

# LAND TO THE TILLER REDUX: UNLOCKING ETHIOPIA'S LAND POTENTIAL

*Dustin Miller<sup>1</sup> &  
Eyob Tekalign Tolina<sup>2</sup>*

I.	New Era for Ethiopia .....	348
II.	Land Classification History - Connectedness to the Land .....	350
	A. Pre-Imperial.....	350
	B. Imperial: Feudal .....	351
	C. Derg: Land to the Tiller.....	352
III.	Post-Derg: Current Political and Land Classification.....	354
	A. Politics/Economy .....	355
	B. Agriculture .....	355
	1. Agricultural Development-Led Industrialization.....	357
IV.	Challenges to Current Land Policy .....	358
	A. Challenges & Opportunities of Current Land Tenure System .....	360
	1. Expressed Tenure Insecurity.....	361
	2. Expropriation .....	362
	3. Redistribution .....	363
	4. Set Time Period for Use Rights .....	366
	5. Private versus State Ownership .....	367
	6. Alienation.....	369
	7. Decentralization of Administration .....	371
	8. Positives from Current Land Tenure System.....	375
V.	Conclusion .....	376

---

1. Dustin Miller is a former summer intern at the International Food Policy Research Institute (IFPRI) in Washington, D.C and compiled this research as part of the internship in the summer of 2007. He is a 2008 graduate of Drake Law School and was able to compile this paper with assistance from both IFPRI and the Drake Agricultural Law Center.

2. Eyob Tekalign Tolina is the Head of Economy and Business for the Ethiopian Embassy located in Washington D.C. He spoke on Ethiopia's land policy and Agriculture Development Led Industrialization at the Drake Agricultural Law Center's Fall 2007 conference entitled The Role of Law in Promoting Sustainable Farming and Rural Development: An International Perspective.

## I. NEW ERA FOR ETHIOPIA

Ethiopia's political and economic history has been clearly demarcated through its land policy, with each new era offering the hope that the previous administration promised but could not provide. This history illustrates just how easily land tenure issues can politically divide a country and it has been the land policy which has driven politics in Ethiopia over the past one hundred years. Most recently in 1991 a coalition force defeated the existing Derg government and offered the assurance of a renewed land policy.

When the Derg came to power in 1975 they were welcomed due in part to their policy of "Land to the Tiller." This slogan promised that the previous imperial feudalism would be eliminated and land policy would allow for farmers to own the land they were working.<sup>3</sup> The Derg's ultimate purpose was to "abolish the feudal system in order to release for industry the human labor suppressed within such system."<sup>4</sup> However, the Derg's promise was not fully realized.

It has been fifteen years since the most recent coalition government offered that same promise of change, but the continued reliance on old policies has limited the land policy. Land is so important to Ethiopia because it relies upon the land as its main economic force.<sup>5</sup> Agriculture, as in most developing countries, drives economic development in Ethiopia and underlying this economic spur is the land tenure policy which farmers work under.<sup>6</sup> Ethiopia has the added incentive due to it being a largely rural country.<sup>7</sup> Agriculture provides the majority of exports and employment for the country.<sup>8</sup> How crops are grown and where livestock graze is all dependent upon a favorable land policy. Ultimately the country is an agrarian economy with a small, but developing, industrial base.<sup>9</sup> Ethiopia has seen rapid growth in its economy and that growth has been attributed to their Agriculture Development Led Industrialization (ADLI).<sup>10</sup> Ethi-

---

3. Public Ownership of Rural Lands Proclamation, No. 31 Purpose (Ethiopia 1975).

4. *Id.*

5. BERHANU ADENEW & FAYERA ABDI, RESEARCH REPORT 3: LAND REGISTRATION IN AMHARA REGION, ETHIOPIA 7 (2005).

6. *Id.*

7. *Id.*

8. AMIN ABDELLA, AGRICULTURE DEVELOPMENT-LED INDUSTRIALIZATION (ADLI) AND EXPORT-LED GROWTH: COMPATIBILITY ANALYSIS 3 (2002).

9. *Id.*

10. See Simon Tisdall, *Green Shoots of Recovery*, GUARDIAN (London), Fed. 11, 2008, available at <http://www.guardian.co.uk/commentisfree/2008/feb/11/greenshootsof recovery>.

opia's ADLI rests upon its agriculture sector to lead the way to development for the entire country.<sup>11</sup> The past three years has seen expansive growth in the agricultural sector and thus overall growth for the whole economy.

The economic reality for Ethiopia is that geography places the country within the Horn of African and unfortunately amongst some of the poorest countries in the world. Even with the recent economic growth, the country faces continued challenges. Close to forty-five percent of Ethiopians fall below the living standard of one U.S. dollar per day.<sup>12</sup> And, representing one of the largest populations on the African continent and currently the second largest economy in Sub-Saharan Africa, much focus is given to ensure that a country with rich labor and resource assets thrives, thus making development of the country extremely important for the entire continent.<sup>13</sup> Agriculture continues to offer this hope because overwhelmingly the poor are found in rural parts of the country operating smallhold farms. At the end of the day, agricultural growth rests on a favorable land policy for farmers to work under. These farmers need the proper land security and incentives to improve their land.

Based upon the relationship between land policy, agriculture, and economics, this paper analyzes possible small reforms that could be adopted within the current legal framework and likely result in positive change for Ethiopia's land, agriculture, and economic systems. The offered reforms are small in comparison to the land reform that has already taken place in Ethiopia. Because of the controversial nature of land, it is important to use these minute, native ideas. Without an effort to allow the country's voice to be heard the land system can remain insecure. The reforms proposed are minor adjustments to the system that have already been considered by Ethiopia throughout their political processes. Although it is important to use ideas from the country, change is needed within the land legislation to foster continued growth. These changes could unlock the potential of land by maximizing land use, increase land markets, and gaining the agricultural production results desired by Ethiopian government.

The paper begins in Section Two by giving a brief explanation of Ethiopia's history and that history's connectedness to land policy. The next section outlines the current land tenure system. It also provides a more in-depth characterization of how agriculture is being used to spur development for the country. It is Section Four that goes about providing the possible favorable changes to the land system. There are important positives to the current system, but again this

---

11. ABDELLA, *supra* note 8, at 3.

12. AFRICAN DEVELOPMENT FUND, THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA: AGRICULTURAL SECTOR REVIEW, i (2002).

13. CIA, *The World Factbook: Ethiopia*, <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html> (last visited August 5, 2008).

section provides examples of possible growth spurring changes. Finally, Section Five concludes the entire paper and provides a way forward for Ethiopia.

## II. LAND CLASSIFICATION HISTORY- CONNECTEDNESS TO THE LAND

How land has been classified has caused major political and economic changes throughout their history, which is not something limited to Ethiopia. In a broad sense land is extremely important in the developing world because it is many times the only asset the poor possess. As a social asset it is extremely important for citizens of these countries and is a central economic issue.<sup>14</sup> “Land is becoming increasingly scarce and sought after in many parts of Africa. Good quality arable land and common pool resources are becoming more valuable, due to greater market engagement, changes in production systems, population growth, migration, and environmental change.”<sup>15</sup> The centrality of land tenure creates a situation that is emotionally charged, where land reform is emotive and generally politically unpopular.<sup>16</sup> Because of this, the process of developing land rights can take years to develop or radically change through revolution.<sup>17</sup> One thing that is true in every country is that these systems are developed and defined by societies, which creates vast differences between regions and individual countries.<sup>18</sup> The process of land classification “is not simply an economic affair. It is very much intertwined with people’s culture and identity.”<sup>19</sup> Ethiopia’s history is no different as land has played a central role in its political history.

### A. *Pre-Imperial*

The centrality of land as a source of livelihood and power has been a constant theme for the peasantry of Ethiopia.<sup>20</sup> Even as one of the oldest nations in the world, the Ethiopian peasantry has historically enjoyed great access to

---

14. Berhanu Abegaz, *Escaping Ethiopia’s Poverty Trap: The Case for a Second Agrarian Reform*, 42 J. MOD. AFRICAN STUDIES 313, 315 (2004).

15. NAZNEEN KANJI ET AL., RESEARCH REPORT 1: CAN LAND REGISTRATION SERVE THE POOR AND MARGINALISED GROUPS? SUMMARY REPORT 3 (2005).

16. SAMEUL GEBRESELESSIE, FUTURE AGRICULTURES, LAND, LAND POLICY, AND SMALLHOLDER AGRICULTURE IN ETHIOPIA: OPTIONS AND SCENARIOS 6 (2006).

17. *Id.*

18. *Id.*

19. Berhanu Nega et al., *Current Land Policy Issues in Ethiopia*, 3 LAND REFORM 103 (2003).

20. Abegaz, *supra* note 14, at 314-16.

land.<sup>21</sup> The country evolved “from Axum, a highly-developed, Christian, slave-owning kingdom.”<sup>22</sup> Similar, however, to many other African nations, the nation is fractionalized with a multitude of ethnic groups with each group’s customary law varying from each group.<sup>23</sup> Within Ethiopia is the second largest ethnic group in the entire continent of Africa.<sup>24</sup> The Oromo occupy some of the most fertile land in the country and have held this land during the pre-imperial history.<sup>25</sup> Ultimately the ethnic groups’ social structure was based on a democratic form of social and political organization which allowed access according to age group.<sup>26</sup> Although there is a rich oral tradition of this time period, little focus has been given to land politics.

### B. *Imperial: Feudal*

The real focus of academic study on Ethiopia’s land and history begins in the mid-nineteenth century. In 1855 a new era of Ethiopian history began, with Kasa becoming Ethiopia’s first emperor.<sup>27</sup> This Imperial Era ruled Ethiopia for over a century and was highlighted by two major figures: Emperor Menelik II and Emperor Haile Selassie I.<sup>28</sup> Menelik took the throne in 1889, which coincided with the African continent’s “Great Scramble.”<sup>29</sup> It was from this period forward, that these emperors achieved their greatest accomplishment by limiting European influence and ultimately staving off formal colonization. Instead of outside colonization’s manipulation of Ethiopia’s land policy, the country developed within itself. Interestingly, the Ethiopian state was born out through a purely African process of imperial expansion and conquest with over half of present day Ethiopia being added under Menelik II.<sup>30</sup>

The land system forcefully put in place by Menelik II was a feudal system of land ownership and agricultural production. Put simply, citizens owed general obligations to the land owners who were primarily the church and nobili-

---

21. John W. Van Doren, *Positivism and the Rule of Law, Formal Systems or Concealed Values: A Case Study of the Ethiopian Legal System*, 3 J. TRANSN’L L. & POL’Y 165, 167-70 (1994).

22. *Id.* at 167.

23. *Id.* at 171.

24. Bereket Habte Selassie, *Self-Determination in Principle and Practice: The Ethiopian-Eritrean Experience*, 29 COLUM. HUM. RTS. L. REV. 91, 108 (1997).

25. *Id.*

26. *Id.*

27. BBC News, Timeline: Ethiopia, [http://news.bbc.co.uk/2/hi/africa/country\\_profiles/1072219.stm](http://news.bbc.co.uk/2/hi/africa/country_profiles/1072219.stm) (last visited August 5, 2008).

28. *Id.*

29. *Id.*

30. Selassie, *supra* note 24, at 101.

ty.<sup>31</sup> In this feudal society, the ownership of land carried the bulk of power in Ethiopia.<sup>32</sup> The Emperor, feudal nobility, and the Ethiopian Orthodox Church controlled the land in Ethiopia, meaning they controlled this primarily agrarian society.<sup>33</sup> “Before 1975, particularly in the [s]outhern parts of the country, land was concentrated in the hands of absentee feudal landlords, tenure was highly insecure and arbitrary evictions were a serious threat.”<sup>34</sup>

Emperor Haile Selassie’s reign began in 1930 and offered hope to those people who had not profited through the feudal land system or had been forced from their land under Menelik II.<sup>35</sup> The emperor set about overhauling the political system, including land tenure, but these ideas did not follow through on their initial momentum.<sup>36</sup> Instead, the land system that existed “was a semi-feudal one in which modern ideas and institutions vied with traditional ones.”<sup>37</sup> Selassie brought with him a great deal of excitement that did not materialize partially due to the inhibiting aspects of the feudal tenure system.<sup>38</sup> Without the ability to establish clear land titles investors were reluctant to supply the capital needed to improve farming methods around the country.<sup>39</sup> The economy relied heavily on agriculture, but this barrier to investment inhibited desired growth. Instead of focusing on the basic idea of land security for tenants and investors, the imperial government promoted large-scale programs that were unable to thrive due to the feudal land policy.

Ultimately, the feudal land tenure system in place for over a century was unable to adapt to the needs of the agricultural sector and ultimately provide the flexibility for a modern economy. The macro level, which was the focus of the empire, was not as important as the local land tenants whose land insecurity created the broad support for an overthrow of the feudal system in 1974.

### C. Derg: *Land to the Tiller*

After a century of imperialistic rule and a feudal land system, the people of Ethiopia rose up against the emperor. The 1974 coup caused a break from the

---

31. Van Doren, *supra* note 21, at 168.

32. *Id.*

33. *Id.*

34. KANJI ET AL., *supra* note 15, at 7.

35. Selassie, *supra* note 24, at 102.

36. *Id.* at 102-03.

37. *Id.* at 103.

38. Kimberly Medlock Wigger, *Ethiopia: A Dichotomy of Despair and Hope*, 5 TULSA J. COMP. & INT’L L. 389, 394-95 (1998).

39. *Id.* at 395.

feudal system motivated by the socialistic slogan, "Land to the Tiller."<sup>40</sup> Instead of a failed system of patronage to the nobility, peasants saw an opportunity to gain value from the land they had worked so hard.<sup>41</sup> The military government, titled the Derg, offered the promise of land being for the benefit of those who worked it and not for the absent landowners.<sup>42</sup>

The 1975 Land Reform Proclamation set forth the land policy that Ethiopian citizens would fall under for the following twenty years. Derg policies' continued to follow Emperor Selassie's liberalization, but land tenure followed a strict socialist agenda.<sup>43</sup> The land policy "abolished 'inequitable' land ownership arrangements and set the farm sector on a path of semi-collectivist land use."<sup>44</sup> This included the nationalization of land and the dismantling of previous interests in land and rights.<sup>45</sup> Ultimately, the new government attempted to villigize the country through "building rural growth poles that would feed the cities and serve as magnets for the rural economy."<sup>46</sup>

All land under the Derg land system became the property of the country of Ethiopia.<sup>47</sup> Even the legal rights given to the use of the land were considerably restricted. Although landholders were given a use right in perpetuity, the ultimate ownership rested in the government of Ethiopia.<sup>48</sup> Further, those owning an interest in the land were given restricted ability to alienate their rights.<sup>49</sup> No owner could rent, sell, mortgage, or allow their land to be sharecropped, according to the proclamation.<sup>50</sup> The only possible way for land to be transferred was either back to the state or through inheritance within the family.<sup>51</sup> Alienation of land and hiring of farm labor were proscribed because of their incongruity with the socialist agenda of the Derg.<sup>52</sup>

To accomplish their land policy, the new government needed to address the feudal system's land ownership scheme. This was achieved through a radical

---

40. Public Ownership of Rural Lands Act Proclamation, No. 31, Ch. 2 (Ethiopia 1975).

41. *Id.*

42. *Id.*

43. Abegaz, *supra* note 14, at 320.

44. John M. Omiti et al., *Some Policy Implications of the Resurfacing of Rural Factor Markets Following Agrarian De-collectivization in Ethiopia*, 28 HUM. ECOLOGY 585, 586 (2000).

45. KANJI ET AL., *supra* note 15, at 7.

46. Abegaz, *supra* note 14, at 327.

47. Public Ownership of Rural Lands Act Proclamation, No. 31, Ch. 2 (Ethiopia 1975).

48. *See id.*

49. *See id.*

50. ADENEW & ABDI, *supra* note 5, at 5-7.

51. Public Ownership of Rural Lands Act Proclamation, No. 31 Ch. 2(5) (Ethiopia 1975).

52. Omiti et al., *supra* note 44, at 586.

redistribution program.<sup>53</sup> Derg land policy set about extinguishing rights of current landholders, and then passing those pieces of land to the peasants who would work the land.<sup>54</sup> Due to the overwhelming popularity of “Land to the Tiller,” the Derg changed the face of the countryside.

Unfortunately for the Derg, the promise of the slogan was not realized. The revolution abolished feudalism but it did not create economic autonomy for Ethiopians or security for its landholders. The Derg government kept a large measure of control over peasants’ lives.<sup>55</sup> The economy did not provide the economic stimulus for political stability. Instead, the economy became stagnate and fell behind the rest of the world.<sup>56</sup> The Derg’s inflexible land policy shares at least partially in the blame. Peasants became reliant on the government who were unwilling to accept the social responsibilities to these citizens ultimately causing a situation ripe for strife.<sup>57</sup> Although the Derg initiated reform on a popular premise, their policy was fundamentally flawed and “failed to alter measurably the organisational, technological and incentive constraints facing Ethiopian agriculture.”<sup>58</sup>

### III. POST-DERG: CURRENT POLITICAL AND LAND CLASSIFICATION

Combined, the previous administrations in Ethiopia eventually led to an antiquated economy left with low social and economic development.<sup>59</sup> In 1991 a revolution was spurred again by this lack of economic growth as the failed promise of “Land to the Tiller” was overturned for a new government.<sup>60</sup> This new government has begun to further liberalize and open up Ethiopian markets, but the land system remains much the same as the one put in place in 1975.<sup>61</sup> Ethiopia continues to rely on its agriculture for economic development while its farm workers continue to toil under a restrictive land policy.<sup>62</sup> Recent growth in the economy has been encouraging for the country as it has tried to utilize its agricultural resources. However, there are certainly potential small reforms to the land system that could result in further growth both agriculturally and economically.

---

53. Abegaz, *supra* note 14, at 320.

54. AFRICAN DEVELOPMENT FUND, *supra* note 12, at 27.

55. Wigger, *supra* note 38, at 398.

56. *Id.*

57. *Id.* at 398-99.

58. Abegaz, *supra* note 14, at 320-22.

59. *See generally* Wigger, *supra* note 38, at 398.

60. BBC News, *supra* note 27.

61. GEBRESELISSIE, *supra* note 16, at 3.

62. *Id.* at 4.



*A. Politics/Economy*

The revolution in 1991 hoped to transition Ethiopia from a command based economy, seen under the Derg, to a free market economy.<sup>63</sup> The new government's focus is on an "externally-focused economic policy" to provide the economic development and improved individual situation for its citizens.<sup>64</sup> And yet, its agrarian system has not fully made the transition to capitalism. Up until the most recent history, there has been little to no evidence that average farm productivity has been affected substantially by the radical land reform of 1975-76.<sup>65</sup> This is extremely important because the land tenure system put in place in 1975 does not vary greatly from the current land system in Ethiopia.

Ethiopia is taking strides to a free-market economy but reform has made slow progress. Privatization of the majority of industries only occurred recently and only marginal effects have been witnessed through the reform.<sup>66</sup> However, current economic growth has shown encouraging results through the re-establishment of private farms.<sup>67</sup> Although reform has not occurred at the pace at which outsiders had hoped, the Ethiopian government's steps toward an externally-focused economy have been promising. With an average of ten percent growth over the past three years, the country can feel proud of its progress.<sup>68</sup> Ethiopia's economy has taken initial steps in the right direction to move from price controls and prohibitive regulations to a free-market economy.<sup>69</sup>

*B. Agriculture*

Ethiopia has some of the world's most beautiful and rugged scenery. It has diverse topography with "mountains over 4000m above mean sea level, high plateaus, deep gorges cut by rivers and arid lowlands."<sup>70</sup> This scenery allows for a predominantly rural country to support its citizens in the countryside. About eighty percent of the population lives in these rural areas producing agricultural products.<sup>71</sup> Farming systems dot the landscape throughout these varying terrains

---

63. Berhanu Adenew, *The Food Security Role of Agriculture in Ethiopia*, 1 J. AG. & DEV. ECON. 138, 145 (2004).

64. Wigger, *supra* note 38, at 402.

65. Nega et al., *supra* note 19.

66. Wigger, *supra* note 38, at 404.

67. AFRICAN DEVELOPMENT FUND, *supra* note 12, at 26-28.

68. CIA, *supra* note 13.

69. Wigger, *supra* note 38, at 402.

70. Rani Devi et al., *Organic Farming and Sustainable Development in Ethiopia*, 6 SCI. RES. & ESSAY 199 (2007).

71. Adenew, *supra* note 63, at 138.

with mixed farming in the highlands, using both crops and livestock, to pastoralism in the lowlands.<sup>72</sup> Albeit sometimes slower than desired, the agricultural sector has no doubt been the backbone of Ethiopia.<sup>73</sup> During the Derg era, coffee by itself made up to more than eighty-seven percent of the total agricultural exports and during Selassie's reign made up over fifty percent.<sup>74</sup> Throughout the years prior to 1991, Ethiopia struggled to find the right policy mix to harness the potential of its agriculture. These struggles had disastrous effects on Ethiopia as the reliance on agriculture created even larger problems for the country as the agricultural sector affected both industry and services.<sup>75</sup> Combining together this has created a continued livelihood crisis.<sup>76</sup>

The slow agricultural growth became completely bogged down from 1980 until the fall of the Derg in 1991. "Part of this poor performance is explained by the numerous restrictive regulations imposed including price fixing, forced creation of cooperatives, and preferential treatment to cooperatives and state farms at the expense of smallholders."<sup>77</sup> Many believed the lifting of the prohibitive restrictions would set the economy free, but unfortunately the performance of the sector has not improved much even after some of these egregious restrictions were lifted following the 1992 reforms of the current government.<sup>78</sup> However, the lifting of the socialist agenda only allows the country to become susceptible to the boom and bust nature of agriculture. Grain harvests soared throughout the 1990s and bumper crops in 2000 and 2001 helped to achieved high GDP growth for the entire economy.<sup>79</sup> The market liberalization seemingly did its work but the crop and price collapse in late 2003 proved that Ethiopia needed a strong agricultural policy to ensure consistent overall economic growth and not development directly tied to the weather.<sup>80</sup>

---

72. Devi et al., *supra* note 70, at 199-200.

73. *See generally* Wigger, *supra* note 38, at 395-404.

74. UNITED NATIONS DEVELOPMENT PROGRAMME, *DECENTRALIZED GOVERNANCE OF NATURAL RESOURCES* 12 (2006) (Nairobi: United Nations Development Programme); Wigger, *supra* note 38, at 403.

75. Ethiopian Embassy for the Federal Democratic Republic of Ethiopia, Ethiopian Agriculture, <http://www.ethioembassy.org.uk/Facts%20About%20Ethiopia/Facts%20About%20Ethiopia%20Homepage.htm> (last visited August 5, 2008).

76. *See generally* Abegaz, *supra* note 14, at 320-22.

77. Nega et al., *supra* note 19.

78. *Id.*

79. Roger Thurow, *Behind the Famine in Ethiopia*, WALL ST. J., July 1, 2003, at 1.

80. *See* ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), *AFRICAN ECONOMIC OUTLOOK*, 254 (2007).

### 1. Agricultural Development-Led Industrialization

The ADLI policy put in place by the new government focuses on growth in the agricultural sector to spur overall economic growth. There are two things that can easily be agreed upon in Ethiopia: there is a desperate economic situation and agriculture is the predominant piece of the country's present economic system.<sup>81</sup> Currently, agriculture is the dominant sector "accounting for an average of 48% of the GDP, an estimated 85% of employment and 99% of exports."<sup>82</sup> The ADLI has been chosen because it looks at the existing state of Ethiopia's economy and acts as a basis for economic transformation in a self-reliant manner while resting on the majority of Ethiopia's rural population.<sup>83</sup> Ultimately there is a reliance on smallholders to provide the economic foundation Ethiopia needs through current employment and capital accumulation providing the resources for further growth into all industries.<sup>84</sup>

Unlike other countries, the makeup of Ethiopia's agricultural industry has focused on small scale agriculture to produce the majority of the agricultural output.<sup>85</sup> It is this smallholder focus which eighty-five percent of the population derives a livelihood and where the country gains nearly half of its gross domestic product.<sup>86</sup> Only recently did Ethiopia support large scale corporate agricultural projects, which is the driving force behind many agricultural sectors. Ethiopia has embraced small-scale agriculture which accounts for ninety-five percent of the total farmed area and is where nearly all of the food crops are produced.<sup>87</sup>

ADLI itself is the policy which steers Ethiopia's economic action and provides significant public expenditure to achieve their economic development goals.<sup>88</sup> The projected ADLI path includes the support of service cooperatives, technical training, expanding agricultural financial institutions, better land use management and planning, further extension services and development of rural roads.<sup>89</sup> All of these pieces will be implemented in phases with the first section

---

81. BERHANU NEGA ET AL., LAND TENURE AND ECONOMIC DEVELOPMENT IN ETHIOPIA: THE NEED FOR NEW THINKING AND PRAGMATIC APPROACH IN DEALING WITH THE PROBLEM, 8-9 (2002) (Paper to be presented at a Regional Workshop on Land Issues in Africa).

82. AFRICAN DEVELOPMENT FUND, *supra* note 12, at i.

83. ABDELLA, *supra* note 8, at 12.

84. Adenew, *supra* note 63, at 145-46.

85. Abegaz, *supra* note 14, at 319.

86. FEYISSA REGASSA, FARMERS' RIGHTS IN ETHIOPIA: A CASE STUDY 1 (The Fridtjof Nansen Institute, 2006).

87. *Id.* at 3.

88. Adenew, *supra* note 63, at 145.

89. International Fund for Agricultural Development, IFAD in Ethiopia, <http://www.ifad.org/english/operations/pf/eth/index.htm> (last visited August 5, 2008).

dedicated to improvement in the existing agricultural system.<sup>90</sup> This will be accomplished with enhanced techniques and improved seeds.<sup>91</sup> Phase two applies further technological advances through such systems as small-scale irrigation projects to open up previously underutilized regions.<sup>92</sup> Finally the ultimate goal of the ADLI is for the growth in agribusiness to be spun off into business and industry in Ethiopia.<sup>93</sup> The true hope for ADLI is agriculture providing the foundation for industrial development to be built upon.<sup>94</sup>

#### IV. CHALLENGES TO CURRENT LAND POLICY

Late in 2007, Ethiopia's economic policy felt vindicated because of a World Bank document that applauded development efforts which focused on agriculture as the driver.<sup>95</sup> After much criticism of Ethiopia's development strategy, the World Bank recognized that agriculture could be a primary driver of economic development for the developing world.<sup>96</sup> In Ethiopia, growth of the economy from 2005 to 2007 averaged over ten percent GDP expansion.<sup>97</sup> This increase was double the average growth for the previous four years.<sup>98</sup> The World Bank report and these numbers simply reflect the government's belief that agricultural can push an economy through the stages of industrialization.

The World Bank report is an extremely important endorsement to Ethiopia's ADLI, but the report also indicates limitations to any agriculturally focused development strategy.<sup>99</sup> Positive growth of an entire economy that rests on agriculture needs security of land tenure to provide incentives for farmers. The success of the ADLI depends upon economic assumptions that this paper is not prepared to answer, but also rests upon the theory that this rise in productivity through improved techniques will result even if the institutional arrangements remain the same.<sup>100</sup> The key to positive economic growth is to provide secure

---

90. ABDELLA, *supra* note 8, at 13.

91. Nega et al., *supra* note 19.

92. Ethiopian Embassy for the Federal Democratic Republic of Ethiopia, *supra* note 75.

93. *See generally* ABDELLA, *supra* note 8, at 13-14.

94. *See* AFRICAN DEVELOPMENT FUND, *supra* note 12, at 26.

95. *See generally* WORLD BANK, WORLD DEVELOPMENT REPORT 2008: AGRICULTURE FOR DEVELOPMENT, (2007).

96. *See generally id.*

97. CIA, *supra* note 13.

98. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 80, at 253.

99. *See* Klaus Deininger & Hans Binswanger, *The Evolution of the World's Land Policy: Principles, Economics, Experience and Future Challenges* 14 THE WORLD BANK RES. OBSERVER 246, 250-252 (1999).

100. Nega et al., *supra* note 19.

and transferable property rights for the development of an efficient agricultural system.<sup>101</sup>

Altogether the ADLI is an extremely important and significant driver to Ethiopia's entire economy, but its ultimate success is linked to the land tenure system upon which the agricultural system rests. Without the proper land security and tenure system, the steps toward industrialization are inhibited. Understanding the current system's makeup and relationship to previous administrations is keyed to analyzing the potential inhibiting factors. Properly functioning land markets, tenure security, and access to land are just a few of the factors that lead to a tenure system that can support growth. The efficacy of land policy driving agricultural development is a result of a multitude of factors.<sup>102</sup> Economic growth is the ultimate desire of Ethiopia, but the question of land policy needs to be addressed from "both output growth and welfare of the people."<sup>103</sup>

The failures of previous administrations are as much a failure as their agriculture and land policy as any other factor. These failures have resulted in a flawed system for the current government, which must address declining farm size, tenure insecurity, and subsistence living.<sup>104</sup> A lack of focus on agriculture led to a neglected sector with antiquated techniques and insufficient capital investments.<sup>105</sup> The problems generated from current and previous policies have led to farms that are too small to operate and the ability to access profitable techniques difficult.<sup>106</sup> The land policy accepted by the government in 1994 was an acceptance of previous systems, which has ultimately been criticized as being a centralized, top-down approach rather than being developed through discussions with all stakeholders.<sup>107</sup>

Land is a limited resource so the land crisis has been further exacerbated by a growing population. Increased population has resulted in the number of landless peasants and lower farm incomes.<sup>108</sup> As population rises the size of landholdings grows smaller and does not allow individuals to grow beyond subsistence living without improved agricultural investment.<sup>109</sup> Despite the prevalence of small scale agriculture, the average income of individuals is in decline due to this land situation.<sup>110</sup> The reality of the numbers is this: over seventy mil-

- 
101. Omiti et al., *supra* note 44, at 600.
  102. Nega et al., *supra* note 19.
  103. ABDELLA, *supra* note 8, at 18.
  104. NEGA ET AL., *supra* note 81, at 7.
  105. AFRICAN DEVELOPMENT FUND, *supra* note 12, at 33.
  106. GEBRESELASSIE, *supra* note 16, at 7-8.
  107. *Id.* at 4.
  108. KANJI ET AL., *supra* note 15, at 7-8.
  109. *Id.*
  110. *See generally* Abegaz, *supra* note 14, at 313.

lion people with ten million hectares of arable land equals out to 0.17 hectares for the rural population making up over eighty percent.<sup>111</sup> Ultimately, these small survival plots have provided “inequities in access to productive assets such as land, credit, and extension services.”<sup>112</sup> These limitations of the land policy have been recognized by current government leaders and they are currently trying to come up with a better arrangement to provide tenure security while continuing to control the land.<sup>113</sup> There is a growing consensus that the current system needs changes to provide security of land and incentives to spur agricultural and economic growth.<sup>114</sup>

#### A. *Challenges & Opportunities of Current Land Tenure System*

The land policy put in place in Ethiopia was developed after years of tenure insecurity and recent political freedom. Discussions of land policy can result in advocacy for large land reforms that cause instant reaction and can be politically untenable. The previous reforms put in place in Ethiopia were mild due to this political nature of land reform.<sup>115</sup> The reform options put forward in this paper are ideas that have either been championed previously in Ethiopia or been successful in other countries around Sub-Saharan Africa. Due to the divisive nature of land, it seems imperative to utilize African ideas in reforming and any analysis relies on the basic system already in place.

Land ownership is comprised of various property laws and a legal analysis of these laws is important to determine if the best policy environment is provided for economic growth. In Ethiopia, the definitive document for the land system is the 1994 Ethiopian Constitution, which set up the ownership and classification scheme.<sup>116</sup> Article 40 governs property ownership within Ethiopia, and establishes that the right to ownership is exclusively vested in the State and peoples of Ethiopia.<sup>117</sup> “Land is an inalienable common property of the nations, nationalities and peoples of Ethiopia.”<sup>118</sup> The current government has so far avoided freehold tenure and opted for state ownership. This definition is seem-

---

111. See Food and Agricultural Organization, Country Profiles, [http://www.fao.org/ess/yearbook/vol1\\_2/pdf/ethiopia.pdf](http://www.fao.org/ess/yearbook/vol1_2/pdf/ethiopia.pdf) (last visited June 2, 2008)(on file with author).

112. AFRICAN DEVELOPMENT FUND, *supra* note 12, at 13.

113. See generally *id.*

114. See Nega et al., *supra* note 19.

115. S.F. Joireman, *Property Rights and the Role of the State: Evidence from the Horn of Africa*, 38 J. DEV. STUDIES 1, 3 (2001).

116. ETHIOPIAN CONSTITUTION [Constitution], art. 40. (Ethiopia 1994).

117. *Id.*

118. *Id.*

ingly the same as the land tenure definition under the Derg.<sup>119</sup> It is from this definition the system is an endorsement of the previous land reforms with slight variations for alienation and land development.<sup>120</sup> The liberalization of the land policy has provided minimal changes. From the definition Ethiopia has provided wide latitude and encouraging decentralization. Land proclamations were offered in 1997 and 2005 to further refine Ethiopia's land system, but ultimately the land remains under the inhibiting conditions that were found under the Derg.<sup>121</sup> The problems of tenure insecurity remain the same and thus inhibiting individual growth. Further refinement of land based rights and possible land reforms need to be considered to lift the strictures of the land policy to provide the proper growth incentives.

### 1. *Expressed Tenure Insecurity*

Ethiopia's first hurdle to an improved land system may be a battle that will take place in the minds of its citizen's. The fear of insecurity in a landholding is not always apparent on the surface, but many peasants express insecurity due to problems of previous administrations.<sup>122</sup> The language of property rights for land owner's needs reformed or clarified to provide the security needed to incentivize growth. In Ethiopia there is considerable evidence that this insecurity has hindered investment in the land that the government is trying to encourage through the ADLI.<sup>123</sup>

The policies of the current administration are not wholly to blame for this insecurity, as there is a multitude of factors involved, but it is clear that proper rights have not been fully expressed to small rural landholders.<sup>124</sup> It is clear that radical land reform is not necessarily needed, but better land institutions need to be further established and fully expressed throughout the landholding population.<sup>125</sup> This is an important first step because the memories of exploitive tenancy, land concentration, and fragmentation of landholdings are still fresh in many peasants' minds.<sup>126</sup> Steps need to be taken to assure the majority of the population that the problems of the past are in the past and individual farmers can feel secure that their right to land is secured according to the government. Protection

- 
119. Public Ownership of Rural Lands Act Proclamation, No. 31 Ch. 2 (Ethiopia 1975).
  120. AFRICAN DEVELOPMENT FUND, *supra* note 12, at 32, 36.
  121. ADENEW & ABDI, *supra* note 5, at 7.
  122. *Id.*
  123. *Id.*
  124. NEGA ET AL., *supra* note 81, at 9.
  125. Abegaz, *supra* note 14, at 315.
  126. *See* Nega et al., *supra* note 19.

of land rights is an important beginning but is only one part. Further clarification and availability of land needs to take place upon this foundation.<sup>127</sup>

## 2. *Expropriation*

The major source of tenure insecurity in Ethiopia rests in the fear of a government taking of individual landholdings. Expropriation is the process by which land can be seized from one citizen and utilized for another government purpose. With the need for infrastructure and investment, citizens dread a takeover of their individual interest in the land to complete these important investments.<sup>128</sup> The fears of the rural population are not unfounded because the Derg policies of the past had an extremely low threshold for a taking. The government could use any land for public purposes and only need to provide compensation for the improvements of the land.<sup>129</sup> This low threshold was used frequently to make landholders uneasy in their interest in property.

The 1994 Constitution raised the legal standard Expropriation under the constitution is allowed for any public purpose. Specifically, “the state may expropriate private property for public use with the prior payment of adequate compensation.”<sup>130</sup> The standard for taking of land continues to remain for “public purposes.”<sup>131</sup> Without proper clarification any government taking can be easily justified as a public purpose. The Federal Rural Land Administration and Land Use Proclamation of 2005 further clarified many aspects of Ethiopia’s land policy, but expropriation remains unclear.<sup>132</sup> Section Five of the Proclamation did restate the ability of the government to change communal land holdings into private holdings, but provided even lower legal language by allowing this process to occur “as may be necessary.”<sup>133</sup> While the government attempts to distinguish itself from the Derg policies, the current language of these instruments has shown a preference for the government’s ability to change land’s ownership based upon the interpretation of need.

Also, the advanced compensation called for in the Constitution is an important piece in providing assurances to farmers that they will be remunerated for any improvements that they make to the land. The problem with this positive

---

127. See ABDELLA, *supra* note 8, at 18.

128. NAZNEEN KANJI, *INNOVATION IN SECURING LAND RIGHTS IN AFRICA: LESSONS FROM EXPERIENCE* 3-4 (International Institute for Environment and Development, 2006).

129. Public Ownership of Rural Lands Act Proclamation, No. 31 Ch. 2 (Ethiopia 1975).

130. ETHIOPIAN CONSTITUTION [Constitution], art. 40, § 7 (Ethiopia 1994).

131. *Id.*

132. See Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, No. 456, §5 (Ethiopia 2005).

133. *Id.* at § 5(3).



piece of language is that the process has not been as positive as the language. The expropriation that has taken place has generally provided inadequate compensation.<sup>134</sup> The one piece of language that was encouraging to landholders has been taken away through the reality of poor administration.

Land distribution has not taken place in Ethiopia similar to previous eras, but the ability for government to take land is available. A positive result of further land administration legislation is that this process should be done in consultation with local community institutions.<sup>135</sup> The decentralization of land administration has put a preference on local land institutions to make determinations that affect them locally. In Tigray's Rural Land Usage Proclamation the state added that not only would there be a local process for determining a taking, but any taking would not only be compensated for improvements on the land, but provided with similar land.<sup>136</sup> The federal government should ensure that each local government is taking steps like these to ensure further land security of the landholding citizens.

An interesting option for the expropriation procedure was actually an alternative process that was eventually turned down. This procedure would provide a more democratic expropriation procedure. Tigray's example of up front compensation is followed in this alternative procedure.<sup>137</sup> The legal standard remains the same where expropriation can only occur for the public interest.<sup>138</sup> However, instead of just allowing for any public purpose, the burden would be placed on the government in a public proceeding to prove that there is no other option available.<sup>139</sup> The open forum would provide the opportunity for the landowner to be heard and also require the government to explain the exact public interest. Although this procedure was ultimately struck down, it would be a positive attribute for Ethiopia to reconsider as the enhanced process could provide heightened tenure security.

### 3. *Redistribution*

Land Redistribution is a public purpose that often utilizes the expropriation process. The post-imperial ruling class utilized this strategy to right the perceived wrongs of the imperial era. As discussed, the Derg placed emphasis on

---

134. INDEPENDENT REVIEW OF LAND ISSUES, VOLUME III, 2006-2007: EASTERN AND SOUTHERN AFRICA 16 (Martin Adams & Robin Palmer eds., 2007).

135. UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 74, at 11.

136. Tigray National Regional State's Rural Land Usage Proclamation, No. 23, art. 11 (Ethiopia 1997).

137. ETHIOPIAN CONSTITUTION [Constitution], art. 40 (Ethiopia, proposed version 1994).

138. *Id.*

139. *Id.*

“Land to the Tiller” and thus a preference for a citizen’s right to access of land.<sup>140</sup> Albeit a noble goal, the last fifty years dragged down the Ethiopian economy due to the reality of increased population on smaller landholdings.<sup>141</sup> Land redistribution became frequent to accomplish the goal of access to land, which has resulted in the furtherance of insecurity and a fragmented land base.<sup>142</sup>

The current government realized the mantra of the post-imperial ruling elites to provide “guarantees of entitlements to subsistence *plots of land*” was imprudent and has shifted the focus to ensuring a livelihood income from various areas.<sup>143</sup> The reality for Ethiopia is that subsistence plots to all citizens are impractical.<sup>144</sup> Due to the limited nature of the resource and the growing population, the amount of land necessary for all rural poor to have land for income is not available.<sup>145</sup> The World Bank has noted the limited plot sizes in Ethiopia have created a mass scarcity that is unable to support rural residents.<sup>146</sup> What has resulted from this reality is that the frequent land redistribution of the Derg has given way to a government that now discourages the policy.

Unfortunately, while redistribution has been discouraged, it has not been totally eliminated. The 1994 Constitution under Article 40 guarantees “peasants [the right] to free allotment of land and not to be evicted therefrom . . .”<sup>147</sup> This free access to land is again a holdover from the Derg era. The current government did not consider radical distribution of land, but continued to put the language within land policy. In fact, the government preserved this power in both the following Rural Land Proclamations in 1997 and 2005. In 1997, redistribution was continued when free assignment of holding rights was offered that would be sufficient for subsistence.<sup>148</sup> Again in 2005 redistribution was clarified with an actual definitional section outlining the meaning of a minimum sized plot.<sup>149</sup> A minimum size holding should ensure food security but, more importantly, there was not limiting language given to the possibility of redistribution.<sup>150</sup>

---

140. See Public Ownership of Rural Lands Proclamation, No.31, ch. 2 (Ethiopia 1975).

141. INDEPENDENT REVIEW OF LAND ISSUES, VOLUME III, 2006-2007: EASTERN AND SOUTHERN AFRICA, *supra* note 134, at 16.

142. ADENEW & ABDI, *supra* note 5, at 5.

143. Abegaz, *supra* note 14, at 315.

144. KLAUS DEININGER ET AL., RURAL LAND CERTIFICATION IN ETHIOPIA: PROCESS INITIAL IMPACT, AND IMPLICATIONS FOR OTHER AFRICAN COUNTRIES 3-4 (World Bank Policy Research Paper, 2007).

145. ADENEW & ABDI, *supra* note 5, at 5-8.

146. See DEININGER ET AL., *supra* note 144, at 5.

147. ETHIOPIAN CONSTITUTION [Constitution], art 40 §4 (Ethiopia, 1994).

148. Federal Rural Land Administration Proclamation, No. 89 §6(2) (Ethiopia 1997).

149. Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, No. 456, §2(10) (Ethiopia 2005).

150. See *id.*

While the government called for no redistribution, every land policy document has left open the possibility of takings for other individuals.

What this language has left open is the possibility for further redistribution. This is not unfounded; a major land distribution took place in Amhara resulting in more young farmers becoming landless throughout the countryside.<sup>151</sup> Although there are no plans for land redistribution, the practical situation is that there is a need for land. The government seemingly understands the limited effectiveness of major redistributions and does not plan further redistribution, but still the majority of farmers (seventy-three percent) feels uncertain about the future or is assured of future redistribution.<sup>152</sup>

Rural Ethiopia needs a more explicit communication strategy on this issue in order to create more security among land owners. The government is not planning further redistribution but every landowner sees that anyone has a right to land, and this seems to imply redistribution.<sup>153</sup> “Well publicised commitment by government authorities not . . . to redistribute land might be as effective in creating confidence and stimulating production.”<sup>154</sup> Nationalization, expropriation, and redistribution are all tools that were used to achieve the economic policy objectives under the Derg. These tools have caused great uncertainty due in part to the policies not reaching the ears of the landowners. The government could benefit from further explanation to the public about the reliance of the economy on these smallholders.<sup>155</sup> Publicizing the continued importance of small holders could be extremely effective in erasing the memory of the previous failed land policies.<sup>156</sup>

Some of the more progressive states have taken an extreme step by banning forced redistribution of rural land. Amhara and Tigray utilized their land proclamations to clarify the land situation in their states by banning large redistribution.<sup>157</sup> Their policy resembles the alternative Constitutional provision. While redistribution is not completely banned, the force of uncertainty has been scaled back by requiring a local procedure to take place before any redistribution

---

151. ADENEW & ABDI, *supra* note 5, at 10.

152. NEGA ET AL., *supra* note 81, at 21.

153. SOLOMON BEKURE ET AL., REMOVING LIMITATIONS OF CURRENT ETHIOPIAN RURAL LAND POLICY AND LAND ADMINISTRATION 8-9 (2006) (Paper presented at the Workshop on the Land Policies & Legal Empowerment of the Poor).

154. INDEPENDENT REVIEW OF LAND ISSUES, VOLUME III, 2006-2007: EASTERN AND SOUTHERN AFRICA, *supra* note 134, at 16.

155. AFRICAN DEVELOPMENT FUND, *supra* note 12, at 35.

156. BEKURE ET AL., *supra* note 153, at 9.

157. *Id.* at 8-9.

can occur.<sup>158</sup> The procedure calls for agreement of the majority of landholders, giving a voice to locals.<sup>159</sup>

Together the information provided to the public about redistribution provides at least certainty that land will be taken through a process. Land should not be completely free from expropriation, as there are reasons for government need of land, but the process to utilize the land of private individuals should be clearly outlined and should provide for citizen participation in the process.

#### 4. *Set Time Period for Use Rights*

The uncertainty of land ownership not only exists in the potential for a government taking but also in the actual property rights that are held by individual landholders. The division of property rights is often referred to as the “bundle of sticks” and in Ethiopia, the 1994 Constitution settled on providing a use right versus complete ownership of land in fee simple absolute.<sup>160</sup> As previously discussed, the government of Ethiopia protects land by maintaining ownership over all land within the country.<sup>161</sup> The government contends that these use rights given to landholders are perpetual, but this is not set out specifically in the Federal Constitution.<sup>162</sup>

The Rural Land Proclamation of 2005 clarified the use interest of rural landholders, but did not spell out all the details. The right is the equivalent of an open-ended usufruct right to use.<sup>163</sup> Policy instruments have been clear about the indefinite nature of the rights but the Constitution remains unclear. Usufruct is the legal right to hold and use property unless the property is damaged. Ethiopia’s property rights are also subject to proof of permanent residence and the ability to farm continuously.<sup>164</sup> The 2005 Proclamation allows an owner of land to utilize the land unless the land is “damaged” or is used improperly.<sup>165</sup> The definitions of damage and improper use of land were left unclear and ultimately left to the states to clear up.<sup>166</sup> Unfortunately, not all states have taken the administrative initiative to clear up these rights and the language leaves the property right uncertain.

---

158. *Id.*

159. *Id.* at 11.

160. *See* ETHIOPIAN CONSTITUTION [Constitution], art. 40 (Ethiopia 1994).

161. *See id.*

162. Abegaz, *supra* note 14, at 328-30.

163. Nega et al., *supra* note 19.

164. *Id.*

165. Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, No. 456, §10(1) (Ethiopia 2005).

166. *See id.* at § 2.

A positive and straightforward option to support the use rights would be to set out a specific time period for their use rights, such as fifty or ninety-nine years, as used in other countries. Tanzania's land policy has provided a stable agricultural growth environment with such a strategy.<sup>167</sup> Renewal of these rights could also take minimal effort, essentially creating a perpetual right. While a matter of semantics, specific long-term use rights could be easily paired with certification and provide improved security with farmers knowing their rights in the land.<sup>168</sup>

### 5. *Private versus State Ownership*

Ethiopia faced a major property based challenge after the fall of the Derg, which was what to do with the land and the vast majority of its residents who survived off the land. Discussions around land generally begin with the primary debate between private versus public ownership of land. The Ethiopian People's Revolutionary Democratic Front ("EPRDF"), a coalition government that took over power after the Derg regime was ousted in 1991, continued the same policy of public ownership of land.<sup>169</sup> However, to many experts, privatization of land provides the best environment to maximize the economic efficiency of the land.<sup>170</sup> Their belief is that the current economic problems have been created through the restrictive land policy.<sup>171</sup> Although opponents of privatization in Ethiopia are many, it seems the current land problems have been furthered through the current land policy. The rest of the economy made progress shifts toward liberalization while the land remained behind under the socialist strictures of the Derg policy. While the opening up of markets was prevalent, the land markets were still impeded. Proponents believe that re-privatization should be a necessary part of a second agrarian reform for Ethiopia in order to take advantage of the economic benefits for the entire country.<sup>172</sup>

Privatization is not just something thought about at the macro level, but is also something that has an affect on individual farmers. According to a survey taken during the 2000-2001 crop season, the vast majority of farmers (eighty-four percent) realize that the land is owned by the government and "[o]bviously this has very important implications to the incentives farmers have to put long term

---

167. Geoffrey E. Roughton, *Comprehensive Land Reform as a Vehicle for Change: An Analysis of the Operation and Implications of the Tanzanian Land Acts of 1999 & 2004*, 45 COLUM. J. TRANSNAT'L L. 551, 561 (2007).

168. Abegaz, *supra* note 14, at 328-30.

169. BEKURE ET AL., *supra* note 153, at 2.

170. Joireman, *supra* note 115, at 4.

171. Nega et al., *supra* note 19.

172. Abegaz, *supra* note 14, at 327.

investment in their current holding.<sup>173</sup> Those advocating private landholdings maintain that this tenure insecurity inhibits a farmer's production and thus affects the entire country's economy. While a difficult reform to proceed with, the ultimate benefits of maximizing the land's profits could far outweigh the risks.<sup>174</sup> A farmer's profession is naturally market-oriented and those advocating privatization argue that farmers wish for legal protection of property.<sup>175</sup>

While many experts side on the cause of privatization, one argument opponents put forward is that Ethiopia ultimately has the right of self-determination.<sup>176</sup> Through the political process, Ethiopia chose its current land system and public ownership made it through the policy debate as the way forward in Ethiopia. Other countries have been successful in maintaining significant controls over land while encouraging economic growth, so although markets would be liberalized, the new government felt it important to ensure land as an important social security asset for rural farmers.<sup>177</sup> The land issue was negotiated early on after the fall of the Derg, and with full agreement of the regions and a two-thirds majority in the federal government "effectively eliminated land policy as a variable instrument that could be used to address the changing circumstances that affect the rural economy."<sup>178</sup>

The reasoning behind the broad support for public ownership of land was relatively simple. It was ultimately the fear of the alternative that drove the decision. The EPRDF government feared that increased land privatization would lead to massive evictions in the countryside and ultimately creating even larger problems for the new government as was seen in Asia and Latin America.<sup>179</sup> However, this comparison is not the same as the poor peasantry would enter the land market having an initial piece of property.<sup>180</sup> Although a paternalistic view, the concern was that peasants did not have the ability to withstand the sweeping reform of privatization. Rural farmers would mortgage land and in hard times be forced to sell their land resulting in a furtherance of landlessness.<sup>181</sup>

A middle ground may also be struck that allows complete ownership, but still provides protection to landowners. However, finding the right tenure policy mix is extremely difficult and can take decades, and sometimes centuries, to develop. The property right system is entrenched within history and politics with

---

173. NEGA ET AL., *supra* note 81, at 21.

174. Abegaz, *supra* note 14, at 326.

175. *Id.* at 324-25.

176. *See generally* Selassie, *supra* note 24.

177. GEBRESELASSIE, *supra* note 16, at 4.

178. Nega et al., *supra* note 19.

179. NEGA ET AL., *supra* note 81, at 12.

180. Abegaz, *supra* note 14, at 325.

181. *Id.* at 315.

the scheme malleable to a multitude of factors.<sup>182</sup> The Ethiopian Constitution is not even twenty years old and the country continues to search for the right policy mix.

## 6. *Alienation*

Alienation, or the ability to transfer land, is one of the major issues in the public versus private ownership debate. Public ownership errs on the side of restricting the ability to transfer land, which was true under the Derg, where land could only be transferred privately through inheritance. In 1975, while the Derg were releasing their land policy, the World Bank released its land policy document that served as its guidance for the next thirty years.<sup>183</sup> The World Bank focused on three essential components of land policy to provide the necessary foundation for economic growth to occur. Ethiopia has clearly accomplished two of the three by relying on owner-operated farming and having a baseline of equitable distribution of assets.<sup>184</sup> The one area that has not resulted is the accomplishment of freely operating land markets to provide land with the most efficient use.<sup>185</sup>

From 1975 to 1991 Ethiopia operated under a restrictive land tenure system which prohibited the renting of land and other transactions were scaled back.<sup>186</sup> The specific language stated that “[n]o person may by sale, exchange, succession, mortgage, antichresis, lease or otherwise transfer his holding to another . . .”<sup>187</sup> The only exception provided for landowners was the possibility of inheritance.<sup>188</sup> These twenty years resulted in a restrictive environment that did not allow the flexibility for the best use of property.

The 1994 Constitution has not opened up the land to full alienation, but on top of inheritance, the new government allows for the rental of property.<sup>189</sup> The land policy was created in the 1994 Constitution but it is the following Rural Land Proclamations which clarify the entire policy.<sup>190</sup> The 1997 Proclamation gave the two types of alienation available, but does not allow for land to be sold,

---

182. KANJI, *supra* note 128, at 3-4.

183. Klaus Deininger & Hans Binswanger, *The Evolution of the World's Land Policy: Principles, Economics, Experience and Future Challenges* 14 THE WORLD BANK RES. OBSERVER 246, 247 (1999).

184. *See id.*

185. *See id.*

186. KANJI ET AL., *supra* note 15, at 7-8.

187. Public Ownership of Rural Lands Proclamation, No. 31 ch. 2, § 5 (Ethiopia 1975).

188. *Id.*

189. ETHIOPIAN CONSTITUTION [Constitution], art. 40 (Ethiopia 1994).

190. *Id.*

exchanged, or used as collateral.<sup>191</sup> A modest strengthening of rights was given under the 2005 act with inter-generational tenure transfer as well as the right to exchange.<sup>192</sup> Both land proclamations represent clarity and a lessening of controls over land, but land markets remain thin.<sup>193</sup>

Although rental is officially allowed, the ability to do this is severely curtailed through permanent residency requirements and other restrictions.<sup>194</sup> Many critics have argued that these restrictions need to be lifted to allow the best use of the property. The 2005 Proclamation is a hopeful document because some restrictions were lifted and the process has slowly given the rights. The slow process is important because the complete privatization of rights could result in the problems the government wants to avoid with private land ownership.

However, the restrictions on transfer vary little from the Derg area and the leasing requirement of continued residence on the land does not allow for the best uses for the land.<sup>195</sup> The problems of fragmentation and declining farm size are a result of this restrictive land policy.<sup>196</sup> In most Ethiopia states, landholders must lease only part of their land but have to keep enough to subsist.<sup>197</sup> Oromia, for example, only allows farmers to rent up to fifty percent of the holding.<sup>198</sup> It seems more efficient to allow someone the ability to work somewhere else and garner the rewards of rent on their land, but the land policy does not allow this. Even if the rental of 100% of a landholding were available, there is the further restriction that, after a two year absence, the landholder loses his or her property right.<sup>199</sup> The ADLI has addressed this argument for increased alienation by calling for farmers to unify and negotiate a land lease deal together, thus using the land most efficiently.<sup>200</sup> This negotiation process is new to Ethiopia and little evidence is available that these markets exist.<sup>201</sup> Ultimately the restrictions limit the "efficient reallocation of land resources from those who want to earn their

---

191. Federal Rural Land Administration Proclamation, No. 89 (Ethiopia 1997).

192. Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, No. 456, §8 (Ethiopia 2005).

193. *See id.*; Federal Rural Land Administration Proclamation, No. 89 (Ethiopia 1997).

194. INDEPENDENT REVIEW OF LAND ISSUES, VOLUME III, 2006-2007: EASTERN AND SOUTHERN AFRICA, *supra* note 134, at 12-13.

195. Nega et al., *supra* note 19.

196. Abegaz, *supra* note 14, at 322.

197. BEKURE ET AL., *supra* note 153, at 2.

198. ADENEW & ABDI, *supra* note 5, at 6.

199. *Id.*

200. Ethiopia Embassy, *Ethiopia's Sustainable Development and Poverty Reduction Programme*, <http://www.ethioembassy.org.uk/Facts%20About%20Ethiopia/Ethiopia%27%20Sustainable%20Development%20and%20Poverty%20Reduction%20Strategy.htm>.

201. *See* Omiti et al., *supra* note 44, at 594.



livelihood from off-farm employment opportunities and still retain their land resources as a safety net . . .”<sup>202</sup>

One the largest criticisms of the restrictive alienation is the inability to use the land as collateral.<sup>203</sup> The ability to mortgage the property allows access to credit.<sup>204</sup> The ADLI calls for a transition away from traditional methods and improvements to the land but these improvements take capital. Rural farmers tend to have no other assets besides the land and it is unlikely that rural landholders have access to capital outside of mortgaging their property interest. The government argues that traditional lenders would not want these loans, but there are other legal protections that could be afforded to protect against foreclosure; including a right to cure default or right of redemption.<sup>205</sup> Unless the government intends to pay for all improvements on the land, the ability to use the land as collateral is probably the only avenue for access to capital. The concerns of the government for massive land takeovers by creditors are valid, but with the right protections this risk can be minimized.

### 7. *Decentralization of Administration*

Ethiopia’s decentralization strategy has provided some encouraging results that have garnered world-wide notoriety, but still contain significant challenges in supplying the proper support for economic growth. As discussed throughout, Ethiopia’s federal government chose to control the definition of property ownership and use through federal policy, but the administration of land is to be done through the state governments.<sup>206</sup> This policy is similar to the Derg policy, which made the property definitions, but operated land administration instead through the local peasant associations.<sup>207</sup> Small legislative decisions are done by the states, but generally their role is limited to being agents over the federal land policy.

The initial classification by the 1994 Constitution left all land administration up to the state governments. This was an extremely broad grant of power whereby they were “entrusted with powers . . . for planning, implementing, regulating and monitoring the sustainable utilization of land, water, forest and wildlife resources based on overall federal policies and laws.”<sup>208</sup> The 1997 Rural Land Proclamation referenced the constitutional grant of power and called for

202. BEKURE ET AL., *supra* note 153, at 11.

203. ABDELLA, *supra* note 8, at 19.

204. KANJI, *supra* note 128, at 3-4.

205. BEKURE ET AL., *supra* note 153, at 10.

206. ETHIOPIAN CONSTITUTION [Constitution], art 52, § 2(d) (Ethiopia 1994).

207. Public Ownership of Rural Lands Proclamation, No. 31, ch. 3 (Ethiopia 1975).

208. UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 74, at 10.

each state to provide a regional rural land proclamation that adhered to federal land ownership policies, but set out the regions' administrative strategy.<sup>209</sup>

Granting broad powers to states was not without its criticisms. First, the lack of capacity at the local level would inhibit the ability of administration. State and local authorities did not have the ability to properly handle their given responsibilities.<sup>210</sup> These responsibilities would fall on ad hoc committees working on a voluntary basis, and the work would not be completed.<sup>211</sup> Additionally, the current land policy can easily be seen as an unfunded mandate by the federal government. Local officials do not get to create the laws they have to administer, which can have great costs associated to their administration. States have not even been given the local ability to tax in order to fund this scheme.

Either individually or collectively these criticisms have caused inaction by the states creating regional land administration strategies. By 2005, only four of the nine states had created a local land proclamation.<sup>212</sup> The inability to take over control of land administration caused the federal government to retract some of this broad grant of power with the Federal Rural Land Administration and Land Use Proclamation of 2005. The 2005 Act reaches into the broad grant of power and establishes land use and environmental protections.<sup>213</sup> This mixing of environmental concerns and administration has been criticized partially because of the taking away of power.<sup>214</sup> If the lack of capacity and initial inaction will not allow for all states to administer the land policy, then the laws need to reflect the new legal structure being executed by the government.

Generally, the decentralization of the land administration has been viewed favorably. The structure created has been clearly delineated all the way down to the local level.<sup>215</sup> Unlike other areas that have remained unclear, the decentralization scheme has provided actual local power in an area of the government that affects local people the most. The federal scheme empowered states to administer this valuable resource locally and for those states, such as Tigray, which took the lead in creating a local land policy they were able to establish

---

209. Federal Rural Land Administration Proclamation, No. 89 (Ethiopia 1997).

210. UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 74, at 10.

211. INDEPENDENT REVIEW OF LAND ISSUES, VOLUME III, 2006-2007: EASTERN AND SOUTHERN AFRICA, *supra* note 134, at 16.

212. RITU VERMA, "WITHOUT LAND YOU ARE NOBODY:" CRITICAL DIMENSIONS OF WOMEN'S ACCESS TO LAND AND RELATIONS IN TENURE IN EAST AFRICA 12 (2007)(IDRC scoping study for East Africa on Women's Access and Rights to Land & Gender Relations in Tenure).

213. *See* Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, No. 456, §§ 5, 10, 13 (Ethiopia 2005).

214. ADENEW & ABDI, *supra* note 5, at 7.

215. UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 74, at 9-11.

further areas of control.<sup>216</sup> Tigray implemented most of the administration at the tabia level of governance, which is at the closest level to the people.<sup>217</sup> For a policy that was derided for lack of capacity, Tigray has shown that even the lowest level of government can run this important asset.

Tigray's National Regional State's Rural Land Usage Proclamation in 1997 was the first state proclamation to grasp the power which had been granted. The document provided that the federal government had not acted in all areas to restrict all action from the state.<sup>218</sup> Tigray exceeded critics' expectations by setting different leasehold years for technology based farming versus traditional farming, thus incentivizing the very methods the government was trying to promote.<sup>219</sup> Other areas, such as the limits to inheritance, have been set by the local land proclamations and provide encouraging results for the entire land policy scheme in Ethiopia.

Three other states followed Tigray by creating local land proclamations: Amhara in 2000,<sup>220</sup> Oromia in 2002,<sup>221</sup> and the SNNPR in 2003.<sup>222</sup> Like Tigray, these states tried to capture some of the broad grant of power that had been given to the states. As mentioned above, these four states took action, but the inaction of the other regions caused the government to take power back through the 2005 Land Proclamation.<sup>223</sup>

The most promising development from delegation of administrative power to the states has been the certification processes that have developed. This systematic registration and property right certification has taken place in all of the states that had adopted local land proclamations.<sup>224</sup> The process has been applauded by the international community by suggesting that this certification process has increased the probability of new investment for rural farmers.<sup>225</sup> Ti-

---

216. LORENZO COTULA ET AL., *LAND TENURE AND ADMINISTRATION IN AFRICA: LESSONS OF EXPERIENCE AND EMERGING ISSUES* 12 (International Institute for Environment and Development, 2005).

217. MITIKU HAILE, ET AL., *RESEARCH REPORT 2 LAND REGISTRATION IN TIGRAY, NORTHERN ETHIOPIA* 8 (International Institute for Environment and Development, 2005).

218. *See* Tigray National Regional State's Rural Land Usage Proclamation, No. 23, art. 7 (Ethiopia 1997).

219. *Id.*

220. Amhara Land Policy Proclamation, No. 46 (Ethiopia 2000).

221. Oromia Rural Land Use and Administration Proclamation, No. 56 (Ethiopia 2002) (as amended in No. 73, 2003).

222. SNNPR Rural Land Administration and Utilization, No. 53 (Ethiopia 2003) (as amended in No. 6, 2004).

223. *See* Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation, No. 456 (Ethiopia 2005).

224. KANJI, *supra* note 128, at 3-4.

225. *See generally* DEININGER ET AL., *supra* note 144.

gray's purpose for this procedure was to specifically provide the tenure security, support land markets and limit land disputes.<sup>226</sup> Ultimately, the states are attempting to get a certificate into a land owner's hands so that they understand their property interest in that piece of land.

The Ethiopian certification has proven that this process can be "simple, inexpensive, and locally controlled."<sup>227</sup> The process in each state has used familiar and traditional methods to administer the method with a preference for low cost, low technology and local language.<sup>228</sup> However, none of the regions are preparing a cadastral map; the focus is on tenure security for the individuals, rather than an interest in knowledge for the government.<sup>229</sup> The process varies between the states where some register the household while others jointly register husbands and wives. Combined, these four states have produced encouraging results that will be replicated throughout the continent.

Local certification has shown room for improvement as well. Much of the research generated regarding the process has focused on only two of the states: Amhara and Tigray. The other two states' certification processes are relatively new and need to be further researched. Also, it has been shown that the registration process has generated conflict at the local level.<sup>230</sup> Through public ownership, Ethiopia has attempted to protect rural landholders against what has occurred in this certification process, such as land concentration, land sales and other disputes.<sup>231</sup> Dispute resolution is a key procedure that needs further development.<sup>232</sup> Finally, the relatively new systems need to be monitored to ensure that updating and awareness of the benefits to certification are continued.<sup>233</sup> Without continued supervision by the states the positive effects of certification can be lost.

Ultimately the decentralization and certification aspects of the Ethiopian land systems are extremely positive. This progressive system should be further evaluated and utilized in other settings. The process that has taken place should be monitored to determine how these procedures can be implemented in the rest of the country. The four leading states are currently incubators to decide what is needed for further land development at the local level.

- 
226. HAILE ET AL., *supra* note 217, at 8.  
227. *Id.* at 3.  
228. KANJI, *supra* note 128, at 3-4.  
229. DEININGER ET AL., *supra* note 144, at 1.  
230. ADENEW & ABDI, *supra* note 5, at 3.  
231. *Id.* at 3-4.  
232. KANJI ET AL., *supra* note 15, at 22.  
233. DEININGER ET AL., *supra* note 144, at 6.

### 8. *Positives from Current Land Tenure System*

The above options could provide improved security for the rural land-holders, but on top of the positive decentralization strategy there has been some real success shown in the land tenure system created and implemented by the government. It is important to note that out of the land policy making process, some real positives have been displayed in the progression of laws not only for Ethiopia, but for the entire continent. Through the Constitution and all the policy documents since 1991, Ethiopia has attempted to refine the broad definition of land being owned by the country of Ethiopia and provide the property framework for economic growth to occur.

First, Ethiopia has been noted as providing for improved position of women related to land rights.<sup>234</sup> Although not necessarily adhered to in practice, even as far back as 1975, the Derg Land Proclamation called for no differentiation of the sexes.<sup>235</sup> The law allowed land ownership for any person with the ability to cultivate the land.<sup>236</sup> Ethiopia has continually made extremely progressive reforms in regards to women. Both the 1994 Constitution and the 1997 Federal Rural Land Administration Proclamation called for gender equality.<sup>237</sup> This recognition of women's rights to ownership has been further recognized at the state level. For example, the Tigray Land Usage Proclamation in 1997 ensured that all provisions were applicable to both genders, allowing ownership of use rights for all.<sup>238</sup>

Second, after many years of radical and forceful redistribution of land, Ethiopia has suspended the policy of land redistribution.<sup>239</sup> "Land to the Tiller" attempted to improve access to land and thereby improve rural livelihoods.<sup>240</sup> The Derg's focus on equal land area per household and improved agricultural performance was not achieved.<sup>241</sup> Instead, the fear of the taking of land resulted in little land investment and thus stagnant agricultural performance.<sup>242</sup> The resulting suspension of redistribution is a positive reform to provide increased te-

---

234. *Id.*

235. Public Ownership of Rural Lands Proclamation, No. 31 §4(1) (Ethiopia 1975).

236. *Id.* at § 4(2).

237. ETHIOPIAN CONSTITUTION [Constitution], art. 7 (Ethiopia 1994); Federal Rural Land Administration Proclamation, No. 89 §6(1) (Ethiopia 1997).

238. Tigray National Regional State's Rural Land Usage Proclamation, No. 23, art. 3 (Ethiopia 1997).

239. Abegaz, *supra* note 14, at 321.

240. ADENEW & ABDI, *supra* note 5, at 3-8.

241. Omiti et al., *supra* note 44, at 594.

242. Abegaz, *supra* note 14, at 321.

nure security for landholders and should continue to be supported to get rid of the bad memories.

Finally, Ethiopia is made up of a multitude of ethnicities in a large geographic area. Ethnic tensions can destroy countries if the political dynamic is not considered. Previous Ethiopian governments had shown insensitivity to these nationalities.<sup>243</sup> The coalition government addressed this issue by specifically basing the new Constitution on a system of ethnic-based federalism.<sup>244</sup> Ethiopia's history of civil unrest led some experts to criticize such a division based upon ethnicities, but thus far the split been a positive step.<sup>245</sup> This system lessens land grabbing by more powerful ethnic groups as regions are given partial autonomy.

## V. CONCLUSION

The growth of a developing economy is a challenging process. There are certainly positive aspects to the new Constitution and land system, but challenges to the entire system remain. Ethiopia's recent growth has shown a reliance on an existing and strong agricultural sector can be a catalyst for economic growth. However, an agriculturally-driven system ultimately rests on the land where the products are grown. The land system needs further clarification and refinement to unlock the full agricultural potential of farmers by maximizing land use and gaining the production results desired by Ethiopian government.

---

243. Selassie, *supra* note 24, at 126.

244. *Id.* at 125.

245. Wigger, *supra* note 38, at 399.