

LAND LAW

Course Manager –Yibelyal meswaet

-LL.B, Haromaya University, Ethiopia

- LL.B Universty of Gonder

- Lecturer at Wollo Universty, School of Law)

SUMMARIZED CONTENTS

- Concept of property
- Tenure History
- Rural Land Holding
- Lease Hold
- Expropriation

MATERIALS NEEDED

- *Land Law and Policy in Ethiopia Since 1991: Continuities and Changes.* (MURADU ed.)
- Civil Code
- Lease Proclamation Proc. 272/2002, 721/2011
- Rural Land Use and Administration proclamation No. 456/2005
- Regional Rural Land Administration and use Proclamations
- Expropriation proc. 455/2005
- Compensation Reg. 135/2007
- Others (proc. 31/1975, 47/1975...)

UNDERSTANDING PROPERTY

- What is property?
- Different people conceive property in different ways.
- Lay persons (non lawyers) understand it as a “thing” such as car, land, or money.
- Lawyers, however, understand it as an interest in the thing.
- It is not the house that matters, rather the legally recognized interest or right to own, possess, use, lease, sale etc of the thing.



- **property law** is about the legally recognized relationships we have with each other in respect of things.
- Property rights are relations not between owner and a thing, but between owner and other individuals in reference to the thing.
- It is not, as many believe, a relationship between people and things.
- Eg. it governs the relationship between a lessee and a lessor; not between the land/house and the owner.

- Property in its noun form refers to the thing, object of property law. The thing (object) may be corporeal (tangible) or incorporeal (intangible).
- Incorporeal properties are associated with intellectual properties, such as copyrights.
- Property may also be divided as movable and immovable.
- According to art. 1130 of the Ethiopian civil code, **land and building are deemed immovable**



PROPERTY AS BUNDLE OF RIGHTS

- Modern property lawyers understand property as a bundle of rights like a bundle of sticks
- All the sticks may be held by one person or different people
- Sticks out of the bundle can be acquired in different ways and held for different periods
- The ownership of the land is not itself as one of the sticks; it must be considered as a vessel or container for the sticks for the bundle.



- The owners of the container (land) has the right to give out different sticks to different people.
- See art. 1204 of the civil code **“Ownership is the widest right that may be had on a corporeal thing.”**

RIGHTS IN OWNERSHIP OF LAND ACCORDING TO HONOR'E,

IN A MATURE LEGAL SYSTEM AN OWNER WOULD TYPICALLY HAVE THE FOLLOWING RIGHTS

- Possession (physical control)
- Use and enjoyment
- Right to manage the thing (manage the use of)
- The right to the income (fruit of a tree, offspring of an animal, rent of land, profit from investment on land)
- The right of transmissibility of the above rights (this is right to transfer rights not the land itself)

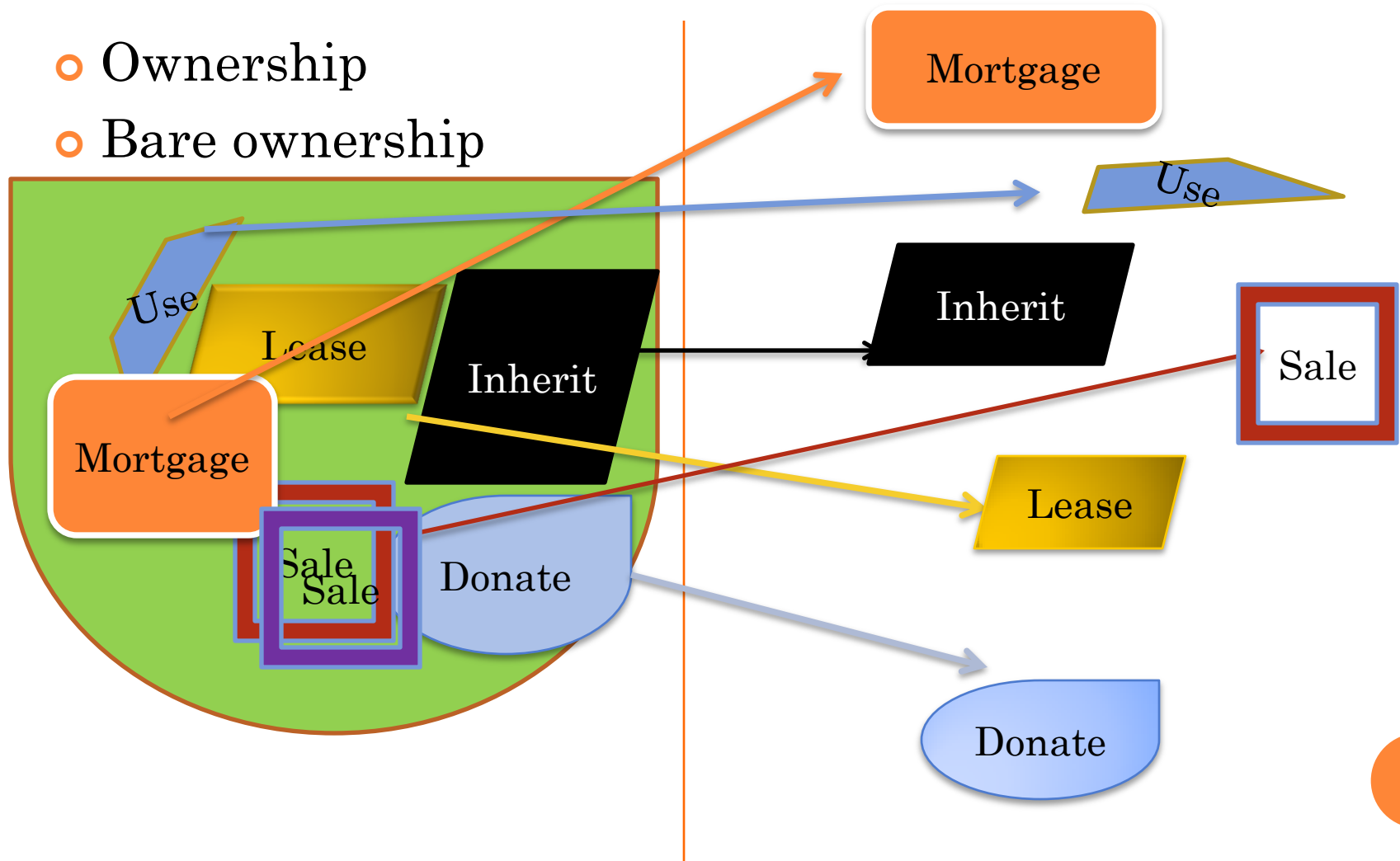


CONT'D

- The right to transfer the land itself (inherit, sale)
- The right to do away (destroy a house): but it is limited for public safety and health reasons
- The right to exclude others (ownership is a right claimed against the world, no one is allowed to interfere in one's ownership right)

OWNERSHIP AS COMPLETE BUNDLE

- Ownership
- Bare ownership



CONTINUED...

- The complete bundle of rights includes the following:
 - the right to sale an interest
 - the right to lease an interest
 - the right to mortgage an interest
 - the right to give away an interest
 - the right to do none of the above things

REAL PROPERTY, REAL ESTATE, IMMOVABLE

- Property law, in systems derived from English common law, is divided into personal and real property.
- Real property concerns itself with rights relating to land.
- In the **Civil law** system, there is a division between movable and immovable property.
- Movable property roughly corresponds to personal property, while immovable property corresponds to real estate or real property, and the associated rights and obligations thereon.

- Hence, the difference in terminology has no basic difference in the types of property.
- What terminology do we use in Ethiopia?
what do you understand by land? Read art.
1126 cum. 1130

TYPES OF LAND OWNERSHIP

- There are four types of property regimes found around the world:
 - **Private ownership**
 - **Communal ownership**
 - **State ownership**
 - **Open access**
- You must note that there is no complete consensus on what constitutes to each system(what property belongs to which regime)
- Eg. While in some countries forest and lakes belong to the state, in others they may be held privately or communally

OPEN ACCESS (OWNERLESS PROPERTY)

- There are some things in respect of which no one has property rights.
- Each of us has a privilege to use such things , and the rest of the world has no right to limit us.
- To put it in terms of exclusion, *none of us has the right to exclude each other from such things, nor do we have the right not to be excluded from use.*

- Every person has a free access to use or exploit such things.
- The assumption is that either they are not highly valued , or abundant and inexhaustible (air and sunlight).
- More eg. Walking paths, parks, radio/TV waves.
- Is it possible for ETV to force us to subscribe? Or should it limit its services by putting codes etc?

- *Hunter v. Canary Wharf* [1997] AC 655, is a case in which the House of Lords decided that terrestrial television signals come within this category.
- It was held that, although everyone has a privilege to receive them, no one has a right to do so. Consequently, residents in the Isle of Dogs were held not to be entitled to complain when Canary Wharf Ltd built Canary Wharf Tower which, because of its size and construction, interfered with their television reception by preventing television signals reaching buildings which fell within its 'electromagnetic shadow'

COMMUNAL PROPERTY

- The defining characteristic of communal property is that every member of the community has the right not to be excluded from the resource.
- In a more closed community, access is allowed only to members (eg. Grazing pasture in a village)
- An individual who is a member of the community therefore has *not only a privilege* to use the thing, but also a *right* not to be excluded from it.
- The difference between open access and communal property is that in the first case a person **may not claim a use as a matter of right**, while he may do in the second case.

- Communal ownership of land refers to such property of land commonly owned by a community of a certain village or locality.
- Grazing land, fishery, forest, irrigation system.
- **Proc. 456/2005** defines communal land as ...
“rural land which is given by the government to local residents for common grazing, forestry and other social services.” Art. 2 (12)

STATE PROPERTY

- A property completely owned by the state and when the state is able to use by itself or allocate its use to others.
- Although it is individuals who may use the property, the state has the ultimate power of management.
- Land neither owned by private individuals nor by the community.
- In most countries, mountains, public highways, public halls, parks, trans-boundary rivers and forest lands, lakes, etc are owned and administered by the state.
- Article 2(13), of Proc. 456/2005 considers *“forestlands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands,”* as state holding lands.

PRIVATE OWNERSHIP

- Ownership right vested in the individual person
- Provides rights of use, exchange, abuse, and exclude others from using it. (use, rent/lease, mortgage, inherit, donate, sale, exchange)
- Widest right 1204(1) of Civil code
- Many countries recognize it, and others prohibited it (like former USSR).
- In Ethiopia, land belongs to the state and the Ethiopian people. No private ownership of land. Read Art. 40(3) of FDRE constitution.
- As a segment of private ownership, joint ownership (such as condominium) and common ownership within a family can also be categorized here.

INFORMAL LAND HOLDING

- This refers to land holding system in which people settle on state or private land illegally.
- It may also refer to construction of houses without permit or against the permitted plan.
- The type of construction are shanty houses and poorly serviced.
- About 80% of land in Addis Ababa is held informally. (UN HABITAT).

- The government is planning to regularize those houses constructed illegally before 2005.
- 30% of houses (about 9000) in Bahir Dar are categorized as informal (PRIME Cons.)
- Consider it as one issue for your thesis .
- See an article by Daniel W/gebriel (Informal Settlement in Bahir Dar City) at http://www.fig.net/pub/fig2011/papers/ts06d/ts06d_ambaye_5096.pdf

IMPORTANCE

- Property is about access and control of material resource.
- Property is considered as one of the essential element in human life throughout history.
- In ancient Greek a person who loses his land loses his citizenship.
- The Romans considered property as something sacred and absolute.

- Protection of private property was of utmost importance to the people of England who penned the Magna Carta in 1215.
- National Assembly of French Revolution
*“the end in view of every political association is the preservation of the natural and inviolable rights of man. These rights are life, liberty, **property**, security and resistance to opposition”.*

LOCKE

- John Locke in his Second Treatise of Civil Government declares the existence of private property before the creation of states and puts it as one inviolable right like life & liberty. (Life, liberty, and property)



- The Founding Fathers of the United States who drafted the Declaration of Independence and the Constitution also gave emphasis to property.
- “Property must be secured, or liberty cannot exist” *John Adams proclaimed in 1790,*
- “One great object of Government is personal protection and the security of Property.” *Alexander Hamilton*



- Scores of constitutions around the world include it as one fundamental right.
- Art. 40 of the FDRE constitution as well guarantees the right to private property.

THEORIES OF PROPERTY

OCCUPATION THEORY

- Natural law theory followers argue that there are some higher principles that existed independent of human reasoning. They are immutable and universal in nature, they are not made but discoverable.
- Hugo Grotius:
- God gave to mankind in general dominion over all creatures of the earth to private ownership. He deduces this from history, writings of poets and philosophers and the Bible.
- In the primitive state of innocence man exercised a general right to seize for his own use or consumption whatever needed, and it became unjust to deprive anyone of what he had once captured. Eg Cicero's theater seat

THEORIES OF PROPERTY

ECONOMIC THEORY OF PROPERTY

- One justification for the genesis or creation of property rights is an **economic** justification.
- Assume in the beginning (non propertied society) the resource was used by all. What will happen?
- Assume resource is always scarce, demand exceeds supply.
- Four consequences shall follow:
 - **People will compete for control and conflict will ensue**
 - **Some resources will be over exploited and exhausted (fish, pasture).**
 - **Premature exploitation of resources before their full potential eg. Timber**
 - **Resources which could be more valuable by applying more investment and skill will be under exploited**
- Economists regard the institution of property as a means of solving these problems caused by scarcity of resources.

- Most of the above problems are solved by privatizing land.
- Consider **Hardin's** "The Tragedy of Commons."
- His basic thesis is that resources that he refers to as 'commons' will inevitably become exhausted once scarce, and that the only way of averting this 'tragedy' is by making the resource the subject of private ownership or state ownership.
- He gives two examples, a pasture and pollution:

- In a pasture open to all, He argues that each herdsman pasturing animals on the field has an incentive to increase the number of animals he puts on the pasture, because he will obtain 100 per cent of the benefit of each additional animal but will bear only a fraction of the cost of the negative effects of doing so.
- Since this is true for all herdsmen, he argues, the pasture will inevitably be overgrazed and then exhausted.
- His second example is pollution, and as he points out the problem is essentially the same as the pasture problem, even though in the case of pollution the problem is putting something (the pollutant) into the commons (i.e. the atmosphere, or a water supply) rather than taking something out.

- The solution for Hardin is privatization.
- But the problem is why only privatizing?
Other forms of property systems, eg.
Communal or state property may also avert
the problem.
- Elinor Ostrom , a Nobel winner economist
proposes the way to govern commons.

ECONOMIC THEORY

HAROLD DEMSETZ

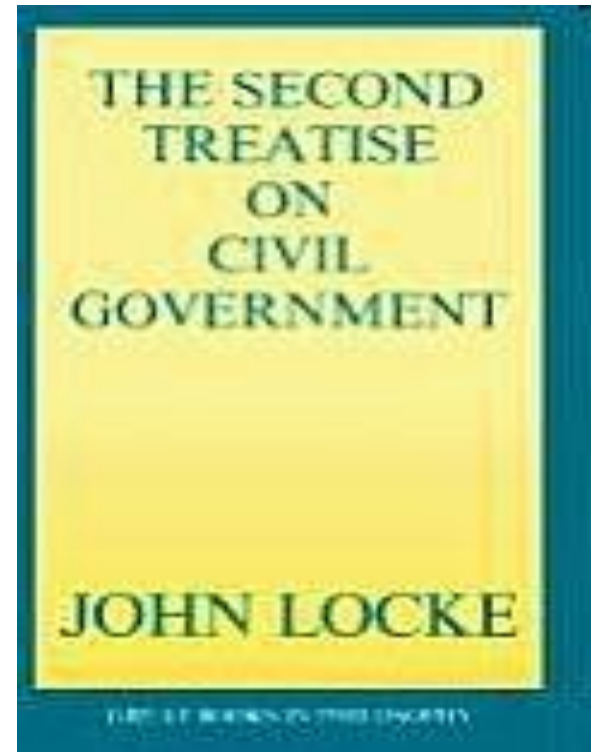
ARISTOTLE SAID “INDIVIDUALS ARE LIKELY TO CARE MORE FOR WHAT IS THEIR OWN.”

- According to Harold Demsetz, the primary function of property rights is that of guiding incentives to achieve a greater internalization of externalities. (**If benefit exceeds cost of doing**)
- Demsetz argues that, if land and resources are communally owned, i.e. each member having the unlimited right to appropriate for himself, then resources will be depleted too quickly.
- Private ownership of land can prevent too quick depletion according to Demsetz's argument:
- He argues that private ownership of land and resources facilitates a more rational use of land and resources, specifically by preventing a too rapid depletion, and that private ownership reduces the costs of internalizing externalities.

LABOUR THEORY

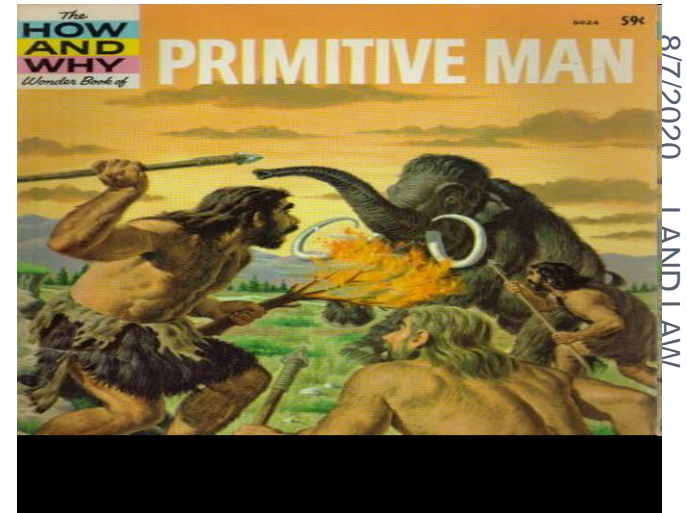
- A favorite of the Americans, advocated by John Locke.
- Locke argued that an original owner is one who mixes his/her labor with a thing and by commingling that labor with the thing, establishes ownership of it.
- God gave the earth and the beasts and fruits thereon to the common use of all man kind.
- But as no one enjoys either the soil or that which it produces unless he be owner, individuals must be allowed the use, to the exclusion of all others.

- How?
- Everyone has an exclusive right over his own person. The labour of his body and the work of his hands therefore are likewise his property.



LABOUR...

- If one mixes his labor to the common property, private property can be created.
- Hence, if one gathers fruits from a tree, kills a deer in the jungle, or catches a fish from the river
- If one digs and treats the ground and fences and grows things, the ground becomes his.
- Labour creates value



DILEMMAS

- Locke's critics say if we follow his argument then subsequent laborers are disadvantaged since they are paid in wages for their work on the land.
- It seems that the material produced far exceeds the remuneration of such labour.
- This line of thinking makes Marx to make the laborers finally the owners of the means of production (land).
- If labour were the only legitimate source of property, it would follow that a society, in which so many labourers live in poverty and so many idlers in opulence, is contrary to all right and a violation of the true foundation of property.
- It is against institutional arrangements of modern world.

- It is difficult to assert the existence of ownership in labour without defining it first.
- Its scope is undefined. Robert Nozick, once said if I pour a can of potato in to a sea, does it mean I own the sea?

SOCIAL CONTRACT

- This theory says property right is the result of social consent (agreement)
- Through social contract individuals pass over their absolute right to the state.
- The right of property, and, generally speaking, every right must spring from public authority.
Bossuet
- As men have renounced their natural independence to live under political laws, they have also renounced the natural community of goods to live under civil laws. .*' Montesquieu*
- Property is founded in the physical power manifested in seizing the object of property /occupation/. In order, however, to convert the fact of physical power into a right, the sanction of the state is necessary. *Pufendorf*

SOCIAL CONTRACT...

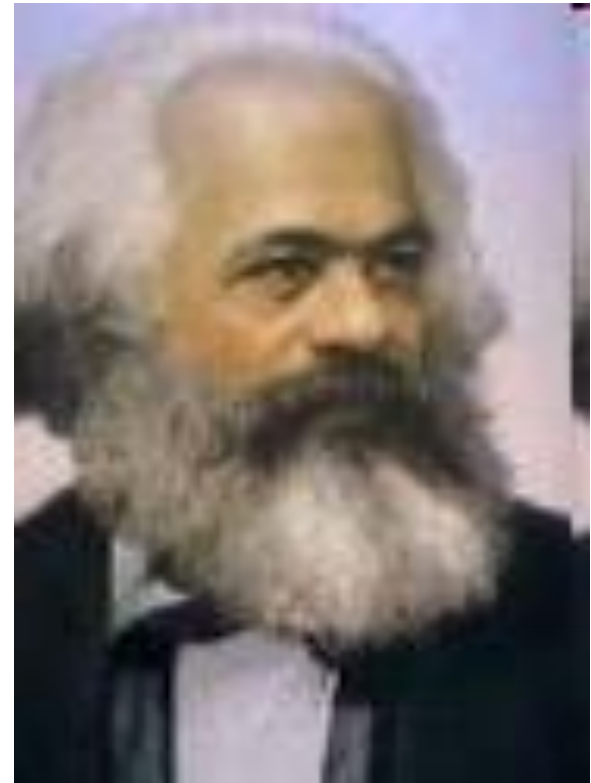
- Bentham says 'Property and Law are born together, and die together. Before laws were made there was no property; take away the laws, and property ceases'.
- The state determines and defines the scope of ownership and it also provides protection.

UTILITARIANISM

- Under the traditional utilitarian theory, property exists to maximize the overall happiness or “utility” of all citizens.
- Accordingly, property rights existed because they provide greater happiness to the majority of the society.
- This is the dominant theory underlying American property law, but still suffers a lot of criticism.
- A utilitarian is concerned about maximizing happiness to the general public: cares little about the distribution of wealth.
- Utilitarianism doesn't care about the sufferings of the minority and thereby leaves out justice and equity in property distribution.

ANTI PRIVATE PROPERTY THEORIES

- Marx took this theory to its final conclusion.
- Marx is not the only one to have warned of problems in private property rights
- Henry Gorge, Plato, Pierre-Joseph Proudhon, Jean Jacques Rousseau, and many early Christian philosophers also cautioned of private property system.



- **Proudhon** has claimed that private property is tantamount to theft, because the acquisition of property in modern capitalist societies increasingly confers power and authority.
- Private property, it has been argued, inevitably creates a growing inequality of wealth which is morally unjustifiable and leads to social instability.
- Private property, it also has been urged, undermines good moral character.
- Recent scholars have argued that what some see as the advantages of private property can be disadvantages to others.

- Marx and Engels denounced private property of the capitalism as it destroys social equality.
- Their manifesto declares “the theory of the communist may be summed up in a single sentence: **abolition of private property.**”
- *“From each according to his ability, to each according to his need.”*

- Aristotle in ancient days showed the failure of such theory. *“Those who do more and get less recompenses will be bound raise complaints against those who get a large recompenses and do little work.”*
- Lack of great efficiency, motivation and corruption were the characteristics of the communist world that denies Private ownership.

THE ARC FOE OF MARX

- **PROPERTY RIGHTS:** The right to life is the source of all rights—and the right to property is their only implementation. Without property rights, no other rights are possible. Since man has to sustain his life by his own effort, the man who has no right to the product of his effort has no means to sustain his life. The man who produces while others dispose of his product is a slave.

Ayn Rand, *The Virtue of Selfishness*

THE SCOPE OF THE OBJECT OF RIGHT TO LAND

- *Cujus est solum, ejus est usque ad coelum*
- *He who is proprietor of land is proprietor also of every thing on it.*
- *All buildings, all natural fruits, and everything above as well as below the surface, belong to the owner of the land.*
- This Latin maxim was also reaffirmed by the English judge Lord Coke when he said *cujus est solum ejus est usque ad coelum ad inferno*, the owner of the surface of the real estate has property rights in the air above the surface and in soil below.

- *Land...includes not only the ground, or soil, but everything that is attached to the earth (trees and herbage, or houses and other buildings.) It includes not only the surface of the earth but every thing under it and over it.*
- *Thus in legal theory, the surface of the earth is just a part of an inverted pyramid having its tip, at the center of the earth, extending outward through the surface at the boundary lines of the tract, and continuing on upward to the heavens.*

IN ETHIOPIA

- In Ethiopia, the extent of ownership of land is regulated by the civil code.
- Read articles 1207-1211

THE ROLE OF LAND FOR SUSTAINABLE DEVELOPMENT

- There are many interpretations of sustainable development, many of which focus almost exclusively on an environmental context.
- Experience shows that sustainable development requires an integrated approach.
- Such an integrated approach to sustainability assumes a string of linked requirements for effective implementation.



CONT'D

- The Concept of Sustainable development can be explained best in this single statement:

“A development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”



SUSTAINABILITY

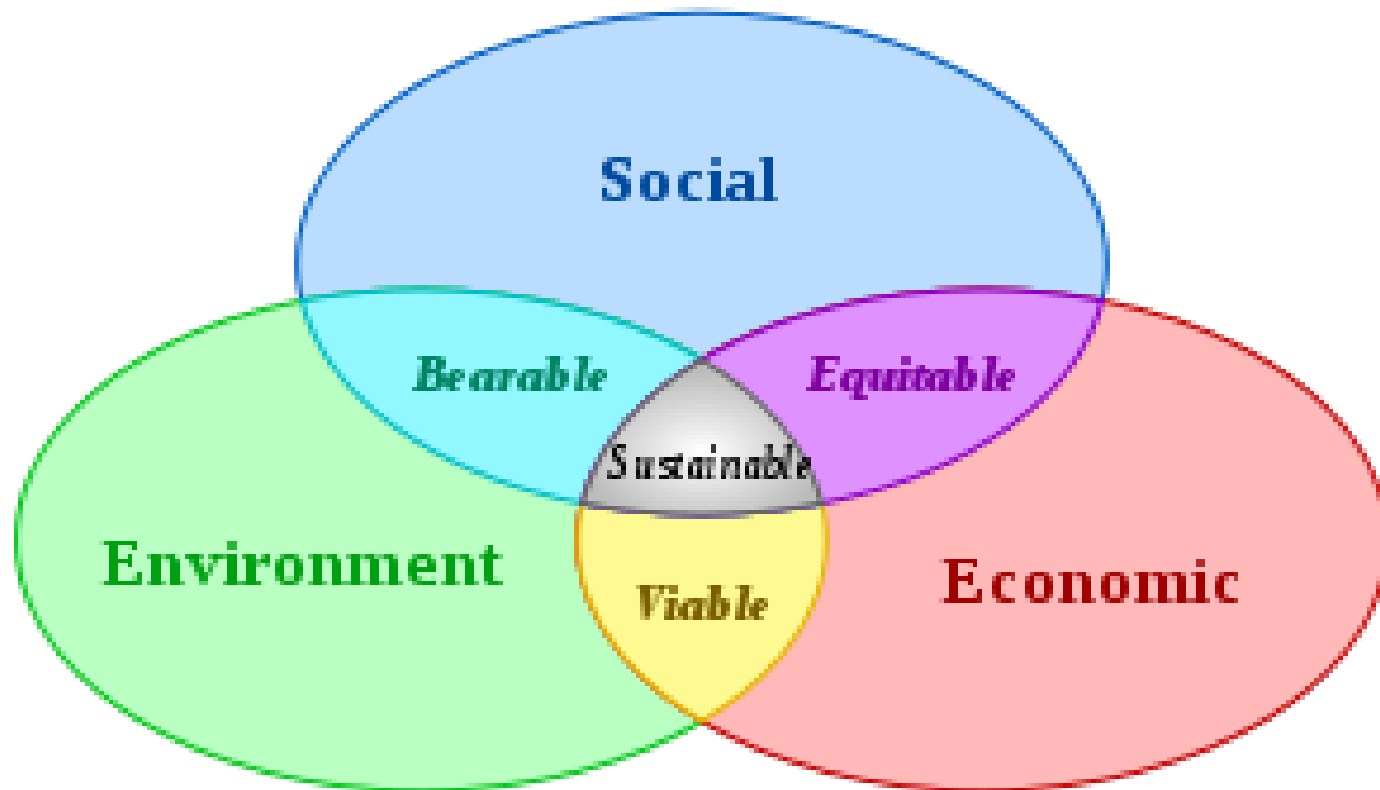


PILLARS OF SUSTAINABLE DEVELOPMENT

- The United Nations 2005 World Summit Outcome Document refers to the "interdependent and mutually reinforcing pillars" of sustainable development as:
 - **Economic development,**
 - **Social development, and**
 - **Environmental protection**
 - **(arguably, Cultural diversity)**



THE LINK BETWEEN THE THREE PILLARS:



CONT'D

- In the context of land and sustainable development, there remain areas of common ground that are of relevance to all countries.
- Land is an asset that has many actual and potential functions, but in particular it has **two key features** from a sustainable development perspective:



CONT'D

- 1) Land, as a scarce and fragile resource, is an object for environmental protection. Achieving this protection is a function of the application of appropriate policies principally at a local level.

Measures to accomplish this include regulatory or restrictive provisions such as conservation orders and zoning and planning provisions.



CONT'D

2) Land is equally an asset for economic and social development.

As an object, with secure land rights it has the capacity to underwrite and accelerate economic development through the treatment of land rights as marketable commodities, as well as a means of distribution of wealth.

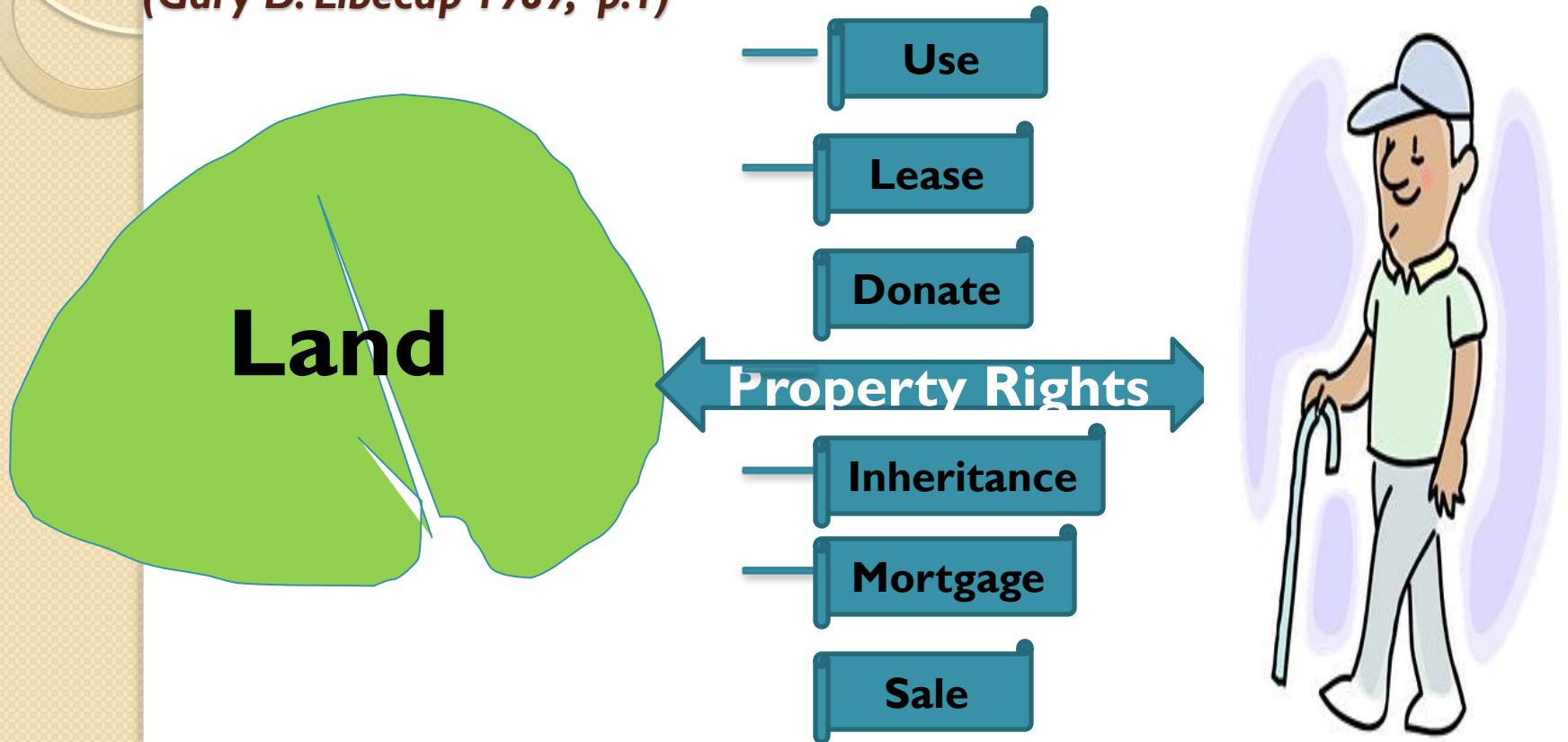


HISTORY OF TENURE SYSTEM IN ETHIOPIA

- Tenure refers to the land ownership and holding system.
- Three broad areas:
 - Pre 1974
 - Post 1974
 - Present system

Land Rights in Ethiopia

Property rights are the social institutions that define or delimit the range of privileges granted to individuals to specific assets, such as parcels of land or water.
(Gary D. Libecap 1989, p.1)



- From land tenure perspective we witnessed three types of systems
 - Imperial Era (Pre 1974 era)
 - The Derg era (1975-1991)
 - Current system



PRE 1975 TENURE SYSTEM- NORTH

- Starting from time immemorial land was controlled by the king.
- All lands annexed as a result of expansion of territories went to the king
- Land collected in this way had been distributed to individuals, church and partly held by the state itself.
- Concerning the classification of the nature of the tenure systems there are two schools of thoughts.



CLASSIFICATION OF TENURES

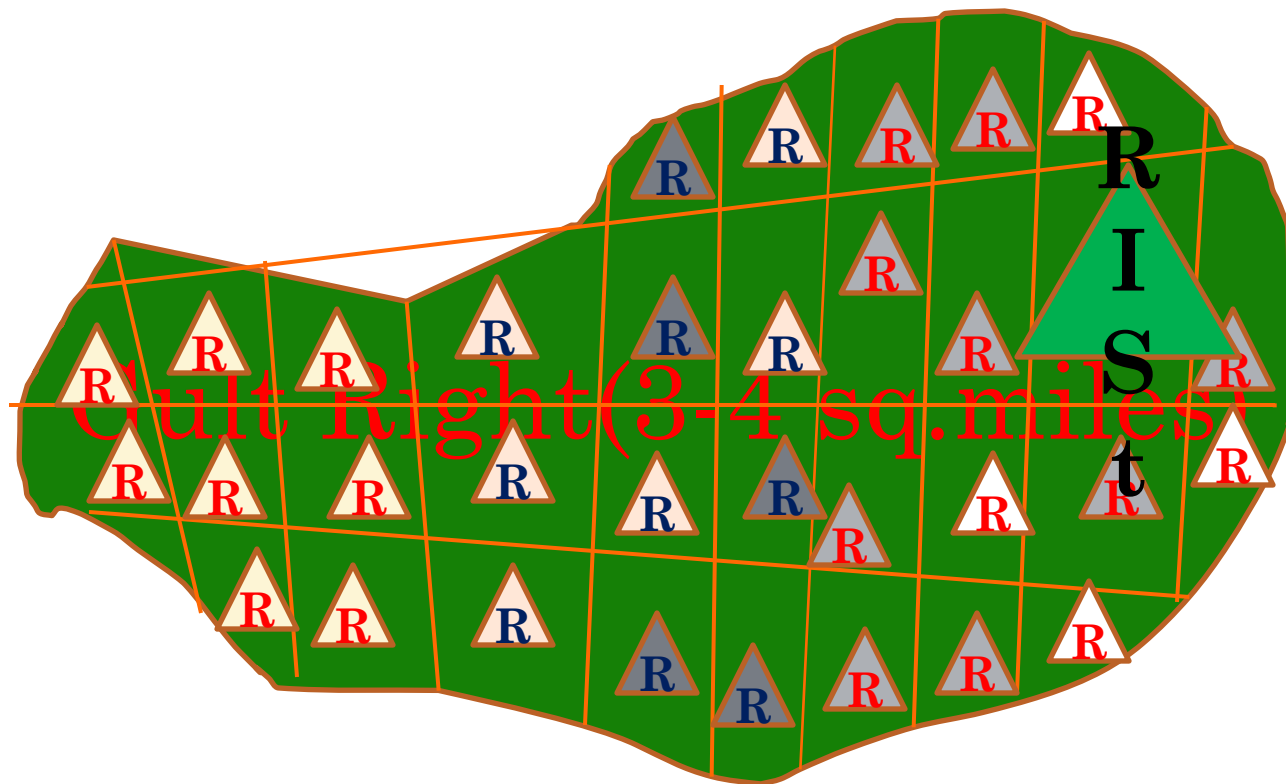
- Rist vs. Gult
- private (rist), church (gult), government
- Rist right confers use right over the land.
- Rist holders had all rights except sale.
- Original Rist right may be created as a result of imperial grant or clearance of forest by the original father.
- It is inheritable to children irrespective of sex or birth order.



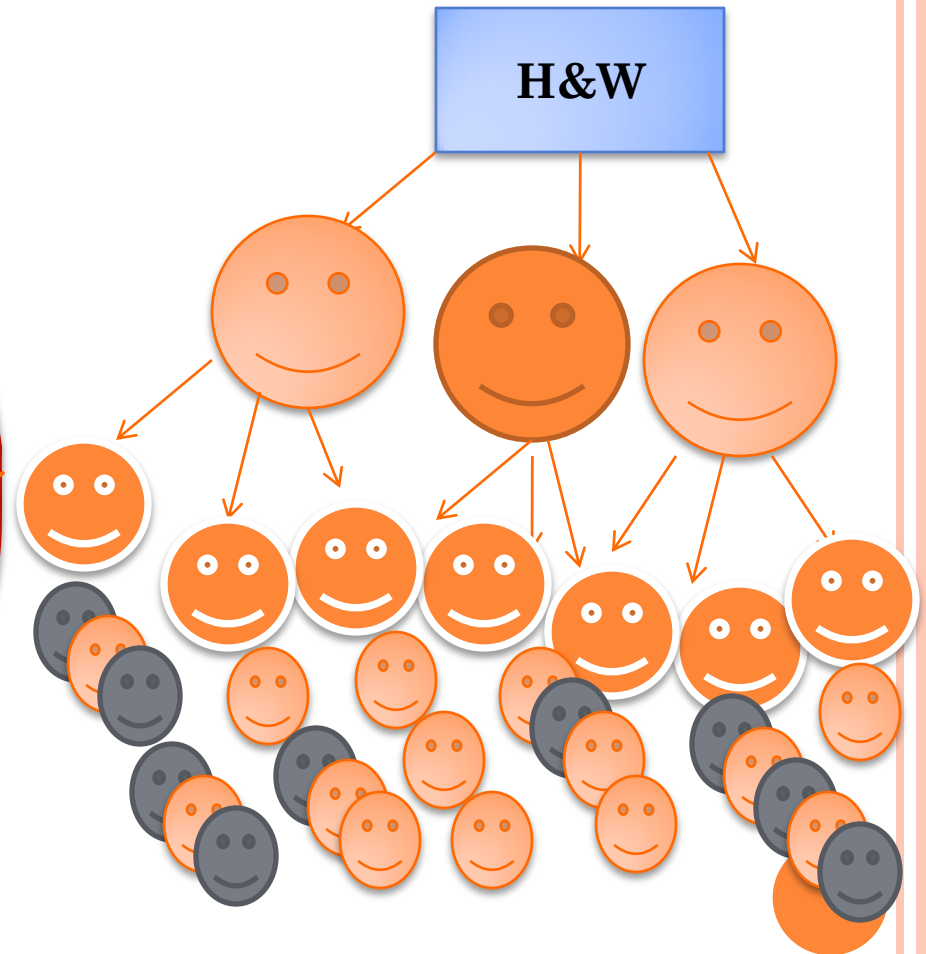
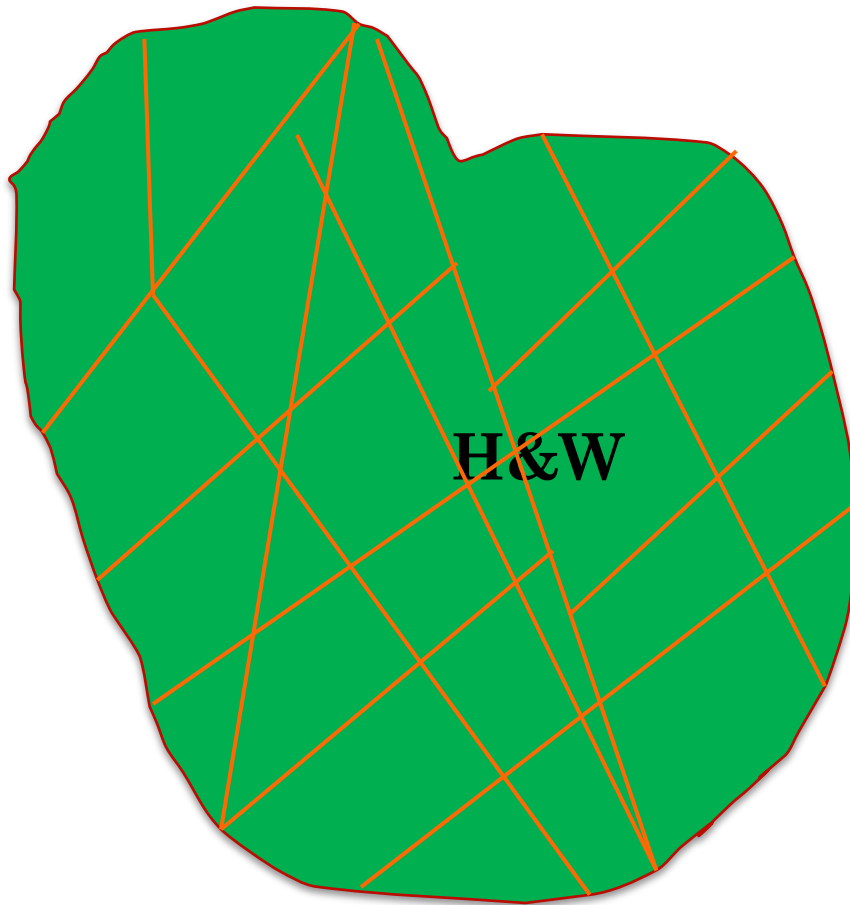
GULT...

- Gult right is not as such use right.
- Gult right provides rights of administration, adjudication, and tribute collection over *rist* holders who settled on the land.
- This right is acquired by the nobility/aristocracy through imperial grant. Some how it was like public office and needed appointment.
- Since it was temporary right (may also be life time for some), it was neither inheritable nor alienable.
- Acc. To Hoben, a single estate of *gult* land, comprises of perhaps one or two square miles, often included within its boundaries strip-fields, held as *rist* by scores (50-150) of farmers.





INHERITANCE AND RST



RIGHTS AND OBLIGATIONS OF RIST OWNERS AND GULT HOLDERS

- **Rist Holder Peasants**
- **Land tax-** tribute($1/3$) and tithe ($1/10$) of total produce
- In the old days peasants were also required to provide manual service to the nobility and the church (grinding, fencing, farming, collecting firewood) which claimed $1/3^{\text{rd}}$ of peasant's time
- Concerning decision of production the peasant had full right.
- His right was relatively secured with little interference either from the immediate gult holder or even the emperor.



GULT HOLDER...

- The Gult holder after being granted the office acted as chief tax collector, judge, and administrator.
- For his service he shall:
 - **retain part of the tax** for himself.
 - **uses the court fees and fines** he collected in his capacity as a judge.
 - **own land** as *rist* to be cultivated by the peasants

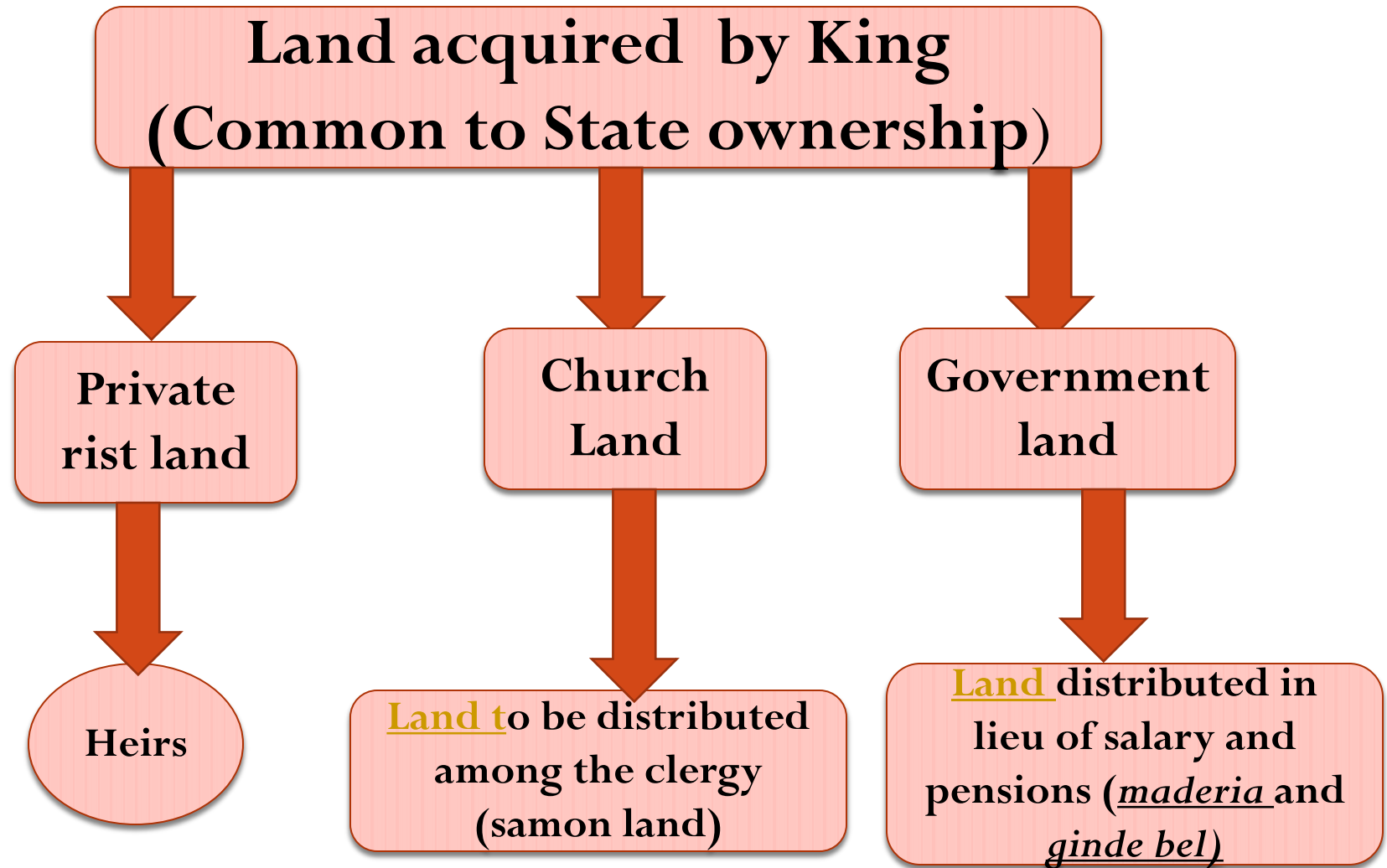


FROM ANONYMOUS WRITER (1910)

- *The gult-holder, assisted by the local official, fixes the proportion of the state due which each parish must pay; he also acts as a court of appeal in civil and criminal matters from judgments of the local official; he is responsible for peace and order in his gult and is, of course, the military chief of the district. In return for this he (a) has his land cultivated free of charge by the ristenyatat (rist holders); (b) receives all of the fines which he may impose in his judicial capacity; keeps a part, generally one-tenth, of the tribute collected by him; and (c) receives certain presents, example a sheep from each parish at Easter.*



Second classification private, church, and government



SOUTHERN ETHIOPIA

- Emperor Menelik II annexed the southern part of Ethiopia (1875-1889)
- Previously all land was held customarily as common
- Then most of the land was confiscated by emperor's forces and distributed to soldiers, church, local gentries, and to imperial families
- Local people were left landless
- Land became private



SOUTHERN....

- This condition of landlessness of the southern people continued until the mid 1960s.
- Local people were given the name *gabbar* (paradoxically means tax payer) and served northern land owners.
- After second world war, government continued to transfer land to investors, northern settlers, patriots of war
- Among 4 million ha (after 1940s) few thousands reached to the *gabbars* (Bahru Zewde)
- When most land owners sold their land, the *gabbars* (tenants) remained jobless.
- The office of Gult was weakened because of establishments of modern courts, tax collection systems, civil and military bureaucracy.



- Additional land taxes however exacerbated burdens of peasants
- Resistance to land reform from northern peasants, MP, government officials
- Government couldn't make meaningful land reform and finally it became a reason for its downfall (under the slogan "Land to the Tiller.")



DERG ERA- RURAL LAND

- After the demise of the imperial power, a military junta (a.k.a. Derg) came to power.
- The Derg immediately passed two land related proclamations which fundamentally changed the age old tenure system
- Proclamation 31 of 1975 nationalized all rural land and transferred it to state ownership
- Land was redistributed in the country and landless tenants got their own land.
- No compensation for land confiscation
- It gave only use right.
- It specifically prohibited sale, donation, mortgage, lease/rent or inheritance of land (except inheritance to minor children and widow) (see art.5)



EFFECTS OF LAND REFORM

- The Derg had enjoyed popular support from the peasantry of the south.
- On the other hand northern peasants (rist owners) and big land owners from across the country opposed the law
- Because **1, it reduced the previous holdings;**
2. restricted the land rights as mentioned above
- Student led opposition movements instantly wage war over the Derg.
- Generally speaking, the land distribution was successful at that time but later erroneous policies prevented the peasant from enjoying it. (villagization, resettlement, grain requisition)
- The “Land to the Tiller” question that brought the Derg to power was paradoxically sabotaged by the Derg itself.
- The government ended up as owner rather than the peasant.
- Finally peasant-supported armed resistance brought down the Derg from power in 1991.



ADDITIONAL CONTENTS

- Compare art. 3(1) of proc 31/1975

All rural land shall be the collective property of the Ethiopian people

- With the PDRE constitution art. 13

Article 13

1. State ownership is public ownership.
2. The state shall, through the ownership of key production, distribution and service enterprises, play the leading role in the economy. Natural resources, in particular land, minerals, water and forest, are state property. The development and utilization of natural resources shall be determined by law.

- The Ministry of Land Reform and Administration, of Haile Selassie, proposed for all individually owned lands above 20 hectares to be distributed.
- Derg used this notion and limited the maximum limit to 10 hectares (art. 4(3))
- It gave only use right and the right to inherit to spouse, minor children or those attaining majority
- No sale, exchange, succession (by will), mortgage, antichresis, lease and so on.

- Tenants were given right to hold the land they tilled until land distribution is carried out.
- Large scale agricultures was distributed, or held by cooperatives or run by the state
- Peasant association with the sole objective of land distribution (art.10) were established in an area that covers 800 hectares

ANDARGACHEW TIRINEH, THE ETHIOPIAN REVOLUTION

Province	Rural Populati	Wholly rented	Partly rented	Total rental	percentage
Arsi	690,600	307,764	50,724	358,488	51.9
Gonder	1,087,200	97,848	62,232	160,080	14.7
Gomu Gofa	583,300	249,412	21,633	271,045	46.4
Gojam	1,344,500	172,785	95,024	267,809	19.9
Hararge	1,435,670	703,429	71,778	775,207	53.9
Illubabur	515,375	376,224	10,307	386,531	74.9
Kefa	969,100	571,769	29,073	600,842	62
Shoa	3,585,000	1,828,350	573,600	2,401,950	67
Sidamo	1,987,590	735,408	39,751	775,159	38.9
Tigrai	1,410,800	98,848	257,218	356,066	25.2
Wollega	1,064,100	574,738	49,715	624,453	58.6
Wollo	2,061,800	360,552	474,214	834,766	40.4
Total		16,734,935	6,076,927 (36 percent)	1,735,269 (10 percent)	7,812,396 (46 percent)

LAND LAW 8/7/2020

Province	Rural Populati	Wholly rented	Partly rented	Total rental	percentage
Arsi	690,600	307,764	50,724	358,488	51.9
Gonder	1,087,200	97,848	62,232	160,080	14.7
Gomu Gofa	583,300	249,412	21,633	271,045	46.4
Gojam	1,344,500	172,785	95,024	267,809	19.9
Hararge	1,435,670	703,429	71,778	775,207	53.9
Illubabur	515,375	376,224	10,307	386,531	74.9
Kefa	969,100	571,769	29,073	600,842	62
Shoa	3,585,000	1,828,350	573,600	2,401,950	67
Sidamo	1,987,590	735,408	39,751	775,159	38.9
Tigrai	1,410,800	98,848	257,218	356,066	25.2
Wollega	1,064,100	574,738	49,715	624,453	58.6
Wollo	2,061,800	360,552	474,214	834,766	40.4

DERG--URBAN LAND

- Derg also enacted in the same year Proclamation 47/1975, which nationalized “all urban land and extra rentable houses”
- All urban land was transferred to state ownership (art. 3.1) and homeless people were allocated with 500 m2 land to build one (art.5)
- No compensation was paid for the loss of land (art. 3.3)
- All extra urban houses (houses other than dwelling houses) were also nationalized (see art 11 cum. 13)
- Urban land was not subject to sale, mortgage, donation, inheritance, and lease (art. 4.1)
- Government became sole owner of land and collector of rent (see detail under art. 20)
- The effect was that shortage of housing in major cities (private construction of houses for rental purposes was shrunkened)



- No compensation was paid for nationalized land.
- The proc allows for payment of compensation for loss of houses (art.18)_ yet no evidence for payment of compensation
- However, government had been paying 250 birr for those land lords who had no other income other than the rent they used to collect (21.2)

THE CURRENT SYSTEM

- After assuming power, in 1991, the current government passed a constitution in 1995.
- The much anticipated constitution once again maintained state ownership of land in Ethiopia.
 - **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. [Art. 40 (3)]**
- The justification for state ownership of land in Ethiopia is based on two grounds: social equity and tenure security.



- To ensure equity the constitution guarantees every person who wishes to engage in agriculture to get plot of land free of charge.
- Peasants have been given more liberated rights of use, lease/rent, donation, and inheritance of land.
- Government restricts the sole power of selling land and mortgage.
- In this way, gov. argues, tenure security will be guaranteed (by prohibiting sale)- the fear is that farmers may sell land during periods of hardship.



PROCLAMATION 456/2005

- In order to implement this constitutional right different land related legislations have been enacted by the Federal and Regional governments.
- Rural Land Administration and Use proclamation 456/2005
- Urban Lands Lease holding proclamation 272/2002 (replaced with proc. 721/2011)
- Expropriation Proclamation 455/2005, Reg. 135/2007
- Regional Rural land Use and Administration proclamations (legislations enacted based on the Federal Rural land and expropriation proclamations)
- Regional urban land leasehold proclamation (based on the Federal leasehold and expropriation proclamations)



RURAL LAND

- Proclamation 456/2005 provides a “holding” right to rural farmers.
- Holding right is a life time right that includes rights of use, lease (rent), donation and inheritance.
- Every able body (18 years) has the right to get rural land/pasture free of charge from government (art. 5.1) or from family (5.2)
- Rural land may also be given to urban investors. This lease right may be mortgaged.



NATURE OF LAND RIGHT

- The right given is known as “holding right”.
- Acc. To art.2.4, holding right includes rights of use, lease, bequeath to family members and other lawful heirs, and to own the fruit (produce) thereof.
- Is this right ownership? Possession? Usufruct?
- Holding right is transferable except sale (art.8). What about exchange?
- Holding right has no time limit (art. 7.1)
- Holding right is guaranteed (from eviction and distribution) and certified (art.6)
- No distribution without consent (art.9.3)
- Loss of holding right (by expropriation) is compensable (art.7.2 of 456/2005 cum art. 8 of proc.455/2005)

TRANSFERABILITY: LEASE AND RENT

- Rural land holding may be transferred to others by way of rent (farmer-farmer), lease (farmer-investor), donate, or inherit
- Such provision is included in regional rural land laws
- Farmers are able to lease or rent land from their holding “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” (art.8.1)
- Two restrictions: all the holding may not be rented out; and transfer for definite period.
- The proc uses the word “lease” only

LEASE

- What kind of land is that mentioned under art. 8.4, land to be mortgaged? Could it be land rented from farmers?
- In any case, leased land may be given as a security to loan (mortgage).
- Regional governments have different lease, rental period and amount to be rent/lease out.

DONATION AND INHERITANCE

- The proc generally allows transfer of land rights to family members through inheritance or donation(5.2 cum 2.4).
- Bequeath (donation or inheritance) is possible to family member or other legal heir.
- Who is a family member? Why is it different from the RFC?
- The details are different in regional rural land laws.
- The restriction is that the beneficiaries must engage in agriculture and live in the area. (art. 2.5, 5.2 and regional laws)

HIGHLIGHTS OF RESTRICTION ON RIGHTS

- Lease/rent (limited by time and size by regional rural land laws
 - Renting not more than 50% of land size
 - Renting for not more than 5, 10 etc years
- To get farm land one:
 - Must be above 18 years (there are exceptions)
 - Must be a permanent resident (acc. To regional laws)
 - Must have intention to engage in the agricultural profession
- Inheritance and donation to people outside family is restricted
- Inheritance to children who are engaged in non-farming activities is prohibited



Rural Land rights in comparison in Ethiopia

Transaxn	Federal 456/2005	Tigray 136/2006	Amhara 133/2006	Oromia 130/2007	SNNPRS 110/2007	BG 85/2010
Rent (Farmer to Farmer)	Amount not specified	50% of land 3 yrs traditional 20 yrs modern	Non specific amount 25 years.	50% 3 years tradition 15 modern	50% 5 yrs(fmr-fr) 10-25 yrs farm- investor	50% of holding 2 yrs traditiona 10 yrs modern
Lease Gov-invstr	Amount not specified	50 yrs for Agri investment	25 years (Art.12.5 regulation)	No mention	No mention	40 years subject to renewal every 5yr
Mortgage lease right	Allowed	Allowed (Art16)	Allowed (Art19)	Allowed (Art15.15)	Allowed	Allowed
Donation	Family member	-	To any farmer- (art.17)	To family members	To family members	To any person (art 18)
Inheritanc e	Family members	Children Parents Dependants (With no land)	To any farmer by will Minor children Children no land Children land	To family members (includes dependants)	To family members	To any farmer by will Minor children Children no land Children land Parents

Two arguments (pro and against state ownership land)

- The argument forwarded by the ruling party for the continuation of land as public/state property rests solely on the issue of security.
- In particular, it has been said that private ownership of rural land would lead to massive eviction or migration of the farming population, as poor farmers are forced to sell their plots to unscrupulous urban speculators, particularly during periods of hardship.
- Some studies conducted by the Ethiopian Economic Association (EEA) and by the World Bank contradict this hypothesis
- During hardship peasants prefer to rent instead of selling it

Critics of the land policy

- Critics of the land policy generally say that the land policy:
 - promotes insecurity of tenure because it allows, among other things, periodic redistribution;
 - is inefficient because it constrains land transactions and has inhibited the emergence of a dynamic land market,
 - promotes fragmentation of land and growing pressure on land resources because it discourages rural people from leaving their farms for other employment opportunities;
 - gives the state immense power over the farming population because land is state property.

My observations

- The fear of both the government and the critics are somehow unwarranted.
- There has not been hard evidence which support government claim of peasants land sale during periods of hardship.
- On the other hand there is neither hard evidence that shows state ownership of land causes tenure insecurity or less productivity
- Recent studies show rather farmers feel secure on their holding irrespective of the fact that they are not the owners.
- The Current land registration and certification process also adds their confidence.
- Privatization before finalization of land registration may create a chaos and widespread and conflict.

Constitution - Article 40

- (3) The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange**
- (4) Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law.**
- (5) Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation of this provision shall be specified by law.”**

Constitution - Article 40

Protection against eviction is provided in Federal Proclamation No. 455/2005. **The problem is valuation & compensation practice.**

- No private ownership of land in Ethiopia is not a new phenomenon

Land was communally owned in the northern part of the country *rist* tenure. No one could sell or transfer *rist* (communal) land (Tigray, Northern Wello, Begemider, Gojam & N. Shoa)
And the rest of the country until the 1890s

Policy Issue

- ❑ land policy has become an inflexible policy instrument;
One has to amend the constitution if one wants to change the policy – very difficult if not impossible

Federal Democratic Republic of Ethiopia Land Policy

Federal Proclamation No. 456/2005 Section 2

- (5b) 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...

Policy Issue

- ❑ This policy is inconsistent with the policy of “no forced redistribution of land”

because it cannot be implemented in densely populated parts of the country without forced land redistribution.

Federal Democratic Republic of Ethiopia Land Policy

Policy Question?

- ❑ Is state ownership of land a great impediment to economic and social development?

It may be; but not necessarily

Let us see

State Ownership vs. Private Ownership of Land

RESTRICTIONS ON LAND USE RIGHTS

GOE LAND POLICY

State ownership
of land

FDRE
Constitution
Article 40(3)

- RENTING OUT <50% , WITHOUT DISPLACEMENT
- RENTING OUT < 3, 5, 10, 15, 20 25 YR
- RESIDENCE REQUIRED
- INHERITANCE ONLY TO THOSE RESIDENT ON FARM
- NO MORTGAGE ALLOWED
- NO IDLE LAND ALLOWED
- ~~REDISTRIBUTION OF LAND~~
- UNCLEAR POLICY & PROCEDURE OF EXPROPRIATION & COMPENSATION

Private
ownership of
land

OF LAND

A typical advertisement on Fortune and Capital Newspapers

House for Sale Bole Area

Plot size 450 sq. m.

House to be demolished

Price 2.0 million Birr

Is he s/he selling the house or
the LAND?

State Ownership vs. Private Ownership of Land

Lifting ~~restrictions~~

GOE LAND POLICY

State
ownershi
p of land

- Renting out 100%
- Renting out 50-99 years
- Residence not required
- Inheritance left to whomever land holder wishes
- Mortgage allowed

Private
ownership
of land

- Idle land not confiscated
- ~~Redistribution of land~~
- Clear policy & fair, transparent & accountable procedures of expropriation & compensation of land

Ethiopia

by lifting these restrictions, can
approach

England – Crown
Property

Israel
Vietnam
Hong Kong
Nairobi Central
Ethiopia Urban Land

State ownership of
land

Private ownership of land

A nutshell of land rights in 3 periods

Period	Land use	N/S	Use	Lease	Donate	Inherit	Mortgage	Sale	Equity
Imperial Era	Rural	Nor	✓	✓	✓	✓	??	X	✓
		Sou	✓	✓	✓	✓	✓	✓	X
	Urban		✓	✓	✓	✓	✓	✓	X
Derg Era	Rural		✓	X	X	X (✓)	X	X	✓
	Urban		✓	X	X	X (✓)	X	X	✓
Current System	Rural		✓	✓	✓	✓	X	X	✓
	Urban		✓	✓	✓	✓	✓(?)	X	✓

X(✓)- No inheritance except to children and widow/er

✓(?)- mortgage only lease right

Term paper topics

- Informal Settlement
- Land Tenure/Rights
- Expropriation
- Lease
- Condominium
- Large scale Agricultural lease (land grab) (vs. Environment)
- Land registration and certification
- Comparative study of Rural Land laws (Federal vs. regional) & among regions
- The status of permit system (old possessions)
- Mortgage

Large scale agricultural lease

- Also known by some writers as “land grab”
- It signifies, large-scale agricultural land transfer on lease or sale basis.
- Recently it has drawn huge amount of media and donors attention.
- This global land rush for agricultural land started during the mid of 2000 and intensified after the food crises in 2008/09
- Sovereign states and foreign investors have massively participated in this investment activities
- The purpose is to produce food crops, bio-fuel, sugar, cotton, food oil, and other industrial imputes.
- The host countries are mainly from Africa, Asia an south America.

Constitutional basis in Ethiopia

- Article 40(6) of FDRE Constitution stipulates:
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.
- Article 5(4)(a) of proc. 456/2005:
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.
- Regional states have also similar provisions in their respective proclamations

- The government gives emphasis for agriculture as the main source of economic growth in the GTP period as well.
- Fundamentals of the strategy include a shift to production of high value crops with a special focus on potential high productivity areas, intensified commercialization, and support for development of large-scale commercial agriculture
- To accomplish this dream, among others, the government has planned to transfer about 3.3 million hectares of land to commercial farming investors in transparent and accountable manner (p.49)

What happen?

- Based on these justifications regional states (Oromia, South, Gambella, and Benishangul) were on a continuous spree of agricultural land.
- A sum of 2.2 million hectare of land was distributed to foreign and domestic investors only by regional states (acc. to the government)
- Recently (after 2010) the federal government gave away about 400,000 ha of land.
- Researchers (such as Dessalegn) put the total land leased since 1991 to 5 million ha.
- The rate and duration of the lease agreement was not similar.
- In Gambella for example an Indian Company by the name Karuturi leased 100,000 hectares of land for less than 2 dollars a hectare.

- The duration was for 60 and more years
- Because of the public outcry and heavy criticism made on the government, the council of ministers passed a circular that mandates the MoA to give land for investors above 5000 ha.
- The Agricultural Investment Directorate under the MoA is mandated with this power and it come up with lists of lease prices and fixed lease period
- Following the criticisms on the secrecy of the whole activity it started to post lease contracts on its website
- See <http://www.moa.gov.et/>
- <http://www.moa.gov.et/node/150>
- So far the federal government has collected from regions about 3.6 million of ha to be distributed in the coming few years.

Justification for government

- Ethiopia has vast reserves of underused land – 60m hectares of the country's 74m hectares suitable for agriculture is not cultivated .
- Ethiopia has been victim of food insecurity and poverty and the land has to be used.
- Hence by doing so the country will benefit in terms of:
 - Capital inflow (eg. 700 tractors are imported annually)
 - Foreign currency income (in the future when products are exported)
 - Technology transfer
 - Employment (yes, but there are complaints that they pay meager)
 - Food security (we shall see that. Because most of them are engaged in cash crops)
 - Saving foreign currency (currently we pay 30M USD a month for oil, 200,000 tones of sugar deficit, our textile industry will need millions of tones of cotton)

Critics

- There is no visible technology transfer
- Affects settlers since they are evicted (eg. Government has a plan for this year to settle 132,000 people in all regions. Is it bad or good?)
- Environmental Impact Assessment has not been properly made and followed.
- Parks , forest and wild life are affected (Dessaegn)
- No discussion with public
- Since remittance (sending back dollars out of country by investors) is free, we will not benefit from foreign income
- etc

URBAN LAND TENURE

- Modern urbanization started with the establishment of Addis Ababa
- Menelik proclaimed the 1908 land legislation of Addis Ababa which recognized private ownership of urban land.
- During the reign of Haile Selassie, private ownership of urban land was reemphasized by the subsequent Constitutions of the 1931 and 1955 (art.43) as well as the 1960 Civil Code.
- The Civil code recognizes private ownership of property in general and land in particular.
- Urban land was controlled by few urban elites
- The revolution changed the system through proc. 47/1975 (refer to previous slides)
- Proc. 47/1975 provided land to urban dwellers and such holding system was known as permit system.
- The right to urban land was restricted, but the right was lifetime and inheritable. No rent was paid for the land.

DERG--URBAN LAND

- All urban land was transferred to state ownership (art. 3.1) and homeless people were allocated with 500 m² land to build one (art.5)
- No compensation was paid for the loss of land (art. 3.3)
- All extra urban houses (houses other than dwelling houses) were also nationalized (see art 11 cum. 13)
- Urban land was not subject to sale, mortgage, donation, inheritance, and lease (art. 4.1)
- Government became sole owner of land and collector of rent (see detail under art. 20)
- The effect was that shortage of housing in major cities (private construction of houses for rental purposes was shrunken)



URBAN LAND-TODAY

- Today Urban land is being governed by lease system.
- The first lease proclamation was promulgated in 1993 (proc.80/1993), then revised in 2002 (272/2002), which is also repealed by the current proc. 721/2011
- Ground leasehold system is a very known tenure arrangement in many countries.
- Most cities leased land within their control to collect revenue to run the city
- Lease serves as a means to transfer state ownership of land to users, an alternative to private ownership



ADVANTAGES OF LEASE SYSTEM

- First, market mechanisms could help and guide the allocation of land resources;
 - Efficient land use, no wastage of land
 - Investors could get land quickly and cheaply
 - Convenient for poor people (cheaper and payable over long period), because it is the state who lends or leases
- Second, land use fees would provide local government with a new resource of revenues,
 - In the absence of efficient land taxation, land rent is the main means of income for city governments
 - Lease revenue is destined to the development of housing and urban infrastructure

- Third, by retaining state ownership, social and political conflict would be minimized.
 - Immediate transfer of public land to private ownership may create social unrest
 - By controlling the ownership of land, government may ensure equitable use of land by all (eg. The lot system in Ethiopia)
- Fourthly, where land is state owned, government can reserve land for housing construction and infrastructure developments.
 - Government may use its own land for housing and others instead of purchasing from others
 - Government saves money which could have been paid as compensation (during expropriation) eg. The AA city allocates 800 million for compensation this year
 - This in turn lowers the cost/prices of houses for the public (eg. Condominium houses are cheaper)

LEASE SYSTEM TODAY_ OBJECTIVE

- The objectives of the current lease proclamation are two: to supply land comparable to the amount demanded by the public; and to ensure good governance for the development of efficient land market and a transparent and accountable land administration system.
- The reason for the revision is mainly to curb the “rent seeking” behavior flourished, the corruption and non transparency reined in the system
- Government has complained that speculators and brokers had created artificial and undeserved prices for urban land and reaped the profit by themselves
- Eg. Why was land sold for 26,000 per m2 in Addis? What is the standard?
- Or why was that value of lease right (bare land) increasing twice or 50% every year without any value added?
- There were also complaints that investors or developers failed to finish or start construction on timely basis.

URBAN LAND HOLDING SYSTEM

- All “old possession” shall be held under lease system (transfer of register, entry of lease agreement, issuance of lease certificate)
- “Old possession” means land acquired before the coming of the lease system (1993).
- Whether people will be forced to pay lease price during the change of status (from permit system to lease hold) is not clear
- But in the event of :
 - a. Transaction other than inheritance
 - b. Merger of newly acquired lease right with old possession
 - c. Regularization of informal settlement
- People will pay lease price (minimum price set) multiplied by area of land
- Eg. For a purchase of land area of 200m² assume the lease bench mark set is 500. The total lease price is 100,000. Buyer is forced to pay at least 10% of the total lease value.

MODES OF LAND ACQUISITION

- Previously land used to be acquired through five means: Auction, Negotiation, Allotment, Lot and Award.
- Now since most of the modes opened door for corruption and “rent seeking” behaviors only Auction(tender) and allotment (land transfer without auction) are recognized (art.6).
- As a matter of principle auction will be used
- Yet for activities that have public advantage land may be transferred by allotment (upon payment of the minimum lease price).
- Eg. Gov’t offices, religious institutions, gov.t housing programs, diplomatic missions..(art.11)

EXPIRY AND RENEWAL OF LEASE CONTRACT

- The proclamation provides different years of lease lives for various activities (15-99 yrs)
- After expiry, as matter of principle, contract is renewable.
- But if the city administration needs the land for other purposes, then the contract shall be terminated.
- Lessee shall remove his property at his own cost; or else gov't will take it and no compensation shall be paid.
- There are experiences from other countries where government pays compensation.

TRANSFER OF LEASEHOLD RIGHT

- Leasehold right is freely transferable in the current proclamation as well.
- But to discourage “rent seeking” activities (seeking benefit without adding value) the proclamation puts three strategies:
- One, speculators who participate repeatedly in unfinished land sale shall be denied such right (23.7)
- People who wish to sell their lease right (bare land) or half completed construction will get no benefit (paid lease price + construction cost + 5% of profit gained from sale)

EXAMPLE

- Assume X holds 200m² land, leased for 3,500 birr per m², and expend 40,000 birr for foundation. He paid 70,000 birr initial lease price. Now he transfers it to Z for 4000 birr per m²).
- He shall get 118,500
 $70,000 + 3500 + 40,000 + 5000$). Profit is 8,500.
- While the gov't collects 95,000 birr out of the profit (100,000).
- What about if the construction is completed?

HALF COMPLETED= FOUNDATION + COLUMNS + TOP BEAM

70,000

1,000,000



5,000



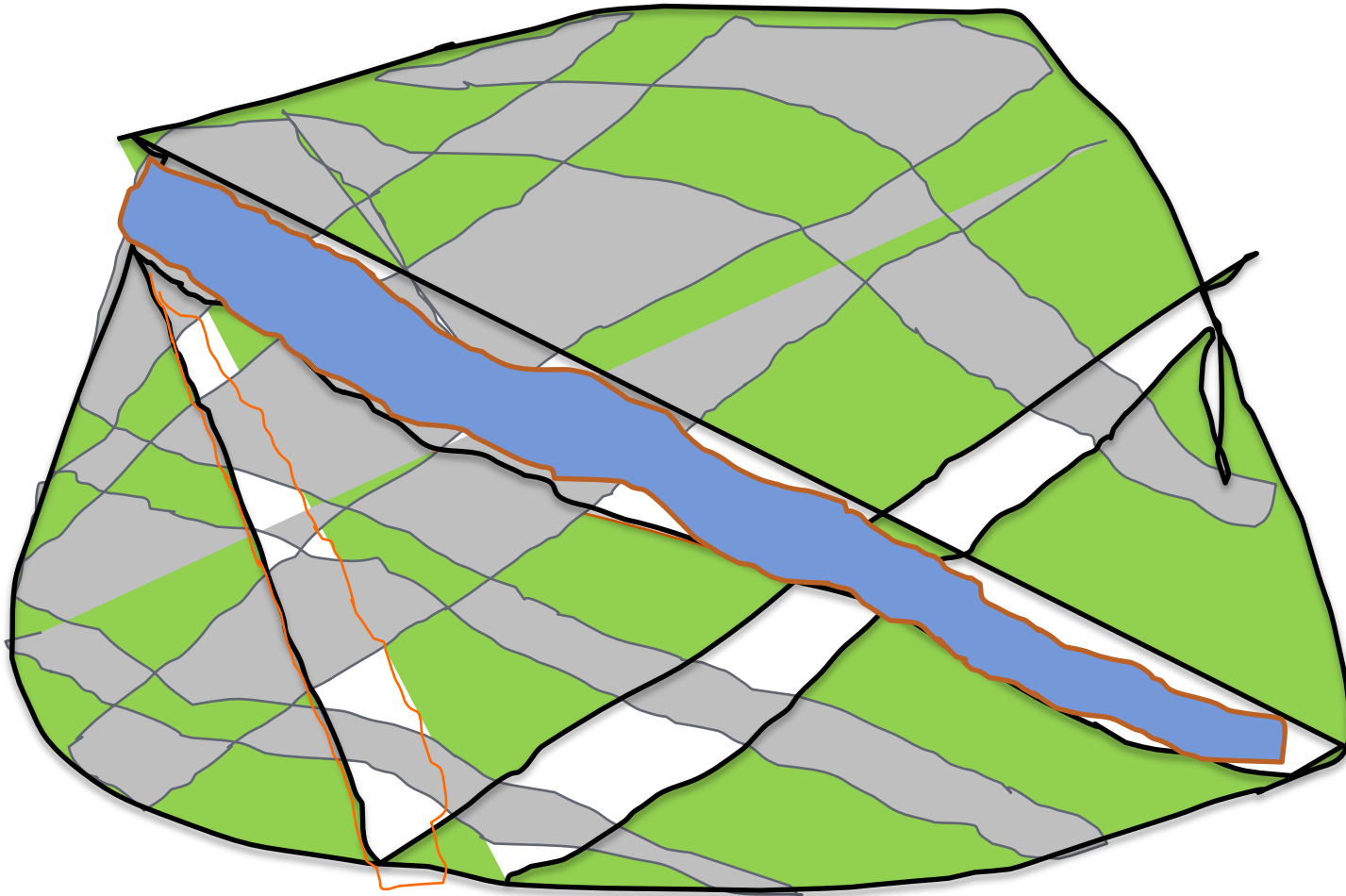
10m

20m

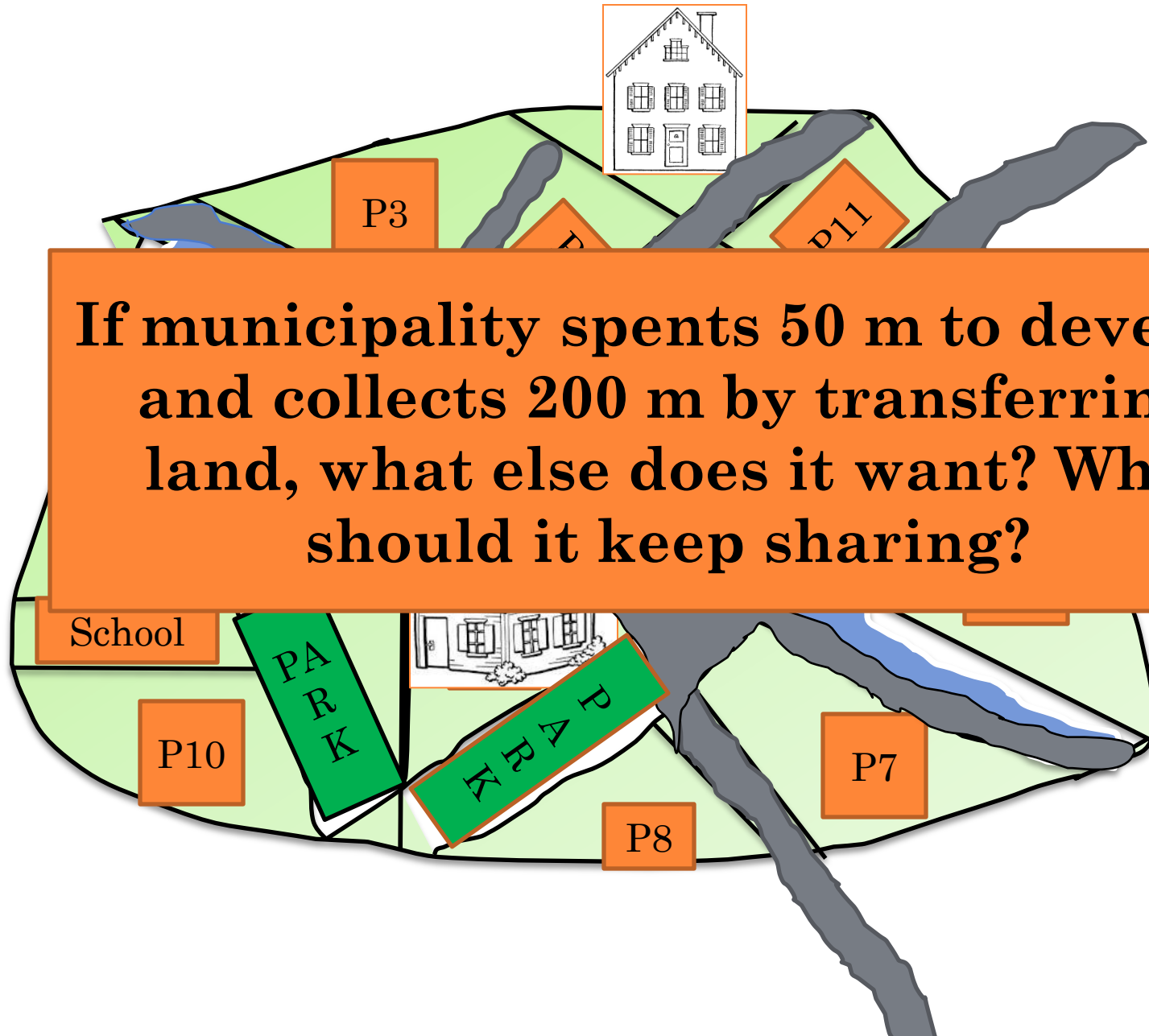
- But how do we stop people from conniving?
- Even though it is possible, speculators will shift from selling unfinished properties to finished ones.
- Is “Rent seeking” by itself a crime?
- These measures do not cure the illness.
- The solution is rather supply of more land according to some critics.
- Municipality is collecting undeserved income, and it is unfair to the leaseholder.
- Art. 2(11) “lease benchmark price” means the threshold price determined by taking into account the cost of infrastructural development, demolition cost as well as compensation to be paid to displaced persons in case of built up areas, and other relevant factors;

**“LEASE BENCHMARK PRICE= COMPENSATION
FOR LAND + DEMOLITION COST+ INFRASTRUCTURE
(WATER..) THE MAXIMUM IN ADDIS ABABA IS 600**

- The idea is that government calculates the cost of developing land to be leased out.
- This amount covers government costs
- So by transferring land based on auction government collects its costs as well as big revenue;
- Eg. In Addis Ababa the maximum lease benchmark is 600. But the land may be sold 6000 by auction.
- Only few organs will get land based on the basic lease benchmark.
- So the idea is by transferring land through lease contract government will collect large revenue.
- Why again share with the lessee?



ASSUME MUNICIPALITY EXPENDS 50 M TO
DEVELOP AND COLLECTS 200 M BY TRANSFER



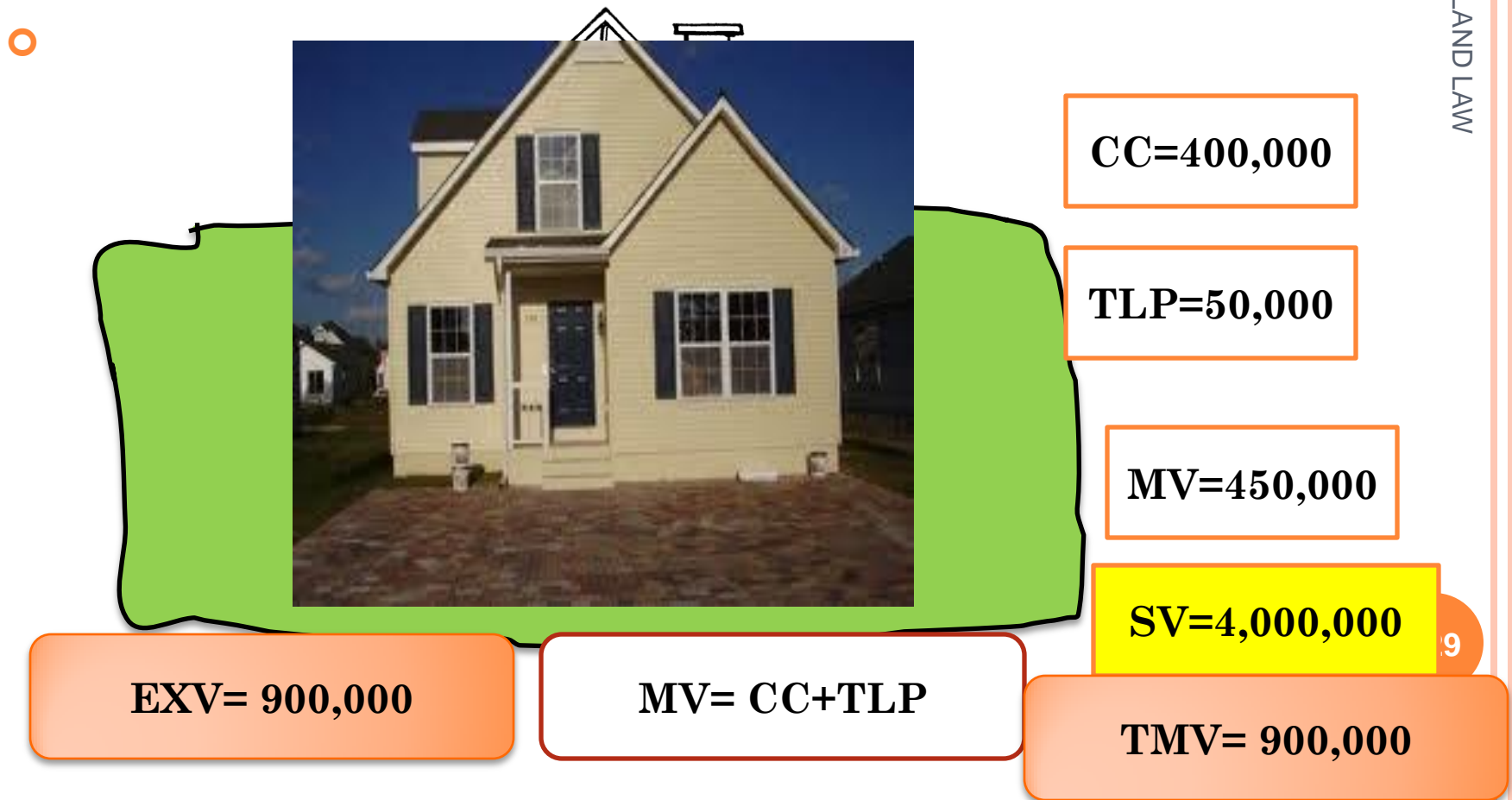
MORTGAGE

MV-MORTGAGE VALUE **CC**- COST OF CONSTRUCTION

TLV-TOTAL LEASE VALUE **TLP**-TOTAL LEASE PAID

SV- SALE VALUE **MORTGAGE RATION** 1:1, 1:2

- The third strategy is limiting the mortgage value of the land only to the amount of lease price paid.



FDRE Constitution Article 89

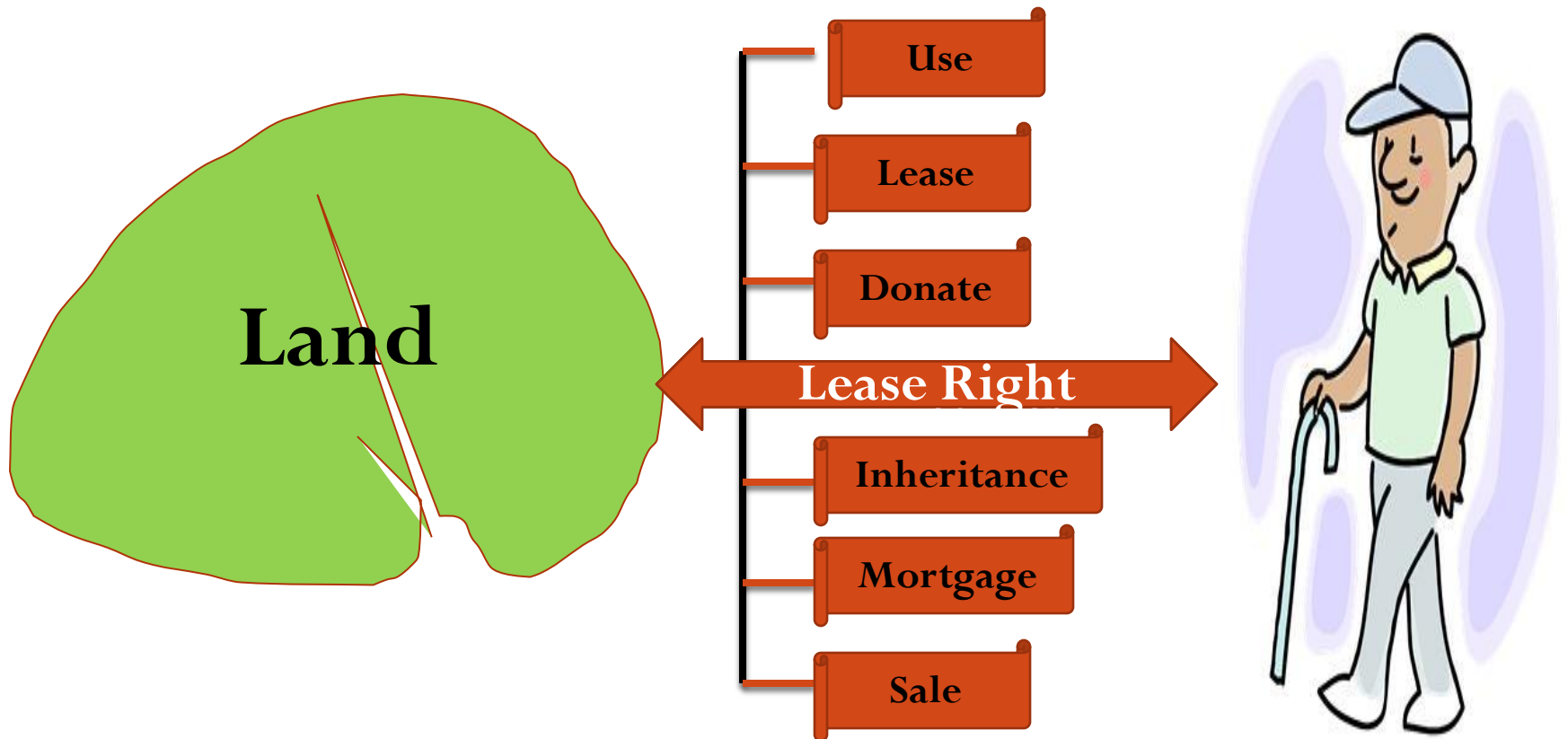
Economic Objectives

- The 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.

Do you think, the people give away their ownership right to the government? Or is it some kind of delegation (land administration power?). See the debate made on the Reporter Amharic weekly.

- Art. 40(3) “right to ownership of rural and urban land as well as of all natural resources is exclusively vested in the state and in the people of Ethiopia..”

“Lease” means a system of land tenure by which the use right of urban land is acquired under a contract of a definite period. Art. 2(1) Lease Proc



EXPROPRIATION

https://www.fig.net/pub/vietnam/papers/ts04c/ts04c_ambaye_3753.pdf



Land Rights: Constitution Art. 40

Proclamations 456/2005, 455/2005, 721/2012, Reg. 135/2007

- In Ethiopia ownership of rural and urban land... is vested in the hand of the state and the Ethiopian people and, hence, is not subject to sale, exchange or mortgage.
- Yet, rural farmers and pastoralists are guaranteed a plot of land free of charge while urban residents can secure the same through ground lease arrangements.
- Rural farmers' right to the land is a kind of usufructuary right, which merely gives peasants possessory or "holding" prerogatives, including the rights to use and enjoy, rent, donate and inherit the land.
- In urban areas, its dwellers may obtain land on 15-99 years lease agreements depending on the purpose for which the land is needed and such right may be freely transferable.

Land Rights...

- To secure such rights, the Constitution prohibits eviction of holders of the land without just cause and payment of compensation.
- Article 40 (8) provides for payment of “commensurate”, amount of compensation during expropriation of property.

Base

Article 40 (8) of FDRE Constitution:

*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.*

Concept

- It is defined as:
-the right of the nation or state, or of those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership and possession of such property without the owner's consent on paying the owner a due compensation to be ascertained according to law (Corpus Juris Secundum).
- Expropriating land holding” means taking the rural land from the holder or user for the sake of public interest paying compensation in advance by government bodies, private investors, cooperative societies, or other bodies to undertake development activities by the decision of government body vested with power.(ANRS Proclamation No. 133/2006 Art. 2(18))



- It is the right of the nation or state, or of those to whom the power has been lawfully delegated,
- to take private property without the owner's consent



- Upon proper notification (negotiation)
- for public purpose
- By paying the owner a due compensation to be ascertained according to law

JUSTIFICATION FOR EXPROPRIATION



- Due to their monopolistic position, landowners would be able to block development
- The need to ensure the efficiency of land acquisition.
- The need of much land for developmental works (expansion of cities and other infrastructures) and the need to make urban areas to fit with the master plan.

Master plan



HISTORY

- Historically expropriation practice said to be applied starting from time immemorial.
- Earliest records from the Bible, the Greece, Roman and middle ages show that it was applied by contemporary states to have more land for public works.
- It was given place in legislations and court decisions of the civil law and common law countries.

IN ETHIOPIA

- In Ethiopia the first law related to the subject appeared in the 1907 Menelik's legislation.
-private owners might be compelled to sell their land together with a house, if any, to the government. The amount of compensation payable shall be determined by experts.
- It was also raised by the 1931 and 1955 constitutions, and the 1960 Civil Code.
- Currently we have proc. 455/2005 at Federal level.

Nature

- Expropriation is an inherent power of the state to take private individual's land.
- There are two limitations however.
- Public purpose
- Just compensation

Public purpose

- For what purpose should a property be expropriated?
- Roads, camp, dam, stadium, private hotel, horticulture?
- As to what constitutes public purpose there are two approaches: broad and narrow views.
- See the case of Kello vs. New England

Broader view

- “Public purpose means anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state (or which leads to the growth of towns and the creation of new resources for the employment of capital and labor), manifestly contributes to the general welfare and the prosperity of the whole community constitutes a public purpose.

Narrower view

- public purpose is actual use or right to use of the condemned property by the public.
- (The indirect contribution the prosperity of the entire community resulting from activities from which only some individuals would profit was not sufficient to justify the exercise of eminent domain. It is necessary that the public possess a 'right' to use the facility or service for which the property was desired).

Ethiopian case

- Federal law defines it as:

the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development. (Art. 3(2) of Proc. 455 / 2005)

- This approach is a broader one.

Ethiopian...

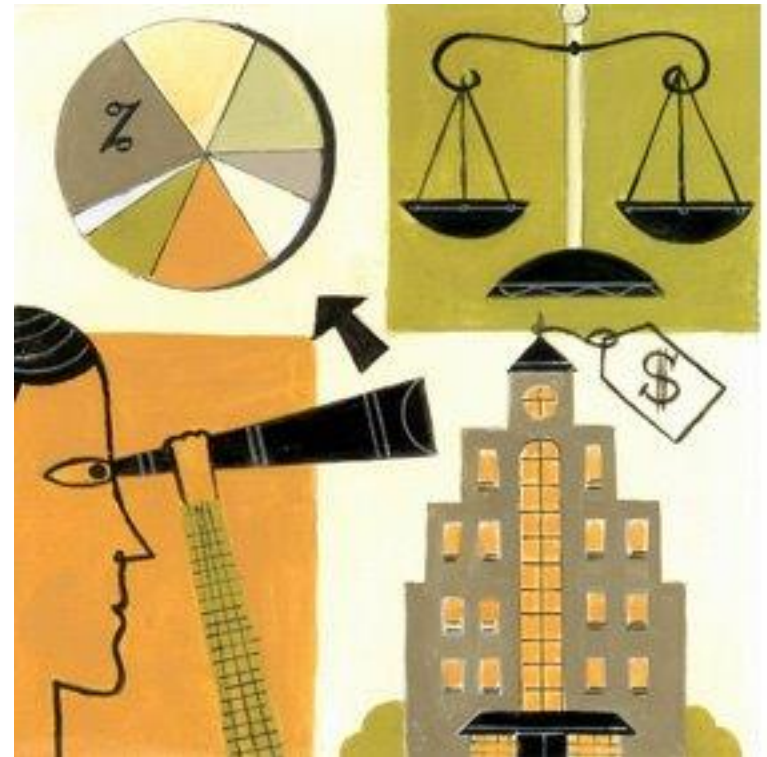
- In Amhara region the law lists down possible activities that justify public purpose:

“Public Service” means a service given to the public directly or indirectly, such as government office, school, health service, market service, road, religious institutions, military camps, and the likes, and includes activities assumed important to the development of people by the Regional Government and to be implemented on the rural land. (Art. 2(15) of Proc. 133/2006)

- What is this approach?
- Does this include private investors?

Valuation and Compensation

- Compensation is one limitation on the government's power of expropriation.
- Compensation is defined as “full indemnity or remuneration for the loss or damage sustained by the owner of the property taken or injured for the public use.”



Valuation...

- The compensation requirement under the law demands that the expropriator reimburses the expropriated for the property interest taken and place the latter in as good a pecuniary position as if the property had not been taken.

Amount

- Amount must be fair, commensurate, just...
- The Ethiopian constitution provides for the payment of “commensurate” amount of compensation.
- This signifies that compensation must be equal to the loss sustained.
- In modern laws this equality can be attained by applying market value.

Market Value

- To reach or attain market value valuers use three different valuation methods:
 - comparable sales approach
 - Income capitalization approach
 - Replacement cost approach
- in many countries the first two are the most utilized approaches. The third one is an exception which is applied for special and peculiar kind of properties.

VALUATION IN Ethiopia/Amhara

- The value of real estate property rights is the function of the property's physical, locational, and legal characteristics (Ling and Archer 2005)

Mandate

- In Ethiopia, there is neither an independent and developed valuation system, nor available professionals in the field.
- Rather the mandate is given to sets of committees and some times to civil engineers.

Major compensable interests

1. Building

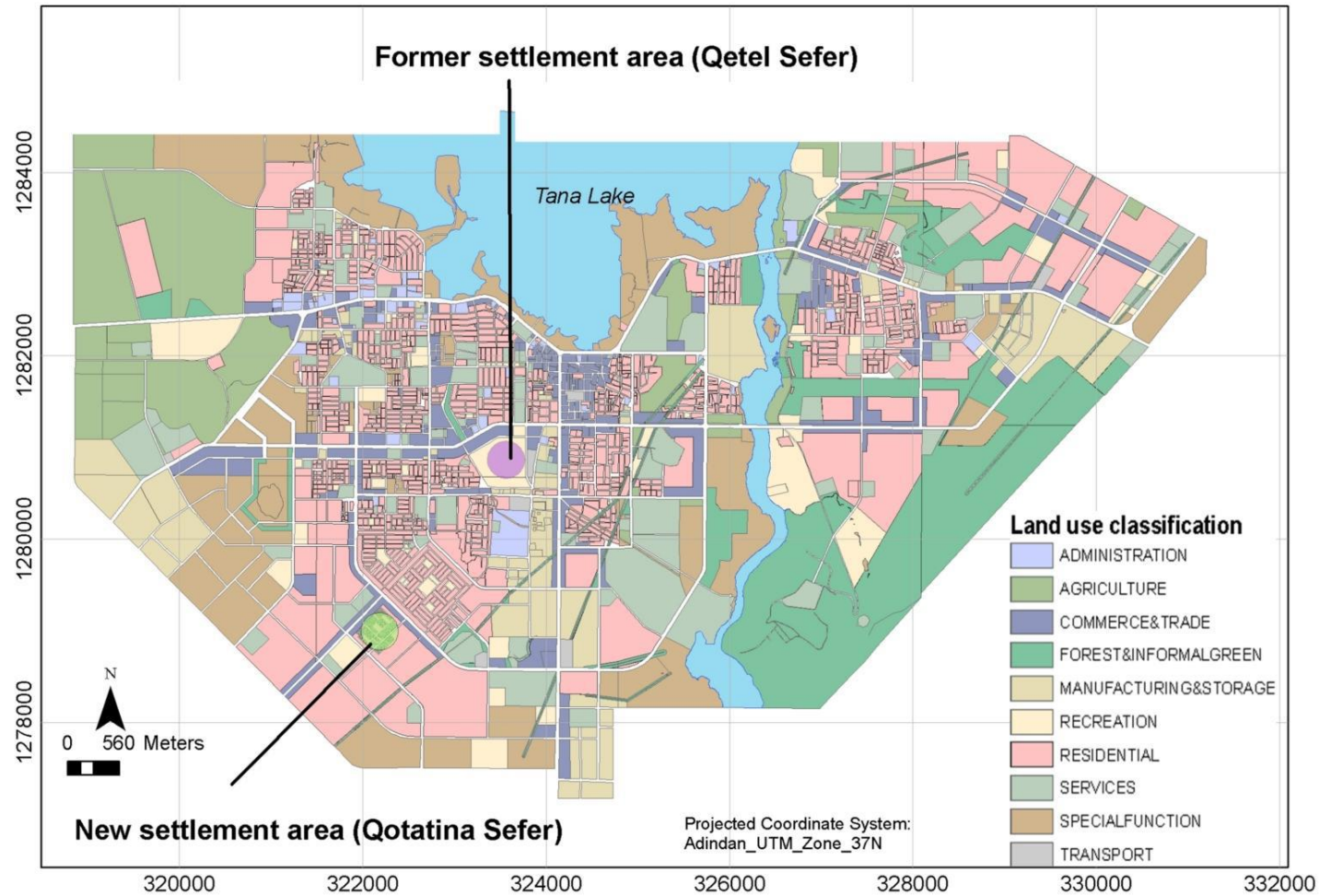
- o Cost replacement + replacement land + 1 year's rent
- o It considers the value in terms of current labour and materials required in assembling a similar asset of comparable utility.

Problems observed

- o Cost of labor and building material is not updated
- o A person may not get a land comparable in size and location.
- o Location is not given value (city administration gets unproportional profit)
- o damages to property/business caused as a result of another project are not compensable.

Simple calculation

- Mr. X lives in the center of the city
- He holds 300 m² plot of land
- He operates small business from his house
- Government expropriates the land
- Mr. X is provided with 300m² of bare land on the escarpment of the city where no infrastructure and utility services is provided
- Ground lease value for such land is about 200-300 birr /m²
- Compensated with 100,000 birr to replace his home
- The Municipality sales the bare land in the center for $(300 \times 2000 \text{ birr}) = 600,000 \text{ birr}$
- Municipality makes a profit of about 450,000.
- Multiply this by 10 or 20 houses in the same neighborhood.



One of the prime locations being expropriated for development (Kasanchis; ECA area)



One of the replacement areas around the eastern part of the city of Addis



The Practice of Commercial Bank of Ethiopia (CBE)

S. N	City\Town	50m zone		100 m zone		200m zone		Beyond 200	
		Res	Com	Res	Com	Res	Com	Res	Com
1	Bahir Dar	550	600	385	420	220	240	110	120
2	Gonder	600	665	420	294	240	266	120	133
3	Dessie	179	199	125.	139	71	79	35	39
4	Debremarkos	130	145	91	101	52	58	26	29

Location value in birr per m² for residential and commercial properties
 250X550= 137,500. Source: CBE Valuation Manual, 2006

In Addis Ababa

- In Addis Ababa the *Merkato* and Piazza areas are the most valuable localities for which the bank gives.
- Birr 4805 (up to 100m²),
- Birr 4362 (101-200m²)
- Etc.
- Of course, this shall be revised based on the newly adopted lease proclamation

Displacement Compensation

- Farmers who lost their land permanently may be compensated through monetary compensation or land-to-land compensation.
- Full monetary compensation (*ten times the average annual income he secured during the past 5 years*)
 - *why ten years?*
 - *why 5 years back?*
- Some argue it is like forcing the farmer to sell today's produce at yesterday's price.
- It doesn't consider inflation

-Assume a farmer produces 50 quintal wheat per year
-sales price per Q is 500 Birr and his total income is 25000
-Bank Interest rate 5%
Following are two types of calculations

- Compensation = $\frac{\text{Annual Income}}{\text{Interest rate}} \times 100$

$$\text{Compensation} = \frac{25000 \times 100}{5} = 500,000 \text{ Birr}$$

- On the other hand applying the current calculation system it gives us:

Average Annual Income X 10

$$25000 \times 10 = 250,000 \text{ Birr}$$

- Partial monetary compensation

Koga case

- land-to –land compensation
 - highly favored by farmers
 - land is given from communal property
 - abused by officials and implementing agencies (este, church)
 - no guarantee to get comparable land in fertility, access to roads or other services/neither compensation mechanism
- Why should village community bear the burden rather than developing agents/investors?

Displacing farmers from the outskirts of towns

- Replacement cost
- Plot of land on the same site
- 10 years compensation
 - in reality municipalities are reluctant to pay
 - plot of land given only if there was a building
 - fear of unnecessary investments and illegal sale of land

Conclusion

- It is unfair to catch all the profit by the municipality
- Unfair compensation discourages people from making additional investment
- 10 years produce calculation is baseless and not scientific also unjust compared to the lifetime right over the land
- Calculating based on 5 years average is as well unjustified
- Additional laws are needed to fill the gap on urban land speculation.

Recommendation

- Municipalities should share the profit from land lease to former holders
- This can be done for example by following the CBE valuation method or other methods
- At least municipalities must update current price of building materials
- Rural farmers should be compensated the loss of their land on other scientific formula, why not the income capitalization method, EPLAUA used to apply that
- The 5 years application should be removed from the law
- We must strive towards creating professional valuers or property appraisers