

# Land Laws and Proclamations in Tanzania and Ethiopia

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## Preface

Land laws are complex and fundamentally structure rural development. In this *Occasional Paper*, Birhanu Woldegiorgis highlights key aspects of the laws of Tanzania and Ethiopia relating to land and water. Such laws are not always easily accessible, and the aim of this publication is to provide a concise overview of some of the most important legal texts on land and water rights in Tanzania and Ethiopia. This will be of particular value to researchers working on large-scale agricultural investment and other

related subjects. Moreover, all laws are the historical product of particular contexts, and can and do change. It is hoped that this paper may also serve as a reference source for amending existing laws and developing new ones in a changing historical context.

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## Introduction

This document is a compilation of land laws and proclamations in Tanzania and Ethiopia that are in use by land administrations. The document has two parts. The first addresses the laws of Tanzania, the second the Ethiopian laws.

The important sections of the different acts and proclamations have been abstracted to show how the laws serve the purpose of land administration

in both countries. The document also attempts to show the challenges related to land, mainly the process of land lease for investment purposes and other government development agendas enabled by the laws. By highlighting the key sections of the laws, accessing and assessing the intentions behind and purpose of the laws will be facilitated.

## Part One: Tanzania

### **The Land Act 1999 and the Village Land Act 1999**

These two acts are the main pieces of legislation for land administration in Tanzania.

The Land Act 1999 is “to provide for the basic law in relation to land other than the village land, the management of land, settlement of disputes and related matters” (p.17). As to the Village Land Act 1999, it is “An act to provide for the management and administration of land in villages, and for related matters” (p.9).

In both acts, land is defined thus:

Land includes the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land (Land Act, p.26; Village Land Act, p.15).

The Village Land Act relies on the fundamental principles of the national land policy. The basic principle in this policy can be found in Land Act 3(1)(a) and 3(1)(b) on village land, both of which state that the aim is “to recognize that all Land in Tanzania is public Land vested in the President as trustee on behalf of all citizens” (p.36 and p.22 of Village Land Act).

In addition, section (b) of the Land Act and section (c) of the Village Land Act ensure that existing rights are addressed, while section (c) of the Land Act and (d) of the Village Land Act (see p.37 and p.23 respectively) facilitate equitable distribution of land to and access to land for all citizens. Both acts include as key issues of land policy provisions regarding amount of land, land transactions and compensation (see Land Act 1999, pp.37-40; Village Land Act pp.23-6).

### **Classification, transfers and land tenure**

Part three, section 4(1) of the Land Act 1999 reiterates that “all land in Tanzania shall continue to be public land and remain vested in the president as trustee for and on behalf of all the citizens of Tanzania” (pp.40-1).

Section 4.2 of the Land Act 1999 states:

The president and every person to whom the president may delegate any of his functions under this Act, and any person exercising powers under this Act, shall at all times exercise those functions or

powers and discharge duties as a trustee of all the land in Tanzania so as to advance the economic and social welfare of the citizens. (p.41).

The Land Act 1999, section 4(3) goes on to state:

Every person lawfully occupying the land, whether under a right of occupancy, wherever that right of occupancy was granted, or deemed to have been granted or under customary tenure, occupy and has always occupied that land, the occupation of such land shall be deemed to be property and include the use of land from time to time for depasturing stock under customary tenure. (p.41).

### **Land categorisation in Tanzania**

Section 4(4) of the Land Act 1999 reads: “For the purposes of the management of land under this Act and all other laws applicable to land, public land shall be in the following categories; (a) General land, (b) Village land and (c) Reserved land” (p.42).

General land is defined as all public land that is not reserved land or village land, and includes unoccupied or unused village land (Land Act 1999, pp.24-5). The Village Land Act 1999 states that general land is “all public land which is not reserved land or village land” (p.14).

Village land is defined in the Land Act 1999 and the Village Land Act 1999 as “land declared to be village land under and in accordance with section 4 of the Land Act 1999 and section 7 of Village Land Act and includes any transfer or land transferred to a village:” (Land Act 1999, p.35 and the Village Land Act 1999, p.21)

The Village Land Act 1999 defines and describes village land in section 7. Section 7(a) refers to village land as “land within the boundaries of a village registered in accordance with the provisions of section 22 of the Local Government (District Authorities) Acts of 1982, No.7” (p.40).

Section 7(b) refers to it as “land designated as village land under the- Land Tenure (Village Settlements) Act, No-27 of 1965” (ibid.).

Section 7(c) reads “land, the boundaries of which have been demarcated as village land under any law or administrative procedure in force at any time before this Act comes into operation whether that administrative procedure is based on or conducted in accordance with any statute law or general principles of either received or customary

law applying in Tanzania and whether that demarcation has been formally approved or gazetted or not:" (p.41).

Regarding the boundaries of village land, section 7(1)(d)(i-v) states that the boundaries are those that have been agreed upon by the village council claiming jurisdiction over the land and the village councils of a neighbouring village; with a commissioner where the adjoining land is general land; with the responsible authority or organisation where the adjoining land is reserved land; with an urban authority where the adjoining land is declared to be urban or semi urban; and with a person or body when the adjoining land is owned under a right of occupancy (pp.41-4).

The Village Land Act also states in section 7(1) (e) that if villagers have been residing and using land other than reserved land for the last 12 years before the act was promulgated, it will be included as village land. This includes land lying fallow, used for depasturing villagers' cattle and/or land customarily used for passage (pp.44-5).

#### Transferring land from one category to another

The Land Act 1999, section 5 addresses the transfer of general or reserved land to village land. Section 5(1) states: "where the president is minded to transfer any area of general or reserved land to village land he may direct the Minister to proceed in accordance with the provisions of this section" (p.43).

Transfers of village land to general or reserved land are discussed on part three, section 4 of the Village Land Act 1999. Section 4(1) states: "where the President is minded to transfer any area of village land to general or reserved land for public interest, he may direct the Minister to proceed in accordance with the provisions of this section" (p.26). Section 4(2) continues: "for the purposes of subsection (1), public interest shall include investments, of national interest" (ibid.).

#### Certification

##### Issuing a certificate of village land after village demarcation agreed

The Village Land Act 1999, section 7(6) states:

The Commissioner shall issue to every village in respect of which the boundaries to village land have been demarcated or agreed in accordance with the provisions of this section or under any law or administrative procedure referred to in this section, a certificate of village land in the prescribed form. (p.49)

Section 7(7)(c) states a certificate of village land shall "affirm the occupation and use of the village land by the villagers under and in accordance with the customary law applicable to land in the area where the village is situated" (p.50).

Section 7(7)(d) continues that a certificate of village land "where the villagers are pastoralists or have a predominantly pastoral way of life, shall affirm the use, for purposes of depasturing cattle, of land other than village land which is customarily so used by those persons" (ibid).

Section 7(8) states: "It shall be the responsibility of the village council of the village to which a certificate of village land has been granted to maintain and at all times to keep secure that certificate of village land" (ibid).

#### Certificate of customary right of occupancy

The Village Land Act 1999, section 25(1) states:

Where a contract for a grant of a customary right of occupancy has been concluded, a village council shall, within not more than ninety days of that conclusion, grant a customary right of occupancy to the Applicant who accepted the offer referred to in section 23 by issuing a certificate, to be known as a certificate of customary right of occupancy to that applicant. (p.120)

The Village Land Act 1999, section 23(2)(a) states:

In determining whether to grant a customary right of occupancy, the village council shall comply with the decisions that have been reached by any committee or other body on the adjudication of the boundaries to and rights in the land which is the subject of the application for a customary right of occupancy. (p.106)

#### Land and customary rights

The Village Land Act 1999, section 14(1) states that "Land which is or may be held for a customary right of occupancy shall be (a) any village land, (b) any general land occupied by persons who immediately before the coming into operation of this Act held that land under and in accordance with a deemed right of occupancy" (p.75).

The Village Land Act 1999, section 18(1) states:

A customary right of occupancy is in every respect equal status and effect to a granted right of occupancy and shall, subject to the provisions of this Act, be (a) capable of being allocated by a village council to a citizen, a family of citizens, a group of two or more citizens whether associated together under any law or not, a partnership or a corporate body the majority

of whose members or shareholders are citizens; (b) in village land or reserved land: (c) capable of being of indefinite duration; (d) governed by customary law in respect of any dealings, between persons residing in or occupying and using land. (pp.90-1)

#### Division of village land

Section 12(l) of the Village Land Act states how village land shall be divided.

(a) land which is occupied and used or available for occupation and use on a community and public basis, to be known as communal village land, by all villagers and any other persons who are, with the agreement of the village council, living and working in the village whether those persons are occupying and using village land under a derivative right or not and that communal village land shall not be made available for individual occupation and use by any person through a grant of a communal or individual customary right of occupancy or a derivative right or any other disposition; (b) land which is being occupied or used by an individual or family or group of persons under customary law; or (c) land which may be made available for communal or individual occupation and use through allocation by the village council in accordance with the provisions of this Part. (pp.68-9)

Section 12(2) of the Village Land Act states:

A Village land referred to in paragraphs (b) and (c) of subsection (1) may be made the subject of a grant, in accordance with the provisions of this Part, by a village council to the occupier of that land or a citizen who is a villager or a group of citizens who are villagers or any other citizens who may be provided for in this Part, of a customary right of occupancy, by means of a document to be known as a certificate of customary title. (pp.68-9)

#### Certificate of granted right of occupancy or right of occupancy

Concerning the right to occupy land, the Land Act 1999 at section 19(1) states:

the rights to occupy land which a citizen, a group of two or more citizens whether formed together in an association under this Act or any other law or not, a partnership or a corporate body, in this Act called 'right holders' may enjoy under this Act are hereby declared to be (a) a granted right of occupancy, and (b) a right derivative of a granted right of occupancy, in this Act is called a derivative right. (pp.77-8)

The Land Act, section 22(1) states "A granted right of occupancy shall be: (a) granted by the president, (b) in general or reserved land and ... (e) for a period up to but not exceeding 99 years" (pp.80-1).

#### Certificate of derivative right

Section 19(2) of the Land Act states:

A person or a group of persons, whether formed into a corporate body under the Companies Ordinance or otherwise who is or are non-citizens, including a corporate body the majority of whose shareholders or owners are non-citizens may only obtain a right of occupancy or derivative right for purposes of investment prescribed under the Tanzanian Investment Act, 1997. (p.78)

Section 20 of the Land Act states:

1. For avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Tanzanian Investment Act, 1997. (p. 79)

2. Land to be designated for investment purposes under subsection (1) of this section shall be identified, gazetted and allocated to the Tanzania Investment Center which shall create derivative rights to investors. (ibid.) ...

4. For the purpose of this Act, any body corporate of whose majority shareholders or owners are non-citizens shall be deemed to be a non-citizen or foreign company. (pp.79-80).

5. At the expiry, termination or extinction of the right of occupancy or derivative right granted to a non-citizen or a foreign company, reversion of interests or rights in and over the land shall vest in the Tanzanian Investment Center or any other authority as the minister may prescribe in the Gazette. (p.80).

On the procedure for applying for the right of occupancy by a non-citizen or foreign company, section 25(1)(h) of the Land Act states that it is valid "if it is ... accompanied by a Certificate of Approval granted by the Tanzanian Investment Center under the Tanzanian Investment Act, 1997 and any other documentation which may be prescribed by that Act, this Act or any law" (p.87).

Section 25(1)(i) of the Land Act continues that "if an application for a right of occupancy or a derivative right, which is made by non-citizen or a foreign company, is for residential purposes, the use of such land shall be secondary or ancillary to the investment approved under the Tanzanian Investment Act" (pp.87-8).

The Land Act 1999, section 34(3) states:

Where a right of occupancy includes land which is occupied by persons under customary law, it shall be a condition of that right of occupancy that those customary rights shall be recognised and those persons so occupying the land shall be moved or relocated only: (a) so far as is necessary to enable the purpose

for which the right of occupancy was granted to be carried out; and (b) in accordance with due process and principles of fair administration, being given, (i) not less than one hundred and eighty days' notice of any requirement to move; and (ii) the opportunity to reap crops sown before any notice to move was given to those persons; and (iii) the right to continue to use water which those persons had a right to use before being given notice to move; and (iv) prompt payment of full compensation for loss of any interests in land and any other losses that are incurred due to any move or any other interference with their occupation or use of land. (pp.112-13)

Section 12(3) of the Village Land Act states: "A Village land referred to in paragraph (c) of subsection (1) of section 12 may be made the subject of a derivative right granted by a village council in accordance with the provisions of this Part" (p.70).

Section 15(7) of the Village Land Act 1999 states: "Every derivative right granted out of a customary right of occupancy confirmed by this section is hereby confirmed to be and to have always been a valid derivative right in any manner it was created and to whom it was granted" (p.83).

Section 15(8) states:

A derivative right referred to in subsection (7) which conflicts with any of the provisions of this Act relating to the persons to whom, the period for which and amount of land which a derivative right granted out of a customary right of occupancy is required to comply with, may subject to the payment of any compensation which is required by this Act and any other conditions which may be prescribed, be terminated by the village council having management powers over the land. (pp.83-4)

The Village Land Act 1999, Section 31 refers to the private disposition of a derivative right.

1. This section applies to the disposition, by the holder of a certificate of occupancy or right of occupancy, of a derivative right in the land held for a customary right of occupancy. (p.145) ...

3. Unless otherwise provided for by this Act or regulations made under this Act, a disposition of a derivative right shall require the approval of the village council having jurisdiction over the village land out of which that right may be granted. (p. 146).

4. In exception to number 3, (a) The grant of a lease, a licence, a usufruct or an equivalent interest in customary law from year to year or for a lesser period to a person ordinarily residing in the village from a person ordinarily residing in the village; and (b) the creation a small mortgage or a mortgage for an amount equal to or less than the amount for

which a small mortgage may be created; or in case of (b) (iv) a lease for not more than ten years by a lender exercising the powers of leasing contained in section 29 of the Land Act, 1999 relating to the lender's power of leasing shall not require the approval of the village council. (pp.146-8).

11. Where the derivative right permits the grantee to occupy and use any land in the village, that occupation and use shall be subject to the provisions of section 29 of this Act. (p.152).

#### Conditions for right of occupancy

Section 51(1) of the Land Act 1999 addresses the abandonment of a right of occupancy. Factors include failure to pay tax, rent and other dues; when the occupier leaves the country without giving appropriate notification to the commissioner and without making an arrangement with any other person to be responsible for the land and for ensuring that the conditions under which the right of occupancy was granted are complied with; and the reason for the neglect of the land (pp.164-8).

Section 29(1) of the Village Land Act 1999 states: "Every customary right of occupancy shall be granted subject to the conditions set out in this section and any other conditions which may be prescribed" (p.132).

Section 29(2) states the conditions.

.. the occupier will use and will take steps to ensure that those persons occupying and working the land with him or occupying and working the land with his permission will keep and maintain the land in good state and in the case of land to be used for farming, farm the land in accordance with the practice of good husbandry customarily used in the area; and in case of land to be used for pastoral purposes, use the land in a sustainable manner in accordance with the highest and best customary principles of pastoralism practised in the area. (pp.132-4)

Section 35(1) of the Village Land Act 1999 states: "A villager or group of villagers or any other person or persons holding a customary right of occupancy, may, subject to the provisions of this section, at any time surrender the customary right of occupancy which has been granted to him or them" (p.176).

#### Land management and administration under the Village Land Act 1999

Section 8 of the Village Land Act states:

1. The village council shall, subject to the provisions of this Act, be responsible for the management of all village land. (p.52)

2. The village council shall exercise the functions of management in accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under a trust of the village land. (ibid.)

3. In the management of village land, a village council shall have regard to, (a) the principle of sustainable development in the management of village land and the relationship between land use, other natural resources and the environment in and contiguous to the village and village land. (p.53) ...

5. A village council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly. (p.55) ...

7. The Commissioner may give any advice, either generally to all village councils or to a specific village council on the management of village land which he considers necessary or desirable and all village councils to which that advice is given shall have regard to that advice. (ibid.) ...

12. Any villager who is aggrieved by the management of village land by a village council, including management by a village council as part of any arrangement for joint management, has standing to sue that village council in respect of the management of that village land. (p.59)

Section 10(3) states:

Where a conflict of interest arises in respect of administration of village land, any member of a village council [...] or a committee of the council dealing with land which is covered by that description shall declare his conflict of interest and shall take no further part nor attend any meeting of the village council or its committee where the land the subject of the conflict of interest is on the agenda, and any person who fails to declare that conflict of interest or who contravenes this provision shall render himself liable to disciplinary proceedings applicable to a member of the village council. (pp.61-2).

Section 11(1) states:

In the exercise of the land use powers of management, a village council shall have power to enter into an agreement, to be known as a joint village land use agreement, with any other village council concerning the use by any one or more groups of by those groups, being the land which is partly within the jurisdiction of one village and partly within the jurisdiction of another village with which an agreement is to be entered into and that agreement may be amended, modified or varied from time to time. (p.62)

Section 13 states:

1. The village council shall recommend to the village assembly what portions of village land shall be set aside as communal village land and ... for what purposes. (p.71)

2. The recommendations of the village council may be put forward as (a) a land use plan for the village or part of it; or (b) specific recommendations on specific portions of village land; or (c) partly in accordance with paragraph (a) and partly in accordance with (b). (ibid.)

3. The District Council shall provide advice and guidance to village councils on the exercise of their functions under this section. (ibid.)

In the case of acquiring excess land, section 15(6) states "... taking account of the views of the customary right holder as to the portion of land to be excised as excess land, be terminated in respect of that excised land by the village council exercising management powers over that village land"( pp.82-3).

Section 17(5) states: "On and after the coming into operation of this Act, a non-village organization which wishes to obtain a portion of village land for the better carrying on of its operations may apply to the village council for that land, and the village council shall recommend to the Commissioner for the grant or refusal of such grant" (p.89).

Section 21(1) states: "A village council shall maintain a register of village land in accordance with any rules which may be prescribed by the Minister and the village executive officer shall be responsible for keeping that register" (p.99).

Where a breach of conditions of customary right of occupancy occurs, sections 37-43 of the Village Land Act 1999 set out the powers of the village council and the procedures to be followed. For example, Section 38(1) states:

Upon any breach of any condition subject to which any customary right of occupancy has been granted, or upon any failure to pay any rent taxes or other dues, the village council may (a) exercise any remedy available under customary law; ( b) impose a fine on an occupier in accordance with section 40. (pp.187-8)

Grants of leases and derivative rights by village council

Section 32 of the Village Land Act 1999 states:

5. An application for the grant of a lease under this section (a) of five hectares or less and for five years or less, to be known as a class A application, shall be determined by the village council; (b) of more than

five but less than thirty hectares and for more than five but less than ten years, to be known as a class B application, shall be determined by the village council subject to approval by the village assembly; and (c) of more than thirty hectares or for more than ten years, to be known as a class C application, shall be determined by the village council subject to approval by the village assembly and the advice of the Commissioner. (pp.156-7) ...

7. A grant of a derivative right under this section shall be (a) personal to the applicant; (b) not assignable without the consent of the village council after the approval of the village assembly. (p.166) ...

10. A grant of a derivative right under this section shall be made subject to section 29 and such other terms and conditions as may be prescribed or as are determined by the village council. (p.168)

On the criteria for approving or granting a derivative right, Section 33(1) of the Village Land Act states:

A village council and, in respect of a Class B and Class C application under section 32, a village assembly, shall, in determining whether to give approval to a private disposition of a derivative right under section 34 or to grant a derivative right under section 32, have regard to all or any of the following matters which appear to the village council to be applicable, that is to say (a) any land use plan prepared or in the process of being prepared by or for the village, (b) the likely benefits to be derived by the village as a whole by the grant of the derivative right, (c) the need to ensure the maintenance of sufficient land for reserve occupation, and use by villagers and for community and public use by those persons. (pp.169-70)

## Compensation

Section 4 of the Village Land Act 1999 states:

8. No village land shall be transferred (a) until the type, amount, method and timing of the payment of compensation has been agreed upon between (i) the village council and the Commissioner or (ii) where subsection (3) and (9) apply, the persons referred to in those subsections and the Commissioner; or (b) if the matters of compensation referred to in paragraph (a) cannot be agreed until the High Court has agreed as an interim measure, pending final determination of the matters of compensation, to the payment of any sum on account which it thinks proper by the Commissioner to the village council and to the persons referred to in subsection (3) as the case may be. (pp.30-1) ...

In cases of transfers of village land that cause a dispute among different groups, the final decision lies with the president.

10. ... (T)he President where he is minded to exercise his power to transfer the village land to general or reserved land, determines whether those persons may continue to occupy and use the land, subject to any terms and conditions, which he may impose, or whether the rights of those persons shall be compulsorily acquired ...

11. The President may direct that any compensation payable under this section shall be paid by the person to whom or an organization to which the village transfer land which has been transferred to general land is granted by a right of occupancy. (p.33)

## Revocation and abandonment of land held under a customary right of occupancy

Section 44 of the Village Land Act states:

1. The President may revoke a right of occupancy granted to a non-village organization or a group of persons not being villagers. (p.223)

2. The provisions of sections 46 and 47 of the Land Act, 1999 which relate to fines for breach of condition and to summary action to remedy breach of condition of customary right of occupancy respectively shall, as near as may be, apply to the revocation of a customary right of occupancy as they apply to the revocation of a granted right of occupancy provided for in those sections. (pp.223-4)

3. The Commissioner may direct the village council of the village where the land held for a customary right of occupancy which may be revoked is situated to give him any information and documents and take any action in any time which may be specified in the direction, being not less than forty days, to enable him to exercise his functions under sections 46 and 47 of the Land Act, 1999 in relation to that customary right of occupancy. (p.224).

4. A village council in receipt of which the directive is referred to in subsection (3) shall comply with that directive in every particular. (ibid.)

Section 45 states:

1. Land held for a customary right of occupancy shall be taken to be abandoned where one or more of the following factors are present: (a) the occupier has not occupied or used the land for any purpose for which land may lawfully be occupied and used, including allowing land to lie fallow, in the village for not less than five right of occupancy years; (b) the occupier, other than a villager whose principal means of livelihood is agricultural or pastoral, owes any rent, taxes or dues (p.225) ...

4. Where a village council considers that any village land held for a customary right of occupancy has been abandoned, it shall publish a notice in the

prescribed form at the offices of the village council and affix a copy of the notice in a prominent place on that land: (a) stating that the question of whether that land has been abandoned will be considered by the village council at a time which shall be not less than thirty days from the date of the publication of the notice. (p.229) ...

6. Where either no person interested in the land has shown cause or a person interested in the land has shown cause to the satisfaction of the village council as to why the land should not be declared to be abandoned, the village council may make an order, to be known as a provisional order of abandonment in the prescribed form. (p.230) ...

9. On the coming into effect of a final order of abandonment (a) the customary right of occupancy in the land which has thereby been declared to be abandoned, shall immediately and without further action being required stand revoked; and (b) the land which has been declared to be abandoned shall, immediately and without any further action being required, revert back to land held by the village council as available for allocation to persons ordinarily resident in the village. (p.232) ...

11. A village council shall record a provisional and a final order of abandonment in the register of village land. (p.234)

### **Pastoralists and women under the Village Land Act**

Section 57(3) of the Village Land Act states:

In making any determinations under subsection (2), a village adjudication committee or as the case may be an adjudication officer shall have regard and treat the rights of women and the rights of pastoralists to occupy or use or have interest in land not less favourably than the rights of men or agriculturalists to occupy or use or have interests in land. (p.277)

Section 58(1) states

Where, in respect of any land the subject of adjudication, the village adjudication committee or, as the case may be, the adjudication officer is satisfied that there is a dual use of the land between groups of persons using the land for pastoral purposes and groups of persons using the land for agricultural purposes and that both groups claim to be using that land in accordance with customary law applicable to their respective uses, the committee or, as the case may be the adjudication officer shall (a) determine and record the nature, extent and incidents of each use and so far as it is possible to do so, the length of time that each group has used or claimed the use of that land for their respective uses; (b) where the village adjudication committee or the adjudication officer is satisfied

that the groups of persons so using the land have in the past and are likely to continue in the future to carry out their respective uses of the land in co-operation with each other, he ... may ... prepare an arrangement for that continued dual use. (pp. 282-3)

Section 7(7)(d) regarding the certificate of village land states that “where the villagers are pastoralists or have a predominantly pastoral way of life, [the certificate] shall affirm the use, for purposes of depasturing cattle, of land other than village land which is customarily so used by those persons” (p.50).

In addition section 7(7)(d), section 20(4)(d) states that where lands are used by pastoralists under customary law, the customary law is recognized as the governing rule for those pastoralists who occupy the land (p.98).

Several sections address the role and interests of women. Section 23(2)(c) states that in determining whether to grant a customary right of occupancy the village council shall “have special regard [for] the equality of all persons, such as (i) treat an application from a woman, or a group of women no less favourably than an equivalent application from a man, a group of men or a mixed group of men and women; and (ii) adopt or apply no adverse discriminatory practices or attitudes towards any woman who has applied for a customary right of occupancy” (pp.107-8).

Section 33(1)(d) regarding the criteria for determining an application for approval or a grant of a derivative right, refers to “the need to ensure that the special needs of women for land within the village is and will continue to be adequately met” (pp.169-70).

In regard to the composition of the village adjudication committee, section 53(5) states: “The quorum of a village adjudication committee shall, be five, of which at least two members shall be women” (p.257).

Section 60(2) addresses the make-up of a village land council: “Where a village council establishes a village land council, that council shall consist of seven persons of whom three shall be women who shall be (a) nominated by the village council; and (b) approved by the village assembly” (p.291).

### **Water resources**

The national water policy (2002) has guidelines on sustainable water usage in urban and rural areas. With regard to ownership in rural areas, the policy states:

Water supply and sanitation facilities provided without the active participation of the beneficiaries in planning and management are often not properly operated and maintained and hence are unsustainable. Ownership of the facilities including water wells is neither perceived to be, nor legally vested in user communities. These factors lead to lack of commitment to maintenance of the facilities by the users. Communities will be empowered to initiate, own and manage their water schemes including water wells. In order to ensure that communities become legal owners of water supply schemes the following will be undertaken: (i) Legal registration of water user entities will be instituted to ensure that communities are the legal owners of their water supply schemes including water wells, and (ii) Roles, responsibilities, rights and limits of authority of water user entities will be clearly defined right. (National Water Policy 2002, p.32)

### Land bank

Nothing has been explicitly written on this in the Tanzanian Investment Center Act 1997. The only reference the land bank idea is “the investment climate facility for Africa (ICF) and the ministry of lands, housing and human settlements development appraisal of prime issues on the creation of Tanzania land bank.”<sup>1</sup>

### Agricultural Land Management Act 2013

The Tanzanian parliament recently enacted the Agricultural Land Management Act 2013. Agricultural land management includes all activities carried out on agricultural land for sustainable productivity and environmental conservation in Tanzania. This act is important in giving legal definition to terms such as agricultural land management, agricultural land reserve, agricultural land use planning, idle agricultural land and inspector.

For administrative purposes, part 2, section 3(1) of the act states: “The Minister [Agriculture Minister] shall be responsible for national policy and strategy formulation and for ensuring the execution by authorities or persons under the control of the Minister of their functions connected with the implementation of this Act” (p.5).

Among the main responsibilities of the minister set out in section 3(2)(a-k) is the “declaration of agricultural land including areas suitable for irrigation after consultation with the Minister responsible for land and the Minister responsible for irrigation at the time” (ibid.).

The act established a National Agricultural Land Management Advisory Committee (section 4(1)(a-i), p.6). It further states that this national advisory committee will set up similar committees at regional, district and village levels (pp.6-7).

In section 8(1), the responsibilities of the director of agricultural land use planning are set out section 9(1) specifies the appointment of the inspector. The inspector is to be an experienced agricultural inspector who shall have powers generally respecting agricultural land matters in accordance with the provisions of the act. In section 10(1), the inspector is given power and responsibilities that include entering on any agricultural land to inspect it and, if he has legitimate grounds, to stop the activities on that agricultural land (pp.8-9).

The land acquisition process is set out in sections 14 and 15 of this act. Section 14 enunciates the consequences of a declaration of agricultural land. Section 14(1) states: “where an area is declared as agricultural land pursuant to this Act, the use and management of such land shall be governed by this Act” (p.10). Section 14 (2) states: “Where agricultural land is for public purposes, the minister shall request acquisition and [the] vesting of such land in the Minister” (pp. 10-11).

Section 15(1) addresses compensation. “Where any declaration referred to under sections 19 (1) affects the existing land rights, the holder of such land shall be entitled to full and fair compensation in accordance with relevant law” (p.11). Section 15(2) further states: “All expenses and compensation incurred in respect of acquisition of any land by the President or the revocation of any right of occupancy under this section shall be paid by the government” (p.11).

The act also allows for agricultural land classification. Section 16 states:

2. ... the Minister may by regulations, make classification of agricultural land according to its capability and land use suitability characteristics. (p.11).

3. The agricultural land shall be classified into the following categories: (a) highly suitable agricultural land; (b) moderately suitable agricultural land; (c) marginally suitable agricultural land; and (d) non-suitable agricultural land. (p.11)

1. This document has no year of publication. On page 2, it states: “The ICF agreed to fund a Contractor to work with a team of Independent Consultants to do an appraisal of key issues related to Land Bank Project. On 30th October, 2007 the ICF and a Contractor signed a Service Agreement for the appraisal of 13 issues and this is the report of the study done.” This suggests that the land bank was not yet operative, or at least until 2007.

Section 20 specifies the uses of highly suitable agricultural land:

1. Highly suitable agricultural land shall: (a) be used only for agricultural activities; (b) not be subdivided without authorization issued under this Act or any subsidiary legislation made under this Act; and (c) be used for optimum utilization. (p.12)
2. Any occupier or owner of the highly suitable agricultural land shall ensure the use of the best agricultural land use management practices which will sustain the land in the category. (ibid.)
3. Where it appears that the occupier of highly suitable agricultural land is not fulfilling his responsibility under this Act, the Director of Land Use Planning may, if so satisfied after affording to the occupier an opportunity to be heard, by order published in the Gazette, declare such land or part thereof to be idle land for the purpose of this Act. (ibid.)

Section 26(1) defines the responsibilities of an occupier of agricultural land, namely “to utilize his agricultural land unit in accordance with set out standards provided for in the Regulations” (p.14).

Section 26(4) elaborates further: “Where agricultural land has not been cropped or managed in accordance with this Act for three consecutive years or more it shall be presumed to be idle agricultural land” (ibid.).

In section 27(1), the act states: “Where agricultural land has been presumed to be idle agricultural land pursuant to section 32(4), the Director of Land Use Planning shall by notice in writing require the occupier of such land to show cause within thirty days as to why that land should not be declared idle pursuant to the provisions of this Act” (p.15).

Section 28(1) states:

Upon the coming into force of an idle agricultural land declaration order, the Director for Land Use Planning shall cause to be served on the occupier of the agricultural land to which the order relates a notice requiring him to prepare and to submit to the Director within such time as may be specified in the notice, not being less than two months after the notice is served on him, an agricultural development plan in respect of the farming of such agricultural land. (p.15)

In general, this piece of legislation aims to strengthen government authority over farm land by giving power to new legal bodies to monitor the occupier and more strictly manage land based on its classification. Where the occupier is found to not be putting the land good use, the new bodies can declare the land idle and reincorporate it as government land.

## Part Two: Ethiopia

### Ethiopia's land laws

The Ethiopian constitution of 1995 is the main source of the basic law regarding land ownership, management and administration that shall not be overruled.<sup>2</sup> Ambaye (2012) states that the two main policy objectives for the continuation of land as state/public property are social equity and tenure security. To meet the first objective, “the FDRE Constitution as well as other Federal and Regional Land Proclamations ensure free access to agricultural land. The amount of land to be provided to peasant farmers, as far as possible, is made equal. This way, the policy objective is to ensure equality of citizens in using the land” (Ambaye 2012:5). As regards tenure security, “the FRDE Constitution prohibits any sale and exchange of land. State ownership of land is considered as the best mechanism to protect the peasants against market forces” (ibid.:6).

### Land Laws in the Ethiopian Constitution 1995

Article 9(1) of the Ethiopian constitution 1995 states: “the Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect” (p.4).

#### Land ownership

Article 40(3) of the constitution proclaims that “the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange” (p.14).

#### Right to land of peasants

In article 40(4), it is stated that “Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law” (p.14).

#### Right to land of pastoralists

Article 40(5) states that “Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law” (p.14).

#### Right to land of investors

This is addressed in article 40(6) of the constitution, which states that “without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law” (p.14).

#### Right to land of women

Article 35(7) states: “Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property” (p.12).

#### Right of individuals

In article 40(7) it is stated:

Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law. (p.15)

Article 40(8) states that “without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property” (p.15).

#### Powers of federal government, regional governments and parliament

Article 51(5) states that “... the Federal Government shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects” (p.19).

2. Samuel Gebreselassie (2006) states that “by inserting the land policy in the constitution, the current government has effectively eliminated the possibility of flexible application of policy.”

Article 52 (2)(d) refers to the powers and functions of regional states “To administer land and other natural resources in accordance with Federal laws” (p.20).

Article 55 refers to the powers and functions of the House of Peoples’ Representatives. In sub-article 2, it states: “Consistent with the provision of sub-Article 1 of this Article, the House of Peoples’ Representatives shall enact specific laws on the following matters: (a) Utilization of land and other natural resources, of rivers and lakes crossing the boundaries of the national territorial jurisdiction or linking two or more States” (p.21).

Article 89 relates to economic objectives. Sub-article 5 proclaims that “Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development” (p.33).

Finally, article 97 of the Ethiopian Constitution of 1995 addresses states’ powers of taxation. Sub-article 2 reads: “States shall determine and collect fees for land user rights” (p.36).

### **Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation 2005**

This proclamation was issued in terms of Article 51(5) of the Ethiopian constitution regarding the federal powers in land administration. The Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation 2005 replaces the previous federal Land Administration and Use Proclamation of 1997.

The basis of this proclamation is sustainable rural land use planning; identifying the size and use rights of “the different types of landholdings” in the country; directing mechanisms to resolve problems between farmers and agricultural investors, and between pastoralists and agricultural investors who encourage individual farmers; and establishing a conducive system of rural land administration. Other than this, it encourages private investors in pastoralist areas, and seeks to implement Article 52 (2)(d) of the Constitution relating to the powers and functions of regional states (see above) (Proclamation 2005:3133-34; see also Ambaye 2012:7)

### **Important definitions in the Rural Land Administration and Use Proclamation 2005**

Rural land is defined in Section 1(2)(1) as “any land outside of a municipality holding or a town designated as such by the relevant law.” Rural Land

Administration is defined in Section 1(2)(2) as “a process whereby rural land holding security is provided, land use planning is implemented, disputes between rural land holders are resolved and the rights and obligations of any rural landholder are enforced, and information on farm plots and grazing land holders are gathered analyzed and supplied to users” (p.3134).

A holding right is defined in section 1(2)(4) as “the right any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for purposes of agriculture and natural resource development, lease and [to] bequeath [to] members of his family or other lawful heirs, and includes the right to acquire property produced on his Land thereon by his labour or capital and to sell, exchange and bequeath same” (p.3135).

A rural land use plan is defined in section 12 (6) as “a practice whereby the options that give greater economic benefits without causing land degradation and environmental pollution are determined and implemented from among the different use options a rural land can give on the basis of physical, economic and social information” (p.3135).

A minimum size holding is defined in section 1(2)(10) as a “size of rural land holding the productivity of which can ensure the food security of a peasant and semi-pastoralist and pastoralist family or which suffices for crop farming, grazing, house construction and garden” (ibid.). In addition, a minimum private holding is defined in section 1(2) (11) as “rural land in the holding of peasants, semi pastoralists, pastoralists and other bodies who are entitled by law to use rural land” (pp.3135-36).

In addition, the proclamation defines a communal holding in section 1(2)(12) as “rural land which is given by the government to local residents for common grazing, forestry and other social services” (p.3136). A state holding is defined in section 1(2)(13) as “land demarcated and those lands to be demarcated in the future as federal or regional states’ holding; and includes forestlands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands” (ibid.). Another important issue is holding certificate, which is defined in section 1(2)(14) as a “certificate of title issued by a competent authority as proof of rural land use right” (ibid.).

### **Acquisition and use of rural land**

Section 2(5) of the Rural Land Administration and Use Proclamation 2005 addresses these issues thus:

1. In accordance with land administration law: (a) Peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge; and (b) any citizen of the country who is 18 years of age or above and wants to engage in agriculture for a living shall have the right to use rural land; children who lost their mothers and fathers due to death or other situation shall have the right to use rural land through legal guardians until they attain 18 years of age; and (c) Women who want to engage in agriculture shall have the right to get and use rural land. (p.3137)

2. Any person who is member of a peasant farmer, semi pastoralist and pastoralist family having the right to use rural land may get rural land from his family by donation, inheritance or from the competent authority. (ibid.)

3. Government being the owner of rural land, communal rural land holdings can be changed to private holdings as may be necessary. (ibid.)

4. Subject to giving priority to peasant farmers/semi-pastoralists and pastoralists: (a) Private investors that engage in agricultural development activities shall have the right to use rural land in accordance with the investment policies and laws at federal and regional levels; and (b) governmental and non-governmental organizations and social and economic institutions shall have the right to use rural land in line with their development objectives. (ibid.)

#### Measuring and registering rural land and providing a holding certificate

The Rural Land Administration and Use Proclamation 2005 addresses these issues in section 2(6).

1. The sizes of rural lands under the holdings of private persons, communities, governmental and nongovernmental organizations shall be measured as appropriate using cultural and modern measurement equipment. Their land use and level of fertility shall be registered as well in the data base centre by the competent authorities established at all levels. (p.3138) ...

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

4. Where land is jointly held by husband and wife or by other persons, the holding certificate shall be prepared in the name of all the joint holders. (ibid.)

5. ... the information that describes the holder of rural land, the holders of the bordering lands, the types of use, and the rights and obligation of the holder thereof shall be registered in the database and kept by the competent authority. (ibid.)

6. ... any rural land that is held through lease or rental shall be registered by the competent authority. (ibid.)

#### Duration of rural land use right

Section 2(7) of the proclamation reads:

1. The rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit. (p.3138)

2. The duration of the rural land use right of other holders shall be determined by the rural land administration laws of regions. (ibid.)

#### Compensation

Section 2(7)(3) of the Rural Land Administration and Use Proclamation 2005 states that a

... holder of rural land who is evicted for the purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired, or shall be given substitute land ... Where the rural landholder is evicted by the federal government, the rate of compensation would be determined based on the federal land administration law. Where the rural landholder is evicted by regional governments ... compensation would be determined based on the rural land administration laws of regions. (p.3139)

#### Transfer of rural land use right

Section 2(8) of the Rural Land Administration and Use Proclamation 2005 reads:

1. Peasant farmers, semi-pastoralists and pastoralists who are given holding certificates can lease to other farmers or investors land from their holding of a size sufficient for the intended development in a manner that shall not displace them, for a period of time to be determined by rural land administration laws of regions based on particular local conditions. (p. 3139)

2. The rural land lease agreement to be concluded in accordance with Sub-Article (I) of this Article shall secure the consent of all the members who have the right to use the land and be approved and registered by the competent authority. (ibid.)

3. A land holder may, using his land use right, undertake development activity jointly with an investor in accordance with the contract he concludes. Such contract shall be approved and registered by the competent authority. (ibid.) ...

5. Any holder shall have the right to transfer his rural land use right through inheritance to members of his family. (ibid.)

### Investor rights

The Rural Land Administration and Use Proclamation 2005, section 2(8)(4) states that “an investor who has leased rural land may present his use right as collateral” (p.3139).

### Distribution of rural land

The distribution of rural land is covered in Rural Land Administration and Use Proclamation 2005, section 2(9).

1. In accordance with land administration laws of the regions farmlands whose holders are deceased and have no heirs or are gone for settlement or left the locality on own wish and stayed over a given period of time shall be distributed to peasant farmers, semi pastoralists and pastoralists who have no land and who have land shortage (p. 3140) ...

3. Upon the wish and resolution of peasants farmers, semi pastoralists and pastoralists where land distribution becomes the only alternative, it shall be undertaken in such a way that it shall not be less than the minimum size of holding and in a manner that shall not result in fragmentation of land and degradation of natural resources. (ibid.)

4. Where peasant farmers, semi-pastoralists and pastoralists are evicted from their holdings for the purpose of constructing an irrigation structure, land distribution shall be undertaken to make them get equitable benefit from the irrigation development to be established. (ibid.)

### Obligations of rural land users

These are set out in Rural Land Administration and Use Proclamation 2005, Section 2(10).

1. A holder of rural land shall be obliged to use and protect his land. When the land gets damaged, the user of the land shall lose his use right. Particulars shall be given in the land administration laws of the regions. (p. 3140).

2. Where irrigation canals are constructed, the holder shall have the obligation to allow the construction of irrigation lines and other infrastructures if they cross his land holding. (ibid.)

3. The holder of rural land shall have the obligation to cooperate when requested by the competent authority to measure and survey his land. (ibid.)

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

### Determining minimum rural land holding size and encouraging land consolidation

Rural Land Administration and Use Proclamation 2005 Section 2, No.11 (1) states “without prejudice to the former holding or farm plot size of a family, the farm plot to be given in the future shall not be less than the minimum size holding”. And in Section 2, No.11 (2) states “Where rural land is transferred by succession, it shall be made in such a way that the size of the land to be transferred is not less than the minimum size holding”. Other than those sections, in Section 2, No.11 (5) it states “a settlement and villagization program to be undertaken at the request and participation of the community shall be undertaken taking into account the objective of land consolidation”(p.3141).

### Dispute resolution

Rural Land Administration and Use Proclamation 2005 Section 2, No.12 states “Where dispute arises over rural landholding right, effort shall be made to resolve the dispute through discussion and agreement, of the concerned parties. Where the dispute could not be resolved through agreement, it shall be decided by an arbitral body to be elected by the parties or be decided in accordance with the rural land administration laws of the region”(p.3141)

### Rural land use restrictions

Rural Land Administration and Use Proclamation 2005 Section 2, No. 13 (1) states “a guiding land use master plan, which takes into account soil type, landform, weather, conditions, plant cover and socioeconomic conditions and which is based on watershed approach, shall be developed by the competent authority and implemented”; and in (2) it states “an equitable water use system shall be established between upper and lower watershed communities (p.3141).

### Responsibility of Federal Ministry of Agriculture and Rural Development

Rural Land Administration and Use Proclamation 2005 Section 2, No. 16 gave three responsibilities. Section 2, No. 16 (1) states “have the responsibility to implement this Proclamation by providing the necessary professional support and by coordinating the competent authorities; (2) states initiate, on the basis of the information gathered at national level and those to be obtained from time to time through monitoring and evaluation, development of new

policy ideas, and the amendment of the existing policy, as necessary; and (3) create the system for the exchange of information between regions and the Federal Government pertaining to rural land administration and use” (p.3143)

#### Responsibility of regions

Rural Land Administration and Use Proclamation 2005 Section 2, No. 17 (1) states “Each regional council shall enact rural land administration and Land use law, which consists of detailed provisions necessary to implement this Proclamation”; and (2) states “Regions shall establish institutions at all levels that shall implement rural land administration and Land use systems, and shall strengthen the institutions already established” (p.3143).

#### Obligation to cooperate

Rural Land Administration and Use Proclamation 2005 Section 2, No. 18 states “any person shall have the obligation to cooperate with relevant bodies for the implementation of this proclamation” (p.3144).

#### Penalties

Rural Land Administration and Use Proclamation 2005 Section 2, No. 19 states “any person who violates this Proclamation or the regulations and directives issued for the implementation of this Proclamation shall be punishable under the applicable criminal law” (p.3144).

### **Proclamation to Provide for the Expropriation of Land Holdings for Public Purposes and Payment of Compensation 2005**

#### Bases of proclamation

Article 51(5) of the Constitution empowers the Federal Government to enact laws regarding the utilization of land and it is deemed necessary to regulate in detail, based on the requirement of advance payment of compensation for private property expropriated for public purpose as provided for under Article 40(8) of the Constitution; and urban centres of the country have from time to time been growing and the number of urban dwellers has been increasing and thereby land redevelopment for the construction of dwelling houses, infrastructure investment and other services has become necessary in accordance with their respective plans as well as preparation and provision of land for development works in rural areas has become necessary. (p.3124)

#### Definitions

Section 2(1) defines compensation as “payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding.” In section 2(3), “landholder means an individual, government or private organization or any other organ which has legal personality and has lawful possession over the land to be expropriated and owns property, situated thereon.” In section 2(5) “public purpose” means “the use of land defined as such by the decision of the appropriate body in conformity with [an] urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development” (p.3125).

#### Powers

Section 2(3) of the Expropriation Proclamation 2005 states:

1. A *woreda* or an urban administration shall, upon payment in advance of compensation in accordance with this Proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose. (p.3126)
2. Notwithstanding the provisions of Sub-Article (1) of this Article, no land lease holding may be expropriated unless the lessee has failed to honour the obligations he assumed under the Lease Proclamation and Regulations or the land is required for development works to be undertaken by government. (ibid.)

#### Notification

Section 2(4) of the Expropriation Proclamation 2005 reads:

1. Where a *woreda* or an urban administration decides to expropriate a landholding in accordance with Article 3 of this Proclamation, it shall notify the landholder in writing, indicating the time when the land has to be vacated and the amount of compensation to be paid. (p.3126)
2. The period of notification to be given in accordance with Sub-Article (1) of this Article shall be determined by directives; provided however, that it may not, in any way, be less than ninety days. (ibid.)
3. [Any] landholder who has been served with an expropriation order in accordance with Sub-Article

(1) of this Article, shall hand over the land to the *woreda* or urban administration within 90 days from the date of payment of compensation or, if he refuses to receive the payment, from the date of deposit of the compensation in a blocked bank account in the name of the *woreda* or urban administration as may be appropriate. (ibid.)

4. Notwithstanding Sub-Article (3) of this Article, where there is no crop, perennial crop or other property on the expropriated land, the holder shall hand over the land to the *woreda* or urban administration within 30 days from the date of receipt of the expropriation order. (p.3127)

5. Where a landholder who has been served with an expropriation order refuses to handover the land within the period specified in Sub-Article (3) of (4) of this article, the *woreda* or urban administration may use the police force to take over the land. (ibid.)

### Compensation

Section 3(7) of the Expropriation Proclamation 2005 states:

1. A landholder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land. (p.3128)

2. The amount of compensation for property situated on the expropriated land shall be determined on the basis of the replacement cost of the property. (ibid.)

Section 3(8) addresses rural and urban land holdings and reads:

1. A rural landholder whose landholding has been permanently expropriated shall, in addition to the compensation payable under Article 7 of this Proclamation, be paid displacement compensation which shall be equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land. (p.3128)

2. A rural landholder of common land whose landholding has been provisionally expropriated shall, in addition to the compensation payable under Article 7 of this Proclamation, be paid until repossession of the land, compensation for lost income based on the average annual income secured during the five years preceding the expropriation of the land; provided, however, that such payment shall not exceed the amount of compensation payable under Sub-Article (1) of this Article. (ibid.)

3. Where the *woreda* administration confirms that substitute land which can be easily ploughed and generate comparable income is available for the land holder, the compensation to be paid under Sub-Articles (1) and (2) of this Article shall only be equivalent

to the average annual income secured during the five years preceding the expropriation of the land. (p.3129)

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

### Complaints and appeals

Section 3, No.8 (11) (1) of the expropriation proclamation 2005 states “rural areas and in an urban center where an administrative organ to hear grievances related to urban landholding is not yet established, a complaint relating to the amount of compensation shall be submitted to the regular court having jurisdiction; and in (2), Where the holder of an expropriated urban landholding is dissatisfied with the amount of compensation, he may lodge his complaint to the administrative organ established by the urban administration to hear grievances related to urban landholdings”(p.3130).

Section 3, No.8 (11) (4) of the expropriation proclamation 2005 states “A party dissatisfied with a decision, rendered in accordance with Sub-Article (1) and (3) of this Article may appeal, as may be appropriate, to the regular appellate court or municipal appellate court within 30 days from the date of the decision. The decision of the court shall be final; and in (6) An appeal submitted, pursuant to Sub-Article (4) of this Article, by any landholder served with an expropriation order may be admitted only if it is accompanied with a document that proves the handover of the land to the urban or *woreda* administration”(p.3131).

### Responsibilities

Section 4(12)(1) of the Expropriation Proclamation 2005 reads “the Ministry of Federal Affairs shall have the powers and duties to follow up and ensure that the provisions of this Proclamation are complied with in regions,” while Section 4(12)(2) provides for the ministry to “give technical and capacity building support to regions so that they will be able to implement this Proclamation” (p.3131).

Section 4(13)(1) states that “*woreda* and urban administrations shall have the responsibilities and duties to pay or cause the payment of compensation

to holders of expropriated land in accordance with this Proclamation, and provide them with rehabilitation support to the extent possible” (p.3131).

### **A Proclamation to Provide for Lease holdings of Urban Lands**

The need for issuing this proclamation has three bases. The first is article 40 of the constitution, which reads that “land is the property of the state and the people of Ethiopia and that its use shall be subject to specific regulation by law” (p.6220). The second basis is that, as the proclamation states, “the sustainable rapid economic growth registered across all economic sectors and regions in the country has necessitated continuously and increasingly the demand for urban land which requires such an appropriate administration that it is efficient and responsive to land resources demand” (ibid.). And thirdly:

... the prevalence of good governance is a foundational institutional requisite for the development of an efficient, effective, equitable and well-functioning land and landed property market, the sustenance of a robust free market economy and for building a transparent and accountable land administration system that ensures the rights and obligations of the lessor and the lessee. (ibid.)

#### **Important definitions**

A lease is defined as “a system of land tenure by which the right of use of urban land is acquired under a contract for a definite period” (p.6221).

An urban centre is “any locality having a municipal administration or population size of 2000 or more inhabitants of which at least 50% of its labour force is engaged in non-agricultural activities” (ibid.).

Public interest is defined as “the use of land defined as such by the decision of the appropriate body in conformity with an urban plan in order to ensure the interest benefits from the use of the land and to consolidate sustainable socio-economic development” (ibid.).

Manufacturing industry premises are “plots of land reserved, developed or allotted, in accordance with the land use plan, for use of manufacturing industry” (p.6223).

Mega real estate is “a housing development involving the construction of at least 1000 residential units with a view to alleviating the shortage of housing in urban centres by way of sell or rent” (ibid.).

Projects having special national significance are “development projects having outstanding contri-

butions in the success of the country’s growth and transformation, or projects which in the course of expanding the country’s cooperative relations with other countries, are intended to lay strong foundations for the relations between the countries” (p.6223).

#### **Fundamental lease principles**

In Part Two of the proclamation, section 4(4) states “the urban land delivery system shall give priority to the interests of the public and urban centres to ensure rapid urban development and equitable benefits of citizens and thereby ensure the sustainability of the country’s development” (p.6224).

Part Two of section 5(1) states that “without prejudice to the provisions of article 6 of this proclamation, no person may acquire urban land other than [through] the lease holding system provided under this proclamation” (p.6224).

Part Three, section 18(1) reads:

The period of urban land lease shall vary depending on the level of urban development and sector of development activity of the type of service and shall have the ceiling of: (a) in an urban centre (1) 99 years for residential housing, science and technology, research and study, government offices, charitable organizations, and religious institutions; (2) 15 years for urban agriculture; and (3) as per agreement entered into with the government for diplomatic missions and international organizations. (p.6232)

Part Three, section 19(1) states: “the period of lease may be renewed upon its expiry on the basis of the prevailing bench mark lease price and other requirements; provided, however that the lessee may not be entitled to compensation where the lease period could not be renewed” (p.6233).

Part Three, section 24(1) states that:

... without prejudice to the period of lease determined pursuant to sub article (1) of article 18 of this proclamation and the obligation to use the land for the prescribed purpose in accordance with sub article 19 of article 21 of this proclamation, a lessee may transfer his leasehold right or use it as collateral or capital contribution to the extent of the lease amount already paid. (p.6237)

Part Four, section 26 states:

1. ... the appropriate body shall have the power, where it is in the public interest, to clear and take over urban land upon payment of commensurate compensation, in advance, for the properties to be removed from the land. (p.6240)

2. ... a person displaced due to an action taken pursuant to sub article (19) of this article shall be provided with a substitute plot of land within the urban centre the size of which shall be determined by the region or the city administration. (p.6240)

Part Four, section 31(1) reads:

Without prejudice to the provisions of sub article (2) of this article, the appropriate body shall take over urban land from any person who has been served with a clearing order within 90 days from the date of payment of compensation, or if the person refuses to take the payment, from the date of depositing the compensation in a blocked bank account in the name of the appropriate body; provided, however that the appropriate body shall pay the deposited amount whenever the entitled person intends to take the payment. (p.6243)

### **Regional land proclamations based on federal rural land proclamation.**

The Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation 2005 states that regions should develop their own legislation based on it. This section addresses similar and peculiar articles in the regions' rural land legislation.

### **Revised Amhara National Regional State Rural Land Administration and Use Proclamation 2006**

The two aims of the proclamation are:

... to design and implement a system based on the objective realities of the region pursuant to the power vested in regions by the Federal Constitution to administer the land and the natural resources and strengthen the farmer, the investor and appropriate organizations in their participation to use land maintaining it properly, use and keep, and to coordinate it with the development objectives of the government. (p.2)

And second,

... it is ... necessary to revise the existing Rural Land Administration and Use Proclamation to incorporate, in detail, the basic rights of farmers, and ensure the implementation and inclusion of the laws of the federal government. (ibid.)

The Amhara Rural Land Proclamation 2006, section 5 states:

1. The right to ownership of land is vested in the state and the public. Hence, it is impossible to transfer the land holding to others in sale or in exchange [for] another property. (p.7) ...

3. The holding right of rural land of farmers, in the region, shall not have [a] time limit. (ibid.)

4. The system of land administration shall be based on public participation. (ibid.)

5. The land use may be applicable based on plan and considering environmental protection. (ibid.)

Section 6(1) states: "Any Person, who is 18 years and above, residing in the region and in need of engaging in agricultural activity shall have a right to freely acquire holding land" (p.8). Section 6(3) states: "Private investors shall have a right to acquire land, to use ... by rent from the government or from any other rural land holder on the agreement to be made" (p.8).

Section 7(1) of the proclamation deals with the conditions for acquiring land states;

Any person residing in the region and engaged or wants to be engaged in agricultural works shall have a right to acquire land in holding in the following manner:(a) By distribution from the *kebele* administering the land in which he regularly resides or wants to reside; (b) By bequest or gift, the detail to be determined by a regulation to be issued to implement this proclamation, anywhere in the region. (p.9)

Section 8 states:

1. In any part of the region, land distribution and allotment shall not be carried out since the coming into force of this proclamation.

2. Notwithstanding the provision of sub-Article 1 of this article, where the land holders residing in one *kebele* and where not less than 80 per cent of them request the authority in writing for land distribution, the land re-distribution may be carried out in accordance with a directive to be issued to implement this decision on the land where question was submitted. Its application shall be only on holders who passed the decision. (pp.9-10)

Section 11 reads:

1. The holding of any person is respected by law. Therefore, pursuant to provision of sub-article 2 of article 8 or article 28 of this proclamation, no person shall be expropriated from his holding without his consent, unless it is done by re-distribution according to [the] decision of [the] people or for the purpose of public interest. (p.11)

2. Any person provided with a right to use the rural land shall not be deprived [of] the right to use the land other than [through the] provisions of this proclamation or a regulation to be issued to execute this proclamation. (p.11).

Section 12(1) of the proclamation states:

Notwithstanding ... sub article 1 of article 11 of this proclamation any holder having a right over [to use] the land, ... may be ... deprived [of] the right of using the land [for] the following reasons: (a) The detail to be determined in regulation, where he is engaged in non-farming activity and earns ... his livelihood there[by]; (b) Where he disappears from his residence for 5 consecutive years without notifying his [whereabouts] and not renting his land or ... assigning a representative to administer his land; (c) Where he fallows his land for ... 3 [consecutive] years and above or 1 year and above where the land is cultivable [under] irrigation; (d) The detail to be determined by a regulation, where gross damage occurs [to] his land due to his mismanagement; (e) Where he notifies ... the concerned body that he has withdrawn from his holding right. (p.12)

In section 19(1) it is stated: “Any investor who rented rural land ... may secure [a] mortgage right to use his land or an asset produced on it, or both for effected period of the lease” (p.20).

Section 21 reads:

1. Any land holder who failed to respect any obligation provided under Article 20 of this Proclamation or similar provisions of a regulation to be issued to execute this Proclamation shall be given oral and written notice respectively. (p.23)

2. Where the land holder could not correct his mistakes in accordance with the notice, administrative measures may be taken as provided herein under: (a) Where his land is degraded due to his weakness not to conserve it, by a decision to be passed to transfer his right to use land in rent temporarily [to] a person who undertake[s] an obligation; (b) Where the offence is committed again after the measure indicated herein above is executed, a measure ... suspending him from using [the land] for a limited time up to expropriating ... his land [and] paying him compensation. (p.23)

3. Where any communal land user refuses to cooperate with ... society to conserve land, he shall ... be given oral or written notice [of] his refusal. (p.24)

4. Where the offence committed is similarly repeated after the notice provided under sub-Article 3 ..., he may be penalized [by] suspending [his] use [of] the land temporarily to [being banned] from using ... communal land totally. (ibid.)

5. A land user who did not respect other obligations provided under Article 20 of this Proclamation, shall be made to pay compensation for the damage pursuant to civil code in addition to measures indicated under sub-Article 3 and 4 of this Article. (ibid.)

Section 22(1) states:

Any Rural Land given to users in holding, held for common usage by the community of an area, or forestry development, or conserved for any other similar activities shall be measured and the map ... prepared by the Authority in traditional way[s] or [as a] modern tool. ... a special system of [e]numerating shall be designed and implemented to clearly understand each [parcel of] land. The sign that indicates the boundary shall also be made on the land. (p.24)

Section 24(1) states: “Any person granted rural land shall be given the land holding certificate in which the details of the land is registered by the Authority [under] his name and his photograph fixed thereon. The holding certification is a legal certificate of the holder” (p.27).

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

This proclamation is similar in content to the Amhara proclamation. Some key differences in the Oromia proclamation are that in maintaining existing farm plots, the holding size for the future shall be not less than 0.5 hectares for annual crops and 0.25 hectares for perennial crops (section 7(1), p.4). Section 7(2) states that the “plot size for new settlers shall take into consideration the average holding size of the community in that specific locality” (p.4).

Section 14(1) states that the “Redistribution of peasant or pastoralist or semi pastoralist’s land holding shall not be carried out in the region, except irrigation land” (p.6).

### **Ethiopian Water Resources Management Proclamation 2000**

This proclamation was issued because “it has become necessary to Issue a Water Resources Management, Protection and Utilization Proclamation to put the water resources of Ethiopia to the highest social and economic benefit for its people through appropriate protection and due management and based on the Article 55, No. 1 of the Constitution of the Federal Republic of Ethiopia” (p.1250).

Part 1, section 3 of the Ethiopian Water Resources Management Proclamation states:

The purpose of the Proclamation is to ensure that the water resources of the country are protected and utilized for the highest social and economic benefit of the people of Ethiopia, to follow up and

supervise that they are duly conserved, ensure that harmful effects of water are prevented, and that the management of water resources is carried out properly. (p.1252)

Part 1 section 5 of the proclamation, concerning public ownership of water resources states: “All water resources of the country are the common property of the Ethiopian people and the state” (p.1252).

Part 1, section 6(1), concerning fundamental principles, states:

1. The Integrated Basin Master Plan Studies and Water Resources legislative framework shall serve as a point of reference and ensure that any water resource is put to the highest social and economic benefit of the people of Ethiopia. (p.1252)
2. The social and economic development programs, investment plans and programs and water resources development activity of any person, shall be based on the country’s Water Resources policy, the relevant Basin Master Plan Studies and Water Resources laws. (ibid.)
3. The supervising body shall ensure ... [that] any water resource is put to the highest social and economic benefit of the Ethiopian people in accordance with the provisions of the Ethiopian Water Resources Policy, Basin Master Plan Studies and Water Resources laws. (ibid.)
4. Management of the water resources of Ethiopia shall be in accordance with a permit system. (ibid.)

Part 1, section 7 deals with preferences among uses and states:

1. Domestic use shall have priority over and above any other water uses.
2. Without prejudice to the provisions of Sub-Article (1) of this Article, pre-allocation of water resource to a given purpose or its being planned, shall not give it priority over and above any other uses. (p.1252).

Part 4, section 11 addresses permits and professional licences:

1. Without prejudice to the exceptions specified under Article 12 of this Proclamation, no person shall perform the following activities without having obtained a permit from the supervising body: (a) construct waterworks; (b) supply water, whether for his own use or for others; (c) transfer water which he/she abstracted from a water resource or received from

another supplier; and (d) release or discharge waste into water resources unless otherwise provided for in the regulations to be issued for the implementation of this Proclamation. (p.1255).

- 2). Any person shall be required to discuss his/her proposal with the supervising body prior to applying for a permit for the purposes specified in Sub-Article (I) of this Article. The details shall be determined by regulations. (p.1255).

Part 4, section 12, No.1 of the proclamation concerns types of water uses not requiring permits.

1. Any person shall utilize water resources for the following purposes without holding a permit issued by the supervising body: (a) dig water wells by hand or use water from hand-dug wells; (b) use water for traditional irrigation, artisanal mining and for traditional animal rearing, as well as for water mills. (p.1255)
2. The supervising body may, where necessary, issue directives to prevent inappropriate use and wastage of water regarding the uses mentioned in Sub-Article (I) (a) and (b) of this Article. (ibid.)

Concerning banks and harmful effects of water, Part 7, section 25(1) states:

The supervising body, in collaboration and in consultation with the appropriate public body may: (1) delimit the boundaries of the banks of certain water bodies; and (2) prohibit clearing, cutting trees or vegetation and construction of residential houses, within the delimited banks of water bodies. (p.1259)

Part 7, section 26 concerns control of the harmful effects of water.

The appropriate public bodies shall before allowing or causing the founding of towns or villages request the supervising body for technical advice in order to prevent or avoid damages, adverse impacts or accidents which may occur as a result of floods and other factors related to water. (p.1259)

Part 8, section 27(1) addresses associations of water users thus: “The supervising body may in consultation with the appropriate public bodies encouraging the establishment of water users’ associations as it deems necessary to utilize water for beneficial uses” (p.1259).

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