takes different forms. Based on the effect of lapse of time on the rights prescribed, it is notably classified into acquisitive and extinctive. Acquisitive prescription signifies the 'acquisition of title to a thing (by open and continuous possession over a statutory period.'¹⁸¹ Extinctive prescription is a mechanism for

¹⁷⁵ Id, also interview with Honourable FSCCD Judge Habtamu Erqiyhun

¹⁷⁶ Id

¹⁷⁷ Id

¹⁷⁸ The Civil Procedure Code of the Empire of Ethiopia, Extraordinary Issue No. 3 of 1965, Addis Ababa

¹⁷⁹ Federal Supreme Court Cassation Division, (n 37)

¹⁸⁰ Id

¹⁸¹ Black's Law Dictionary, 9th ed, 2009

extinguishing an obligation or right. Unlike acquisitive prescription, extinctive prescription is not a mode of acquiring ownership, it rather refers to the situation where a right over a thing is extinguished by a lapse of time. In this regard, extinctive prescription is founded on the principle of the limitation of actions.

In connection with land, extinctive prescription limits the land owner's right to bring legal action against trespasses and nuisances and also bars the right to utilize the land in particular ways. Upon the lapse of a statutory period, a property owner is barred from bringing an action to reclaim the possession of her land from its current possessor. In this regard, prescription is a legal doctrine that states, beyond the passage of a specified amount of time, that even the 'legitimate' owner of real property cannot file a lawsuit to evict an unlawful occupant.

At this juncture, it is important to ask which type of prescription is contemplated in the new FDRE Rural Land Use Proclamation. There seems to be no clear-cut answer to this question as multiple factors should be considered to conclude. To start from what the Proclamation states, Art.64(2) provides that an action to reclaim a holding which was illegally possessed by another person shall be barred by a period of limitation if not brought within 15 years after the date he should have brought the case or having become aware of his rights. Considered, the provision implies that the right to request the court to reclaim his rural landholding expires upon a lapse of 15 years. Accordingly, the original holder will not be legally capable to vacate the intruder. This provision doesn't indicate where the right will go afterwards. The legislating team seems to have included some important hints in the explanatory note of the new FDRELAUP:

[t]he law sets 15 years which is relatively a longer period. This is to be fair enough to preclude the person who failed to bring reclamation action within this expansive period from returning and harassing the other party who has been using the land and therefore the latter must be allowed to continue to produce on the land. It is also in the essence of prescription that the latter should be allowed to continue to produce on the land he used all those years.

Looking at this text of the note it seems that the lawmaker intended to introduce an acquisitive prescription where a defendant to a rural landholding reclamation action invoking

period of limitation as laid down in the Proclamation ends up acquiring the landholding right over the land he's been using for over 15 years.

However, this interpretation of the provision may be slippery as one has to also consider the FDRE Constitution. The latter makes rural landholding right alienation methods that are not expressly allowed in subordinate laws unlawful. Letting a person acquire a rural landholding right over time would therefore defeat this prohibition of the Constitution as, for instance, it could pave the way for landholders to engage in land transactions with the hope that the transaction although ineffective now will become effective after 15 years. It should instead be understood to mean that the defendant may stay on the land until another party with a better right claims the holding right in which case the government may take the land into its land bank considering the holding as abandoned or the holder died with no heir as the case may be. This follows that a person must establish that he has an original holding right or be able to show that he obtained it through one of the means of transfer outlined in the Proclamation.

3.5. Chapter Summary

Before the enactment of the new FDRE Rural Land Proclamation, the application of the rule of prescription lacked explicit legal guidance which resulted in polarized arguments amongst legal experts and inconsistent court decisions. Court decisions somehow showed that prescription could not be set up against the state. It may be resorted to when both parties are private individuals provided that the one invoking proves she obtained the landholding lawfully. The decisions also arguably indicated recognition primarily of extinctive prescription. Even if a litigant successfully raised the limitation of action, acquisitive prescription would not be triggered. This position stems from the understanding that land is the common property of the state and its people, rendering individual ownership inapplicable.

On the other hand, the new FDRE Proclamation addresses some of the previously raised concerns regarding prescription. While it establishes a 15-year prescription period for land reclamation actions, it also acknowledges the application of other prescription rules from relevant laws to different claims. However, certain ambiguities persist in the Proclamation's stance on prescription. Notably, complexities arise when dealing with state and communal landholdings. Furthermore, the Proclamation's provisions appear to open new avenues for rural land access through prescription, raising questions about legality.

Chapter Four

Findings, Conclusions and Recommendations

4.1. Findings

Drawing from the investigations conducted in this study, the findings are presented in the order corresponding to the research questions.

First, concerning the legal framework regulating the application of prescription to rural land disputes, the study identified that the new FDRE Rural Land Administration and Use Proclamation No.1324/2024 provides for the application of prescription to rural land disputes. The Proclamation, under Art.64, identifies two categories of rural land actions for which it sets different prescriptions. Accordingly, while the Proclamation establishes a 15-year limitation on rural land reclamation actions in Art.64(2); and, in Art.64(3), it borrows the application of other relevant prescriptions outlined in other laws as regards other claims over rural landholding rights.

However, the proclamation lacks specific guidance on categorizing rural land suits as either ‘reclamation of landholding’ actions or ‘other claims.’ In this regard, the practice of the FSCCD serves as a reminder to courts that such characterization should be determined on a case-by-case basis, considering the underlying cause of action.

In addition, the Proclamation makes a wholesale reference to other laws’ prescription rules as regards “other claims”. This study has determined that the FSCCD used two sets of prescriptions that would apply to “other claims” in relation to land. Depending on the cause of action of the suits therefore claims concerning succession shall be brought to court within three years as provided in Art.1000(1) of the Civil Code while “other claims” other than those emanating from succession are to be subject to the ten-year prescription period as regulated in Arts. 1845-56 of the Civil Code.

Second, with respect to the scope of application of prescription to rural land disputes, in nearly a similar fashion to that adopted by the FSCCD, the Proclamation excludes the application of prescription as laid down in Art.64(2) to rural land reclamation action when the dispute is over an illegally obtained state or communal holding. The sources analyzed in this study justify the exclusion, among others, in relation to the administrative role of the state,

deterrence of unlawful activities on land such as land grabbing, sale, and exchange, and protecting public resources from falling into the hands of individuals.

It is worth noting that the Proclamation precludes the application of any period of limitation if the land in dispute was obtained through illegal means. Having analyzed the FSCCD's decisions, the study has learnt that through the *acontrario* reading of Art.64(1), the Proclamation opens room for setting up the defence against the state or a community when the land is obtained legally.

The challenge here is the insufficiency of the provisions of the Proclamation to enable the court to clearly distinguish between the legal and illegal means of rural land-holding right acquisition methods. The judicial jurisprudence in this regard categorised methods of obtaining landholding rights into three: legal, illegal, and unlawful means of obtaining landholding rights. Landholding right acquisition means that are explicitly provided for in the Proclamation, namely, distribution/redistribution, succession, and donation constitute legal means of obtaining landholding rights.

On the other hand, those means of acquisition that are explicitly stipulated as unlawful, notably, sale and exchange as well as land grabbing are what the FSCCD considers unlawful to which the Court excludes the invocation of period of limitation. But other methods of obtaining rural landholding rights which are not expressly mentioned as either legal or unlawful are what the Court considers illegal methods. The FSCCD allowed setting up prescription in the latter cases. Similar interpretations therefore help fill the said gap in the new Proclamation. The approach followed by the new ORS Rural Land Administration and Use Proclamation No.248/2023, Art. 2(18 & 19) sets a good example in this regard.

Finally, the question of whether a person invoking the prescription establishes a holding right over the land in dispute or merely ends the other party's right to bring reclamation action against the defendant has not been clearly considered in the new Proclamation. However, when Art.64(2) is read together with Art.26(1) of the Proclamation and the constitutional principle that put rural land beyond sale and exchange, disguised or else, and the principle of non-eviction of rural landholders from their possession, the prescription envisaged seems to be that of extinctive. The FSCCD decisions also showed that a person against whom prescription is invoked loses the right to bring action but does not establish a right for the other party. The opposite of this interpretation seems to be contemplated having regard to the

explanatory note of the Proclamation and the practical relevance of invoking prescription as when a person's right to claim a right against another expires, the other party would technically be entitled to it. Furthermore, the Proclamation does not provide for or specifically borrow the application of counting and interruption of the period of limitation it sets in Art. 64(2).

4.2. Conclusions

This study analyzed the Ethiopian rural land legal framework and the FSCCD's decisions to assess the relevance of prescription in rural land disputes and pinpoint the legal and practical challenges associated with its application.

Prescription means that certain rights are acquired or extinguished upon passage of a period of time as specified by law. Based on the effect of lapse of time upon the right prescribed, a prescription may be acquisitive or extinctive. Prescription is often justified in relation to evidence, quieting title, extinguishing stale claims, encouraging the development of property, discouraging sleeping on one's right, safeguarding the reliance that the adverse possessor developed over the property, and preventing uncertainty.

The doctrine is widely recognized in nearly all legal systems. While it is also recognized in Ethiopia, its application to rural land-related claims had been a contentious topic until the recent update of the FDRE Rural Land Administration and Use Proclamation. The latter have attempted to address some of the previously raised concerns regarding prescription. It establishes a 15-year prescription period for land reclamation actions between private parties. It explicitly prohibits invoking this defence if the case involves the reclamation of an illegally obtained state or communal landholding. It acknowledges the application of other prescription rules from relevant laws to claims that do not involve the reclamation of landholding rights.

Despite recent updates, the Proclamation remains unclear on several fronts regarding prescription in rural land disputes. Notably, it lacks criteria for distinguishing reclamation actions from other claims. Additionally, questions persist about whether prescription can be invoked against the state and communities. Furthermore, the burden of proving lawful landholding means remains uncertain, even when dealing with private individuals. The Proclamation also introduces potential avenues for rural land access through prescription,

raising legality concerns. Lastly, it does not address counting and interruption of the limitation period set in Art. 64(2).

4.3. Recommendations

The Federal government's attempt to address the issue of prescription in the new Rural Land Administration and Use Proclamation is very much appreciated. It will significantly and positively impact land tenure security and sustainable use of the country's most crucial resource. It is also indicative of the law maker's due attention to what the justice system has been through the last 3 decades.

This said, yet, this study has identified some issues that the new Proclamation has to resolve as presented above. This section, therefore, brings the following recommendations to the attention of the legislator and researchers, building upon what has already been addressed, to further tailor the law towards addressing every bit of concern regarding the application of prescription to rural land disputes.

- a. Art.64 (2 and 3) the new FDRE proclamation distinguishes between rural landholding reclamation action on one hand and other claims on the other. Courts should therefore be provided with detailed guidance on which action falls in which category. This can be done either by amending the Proclamation itself or through subordinate legislation. The lawmaker in this regard may build upon the FSCCD's practice where the latter grounded its decisions based on the underlying cause of action.
- b. The Proclamation should be amended or a regulation enacted to address whether prescription as outlined in Art. 64 (2) can be set up against the state or a community where the landholding right in dispute was legally obtained by the defendant.
- c. It is all against the essence of prescription as a preliminary objection ground to require a party invoking such remedy to first prove that the landholding right was obtained lawfully. This must be clarified by amending the Proclamation or in a regulation to be enacted. This will prevent chaotic precedent from being set.
- d. When the state is the applicant to a rural land dispute, the Proclamation, Art. 64 (1) opens room for the applicability of prescription provided that the party obtained the holding right lawfully. First, the researcher firmly believes that allowing one to invoke prescription on the condition of proving the lawfulness of the acquisition of the right makes no sense and is against the Civil Procedure Code, Arts. 244(1), 245(2)

and 246(1). There seems no reason a person would invoke prescription if she is going to have to prove her lawful entitlement to the right anyway. Second, however, given the complexity of the matter in real cases, if allowing such is found to have any practical relevance, Art. 2(15) of the Proclamation shall be amended so that it explicitly stipulates what constitutes legal and illegal means of rural landholding rights. The approach followed by the new ORS Rural Land Administration and Use Proclamation No.248/2023, Art. 2(18 & 19) Has set a good example in this regard.

- e. The Proclamation in Art. 64 should indicate that extinctive prescription has been envisaged. It means the fact that a party can defend on the basis of such ground doesn't mean that a landholding right has been established for him. It rather means the applicant's right to reclaim his holding has expired but another party with a better right will be able to institute a similar action against the defendant.
- f. Last but not least, Art. 64 of the Proclamation should incorporate or expressly borrow the application of specific period of limitation interruption rules from the Civil Code's Arts. 1851-56. A general reference to a law would only serve to complicate matters further.

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Annexe i: Summary of Selected FSCCD Decisions on Prescription

- 1. FSCCD Vol.06, File No. 20295; Vol. 11, File No. 47201; and Vol.6 File No. 26422:** in these decisions, the FSCCD ruled as to when prescription starts to count. See also *FSCCD unpublished File No.186329* which upholds the ruling in File No.26422 and 47201, that is prescription runs from the day the defendant gets possession of the land based on succession.
- 2. FSCCD Vol.06 File No.30101:** the FSCCD ruled that a person owns a building he constructs on another person's landholding with the latter not objecting to the construction, per Art.1179 (1). However, despite Arts. 1179(2) and 1180, the landholder cannot force the person out of the building upon payment of compensation. The FSCCD stated that Arts.1179 (2) and 1180 shall not be effective in this respect as land currently belongs to the people and state. The FSCCD further stated that, notwithstanding the foregoing provisions, the person who has built a house on another person's landholding owns the building per Arts. 40(2) and (7) of the FDRE Constitution. Some contend that this decision is against the FDRE Constitution itself and the land laws as it technically appropriates landholding rights to the one who erects a building on a land which he doesn't have a holding right. The FSCCD also upheld this argument in its subsequent decisions. See *File Nos. 105125, 36638*. However, the disputes in these cases arose over urban lands and it's arguable if they can be cited to disputes over rural land with the same issue.
- 3. FSCCD, Vol. 12, File No. 43226:** invalidation of a contract with unlawful object shall not be barred by a period of limitation. The FSCCD differentiated the "illegal means of obtaining landholding right" from "Unlawful means of obtaining landholding right".
- 4. FSCCD Vol.13 File No. 69291:** the dispute arose due to an antitrust contract where the applicant allowed the defendant to use her 0.75 Hec rural land for an indefinite period. In return, the defendant gave her ETB 1020. The latter kept possession for eleven years until the applicant brought a suit against him to leave her land. The defendant argued the suit be barred by period of limitation. The FSCCD decided that contract of sale do not have value before the law. The Bench didn't rule on the objection of period of limitation, however. It simply went on to state that the contract shall be invalidated.

5. FSCCD, Vol. 13, File No. 69302: on December 29, 2011, it ruled that a farmer whose rural landholding right is usurped by another through a contract or else loses his right to claim the land if he fails to bring a suit within 10 years per Art.1845 of the Civil Code. In this decision, the court focused on the period of limitation irrespective of the source of acquisition which was arguably a purchase agreement.

This decision seems to have been amended by FSCCD Vol.24, File No. 179827 (see below). In the new decision the bench holds that prescription can only be resorted to by a party who proves that he obtained the holding right lawfully.

6. Unpublished FSCCD File No. 71204: the FSCCD held that according to the existing federal and regional rural land proclamations, land can be acquired only through distribution, bequest from family, or through lease arrangement, and no other means. Also, the federal and regional constitutions equally showed that land is not subject of sale or exchange. In this case, receiving land as compensation by the respondent from ERA was declared by the court as illegal and unconstitutional. Since the object of the contract is unlawful, the contract is said to be void and the respondent could not raise period of limitation as a defense. But the court did not refute why the period of limitation and usucaption arguments raised by the respondent were not accepted except that the current laws do not allow the modality of land acquisition.

7. FSCCD, Vol.14, File No. 79394: on October 16, 2013, the FSCCD, having recalled its previous decision, File No. 43226 (see above), held that prescription cannot be invoked by a person who holds a land through a means that is prohibited by law.

8. Unpublished FSCCD File No. 93013: The FSCCD excluded the application of its previous decision in File No.69302 (see above) when one party is the state. It argued that land administration power is entrusted to regional governments and this right may not be barred by limitation despite the user's control of the land for longer period without any disturbance.

9. Unpublished FSCCD File No. 96203: In this case, the claimant pleaded to the cassation court that lower courts decided in favor of the respondent by ordering the return of land which had been under his possession for 16 years and for which he had received land certificate. The claimant indicated that he received the land during the redistribution period and certificate was issued for him then after and hence the respondent's claim

should be barred by limitation. The respondent, on the other hand, without denying the facts raised, said that the land was originally acquired illegally, and it has the right to reclaim and cancel the certificate. The cassation court again argued that as a land administration institution, its right of state land reclamation could not be barred by limitation. It further declared that the fact that period of limitation concerning the reclamation of state land is not indicated under federal and state rural land laws shows that the intention of the legislator is to provide the institution unlimited right.

- 10. FSCCD Vol.20, File No. 105125:** FSCCD has ruled the non-applicability of the Civil Code provisions such as Arts.1179 (2) and 1180 as they are not in line with the FDRE Constitution. See *File Nos. 30101, 36638* (above). However, the disputes in these cases arose over urban lands and it's arguable if they can be cited to disputes over a rural land with same issue.
- 11. FSCCD, Vol. 19, File No. 112906:** on February 24, 2016, the FSCCD decided that prescription cannot be invoked as regards a landholding that is commonly owned by the state and the people.
- 12. FSCCD, Vol. 24, File No. 179827:** the FSCCD decided that a person has to prove that he obtained the landholding right lawfully. Otherwise, it is presumed as if he obtained it through unlawful means and, then, he'll be precluded from setting up prescription when he is asked to leave his possession. The Court stated that this decision aims at synchronizing the decision rendered in File No.69302 with the ANRS Land Administration Proclamation No.252/2017 as the latter, under Art.55, arguably excludes the application of period of limitation in relation to a dispute over illegally obtained landholding right. Compare this decision with File No.69302.
- 13. FSCCD Vol.25 File No. 181643:** the fact that a person gets a court declaration of being heir and possesses land which forms part of the succession before his co-heirs doesn't entitle him to a special right of succession. The ANRS Proclamation doesn't deal with such arrangements other than providing the criteria as to who can succeed rural landholding rights of a deceased.
- 14. FSCCD Vol.25 File No. 185848:** donation/gift of rural landholding right made per repealed laws shall be judged per the same law, not by the new law, 252/2017.

15. Unpublished FSCCD File No. 186329: period of limitation is set to be 3 years (per Art.1000 (1) of the Civil Code) if the dispute is between heirs. It's held that it's for the court to decide which period of limitation is relevant on a case-by-case basis. The court also referred to its previous decisions to calculate period of limitation, vis FSCCD Vol.06, File No. 20295; Vol. 11, File No. 47201; and Vol.6 File No. 26422 (see above).

16. FSCCD Vol.25 File No. 186431: a rural landholding cannot be transferred through a contract of sell notwithstanding that there is a house or other building affixed on it. (Compare this with ANRS Rural Land Administration and Use Proclamation No.252/2017 which gives a room for sale of a building constructed on landholdings within kebele centers.)

17. Vol.25 File No 186461□having recalled its previous decision, the FSCCD sets another period of limitation, that is ten years, although the dispute relates to succession. Further, the bench reminds the need to see the cause of action in every rural land dispute to determine what period of limitation to resort to. It further underscores the application of some of the property law concepts and provisions of the civil code to disputes in relation to land, rural or urban.

18. FSCCD Vol.25 File No.187340□ period of limitation has been set to be 3 years (per Art.1000 (1) of the Civil Code) if the dispute is between heirs.

19. FSCCD Vol.25 File No. 187484: the FSCCD determined the time after which a person's right of action is to be barred starts to count. In the case at hand the applicant rented out his landholding for ETB 500 to the defendant who in turn agreed to use the land for ten years, that was until 2015. The applicant brought a suit against the defendant stating that he refused to leave the land which he used for ten years based on the contract of rent. The Defendant, on the other hand, among other things, objected to the suit claiming that he has been using the land for more than ten years and, therefore, the applicant's action is barred by prescription.

The FSCCD stated that 2015 marks the end of the term of the contract of rent. The period shall be calculated starting from this year, not just the moment the defendant got hold on to the land and began to use it. The FSCCD went on to state that the cause of action shall be considered together with the relevant prescription when calculating the period after which a person's right of action is to be barred.

The Court, however, didn't comment on whether period of limitation could be a ground of objection had the requisite time been fulfilled. It seems that the FSCCD rejected the objection not because prescription cannot be set up against the applicant but because the latter brought the suit just before he runs out of time, ten years. The very fact that the FSCCD didn't state that prescription cannot be set up gives the impression that the defendant could successfully object to the suit if the time between 2015 and the time when the suit was brought surpassed ten years. Remember that it's not legal to obtain a landholding right through a contract of rent. Then why didn't the FSCCD as it does in the rest of its decisions state that prescription cannot be set up by a person who obtained a land through illegal means?

- 20. FSCCD Vol.25 File No. 189608:** the FSCCD in this decision limited the applicability of Art.1179 of the Civil Code when there is no known/clear relationship between the parties over the disputed landholding. In this connection, the court stated, the relevant provision in the case of contract of sale of land is Art.1818 of the Code, not 1179.
- 21. FSCCD Unpublished, File No. 190267:** it's ruled that the cause of action shall be identified to determine which period of limitation to resort to. The FSCCD rigorously differentiated between action of reclamation of land holding right and a suit whose cause of action is contract.
- 22. FSCCD Unpublished, File No. 190987:** this is a case decided by seven judges. The decision was passed 4 to 3. The gist of the arguments convened in this decision is about amending the FSCCD decision it passed in Vol.24 File No. 179827. Dissenting opinions have appeared ferocious.
- 23. Vol.25 File No. 191968:** the FSCCD sets ten years period of limitation for rural land disputes but cites Arts.1677 (1) and 1845.
- 24. FSCCD Vol.24, File No. 179827:** Whether FSCCD decisions rendered on the basis of one regional land legislation should be observed by the lower courts of other regions. See the interpretation that the FSCCD has given as regards the application of prescription to rural land disputes shall bind all lower courts of the country although the case arose in one region with its own land legislation. See also 69302 together with Art.2/1 of Proc. No.454/2005.

25. FSCCD Vol. 10, File No. 43600: Petitory action cannot be barred by period of limitation.

26. The House of Federation (HoF) has also stated that any deal that is made on land in violation of the prohibitions mentioned under the Constitution is void ab initio and, therefore, prescription cannot be invoked against it.

27. Other decisions are also available:

1. FSCCD Unpublished, File No. 192353
2. FSCCD Unpublished, File No. 192470
3. FSCCD Unpublished, File No. 230754
4. FSCCD Unpublished, File No. 234625
5. FSCCD, Vol. 26, File No. 201894

Annexe ii: Discussion and Interview Questions

1. General Questions

- 1.1. Why do you think we have to talk about prescription in the context of rural landholding dispute? What are the issues that you think should be settled in connection with prescription and its applicability to rural land disputes?
- 1.2. Do you think the constitutional prohibition of the sale and exchange of land includes a prohibition of selling one's landholding right?
- 1.3. How do you relate this prohibition to the relevance of prescription to rural land disputes? How do you evaluate the relevance of prescription to rural land disputes in light of the FDRE Constitution?

2. Prescription in light of the FDRE Constitution, Proclamation No. 456/2005, the ARS and ORS Rural Land Administration and Use Proclamation

- 2.1. What is your view on the application of prescription to rural land-related cases in light of the FDRE Constitution, FDRE Rural Land Administration and Use Proclamation No. 456/2005, the ARS and ORS Rural Land Administration and Use Proclamation?
- 2.2. Do you think that the ARS rural land use proclamation has totally banned the application of period of limitation to rural land disputes per Art. 55?
- 2.3. Do you think the exclusion, partial or total, of the application of period of limitation from rural land disputes is properly backed by the theoretical foundation of the doctrine of prescription?
- 2.4. Who can be a "party" to ask a person to leave his illegally obtained landholding right as provided under Art. 55 of the Proclamation?
- 2.5. "Illegal means" of landholding is defined in Art.2(39) of the ANRS Rural Land Use Proclamation as:
 - any rural landholding held by illegal means; and
 - not given recognition by a pertinent body.

Do you think these two requirements shall be met together for a rural landholding right to be legal and then prescription would be applicable?

2.6. The Civil Code is a federal law. We have also the FDRE Rural Land Administration and Use Proclamation No. 456/2005. The regions are also constitutionally empowered to enact their respective land laws within the framework rules provided to them by the federal laws though. So, how is it possible for regional legislation to circumvent or the application of federal legislation, the civil code?

3. **Prescription in light of the new FDRE Rural Land Use and Administration Proclamation No.1324/2024**

3.1. Per the new FDRE Proclamation, to which rural land disputes do you think the prescription as laid down in Art.64(2) applies?

3.2. which of the previously raised concerns do you think the new Proclamation has responded to? What do you think are the newly emerged challenges associated to prescription?

3.3. “Illegal means” of landholding is defined in Art.2(15) of the new FDRE Rural Land Use Proclamation as:

- any rural landholding held by illegal means; and
- not given recognition by a pertinent body.

Do you think these two requirements shall be met together for a rural landholding right to be legal and then prescription would be applicable?

“The newly enacted Oromiya National Regional State (ORS) Land Use Proclamation (No.248/2023) Art. 2(18 & 19) has defined both “legal” and “illegal” means of obtaining rural landholding rights. Accordingly, the former refers to:

- a landholding right for which a land holding certificate has been issued; or
- a landholding right which is acquired through lawful means, vis donation, distribution and succession.

On the other hand,

Illegally seized rural landholding right is defined as:

A landholding right that is acquired through means or procedures contrary to the ORS Land Use Proclamation, and Regulation and Directives to be issued thereto and includes land holding acquired through:

- illegal settlement and occupation of land;
- purchase agreement;
- Purchase on the basis of a house or any construction built on land, perennial plants and tree and parent trees;
- Bequest or gift made to a person not authorized under the Proclamation.

Suppose our discussion is on this proclamation. Would you still think that period of limitation applies? Do you think of any possibility we may make use of the forgoing provisions to clear the air in Arts.64(1) and 2(15) of the new FDRE Rural Land Use and Administration Proclamation, at least persuasively?

3.4. The FSCCD sets Ten years in some of its decisions and 3 years in others as the limitations of actions for claims in relation to rural landholding rights. How is that acceptable? When do you think we should use these respective prescriptions?

3.5. The FSCCD in its decisions has stipulated that prescription shall not be invoked against a state when the subject of the dispute is owned by the state and the people together. All land and other natural resources are commonly owned by the state and the people of Ethiopia. Farmers and pastoralists may have holding rights over tracts of land. Do you think a farmer cannot cite prescription against the state in a dispute to enforce his landholding right?

3.6. What is the relevance of Art.1168 of the Civil Code in rural land disputes? Why do you think the FSCCD in its decisions such as in File No. 69302 resorted to Arts.1677(1) and 1845 not Art.1168? What is the confusion? Is there any clear law that excludes the application of Art.1168 to rural land? How about to Urban land and buildings?

3.7. What do you think marks the difference between the statutory limitations such as in Arts.1845 and 1000(1) of the Civil Code on one hand and Usucaption as laid down in Art.1168 of the same code?

- 3.8. Suppose a person “illegally” got possession of a piece of land and used it for over 10 years. A suit was brought against his holding by a party that holds out to be usurped and it was ultimately decided in the latter’s favor. Despite the decision in his favour, do you think he’ll be able to form a proper landholding right over the land? Remember that he left the land for more than five years. How will he be entitled? Where is the state?
- 3.9. Is the action of limitation contemplated in the new FDRE Rural Land Use Proclamation acquisitive/extinctive prescription? Do you think by allowing prescription to run you’re forging another mode of obtaining rural landholding right?

Annexe iii: List of Interviewees, Discussants and Key Informants

1. Interviewees

1. Dr. Brightman G/Michael: Ethiopian Human Rights Commission
 - Interviewed face to face. Enlightened me with his seasoned research experience in land law.
2. Mr Solomon Goraw: Dean at Wello University School of Law, Attorney, Trainer in land law issues, Former ANRS SC Judge
 - Conducted a phone interview. Addressed multiple issues concerning the research problem.
3. Mr Tsegaye Workayehu: ARS SCCD Judge at Bahir Dar and BDU School of Law lecturer
 - Conducted a phone interview. Addressed multiple issues concerning the research problem.
4. Berihun Adugna: Advocate, trainer of judges in land law issues, and Bahir Dar University School of Law Instructor
 - Conducted a phone interview. Addressed multiple issues concerning the research problem.
5. His Honourable ANRS SCCD Judge Mr. Assfaw Baye
 - Conducted a phone interview. Addressed multiple issues concerning the research problem.
6. His Honourable FSCCD Judge Mr Habtamu Erqyihun
 - We had a face-to-face conversation for nearly 3 hours during which he uncovered for me the multifaceted legal as well as practical problems embedded in Ethiopia's rural land laws concerning the application of prescription to rural land disputes. He shared with me FSCCD resources to be used as input for this study. We kept in touch over the internet for a while.
7. Her Honourable FSCCD Judge Mrs Etmet Assefa
 - Face to face interview. She primarily tried to justify the FSCCD's decision requiring a person to prove the lawfulness of the means of obtaining a holding right before invoking prescription.
8. Elias Nur Sitebek (PhD)
 - St. Merry University
 - *Contacted twice via phone call and advised me on how should I go about the data collection*

FGD Discussants (FGD was rigorously conducted)

1. Abdulaziz Mohammed: LLM, Judge ARS, Werebabo FIC

2. Belayhun Ashenafi, LLM, Lecturer at Wolaita Sodo University (WSU) School of Law
3. Melaku Getachew: LLM, Lecturer at Dire Dawa University (DDU), School of Law
4. Mekonen G/Mariyam: LLM, Former Lecturer at DDU, School of Law
5. Habtamu Eda'o: LLM, WSU SoL Lecturer
6. Dereje Ashenafi: LLM candidate at AAU, Senior Associate at MLA

Key Informants

1. His Honourable FSCCD Judge Mr Habtamu Erqyihun

- Unfolded for me the very intricate problems associated with the issue of prescription and rural land disputes. Provided me with the body of those unpublished FSCCD decisions. Further identified FSCCD decisions that I should further look into.

2. Mr Berihun Adugna

- Advocate, trained judges in land law issues, and Lecturer at Bahir Dar University School of Law

3. Judge Fekadu Andargie

- FFIC Judge, former ARS, North Shewa High Court Judge
- Identified for me the confusion with the topic and their sources. He provided me with HoF decisions on the matter.

4. Judge Abdulaziz Mohammed

- LLM, Judge ARS, Werebabo FIC
- Assisted me in getting insights into the various aspects of the issue. Also identified FSCCD decisions related to the topic under study. Helped me in contacting interviewees.