

**THE LEGAL IMPLICATION OF LAND USE CHANGES IN
PASTORAL AND AGRO PASTORAL COMMUNITIES OF
AFAR AND SOMALI REGIONS OF ETHIOPIA**

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1. Background Introduction

The Intergovernmental Authority on Development (IGAD) assists member states implementing IGAD's Drought Disaster Resilience and Sustainability Initiative (IDDRSI). The measure works through Strengthening the Capacity of IGAD towards Enhanced Drought Resilience in the Horn of Africa Programme (SCIDA-II, PN 2015.2058.4) to support development planning and cross-border development in selected development Clusters INCLUDING Ethiopia

Being integrated into GIZ' Strengthening Drought Resilience Program (SDR) in Ethiopia, the SCIDA-II TC-Facility contributes to the achievement of the program objective: IGAD supports IDDRSI implementation on the basis of the Regional Programming Paper (RPP) and the Country Programming Papers (CPPs) of the member states.

On this basis the SCIDA-II TC-Facility supports participatory land and natural resource management planning at local level (PLUP). Participatory land management helps promote sustainable use of natural resources in the region; it supports preparation of future investments for safeguarding the population's resilience. Land governance, and land ownership aspects, including traditional access regimes play a substantial role in this context in the SDR Program.

More specifically the GIZ Ethiopia is conducting a Water Spreading Weirs project in the low lands of Afar and Somali regions whereby the Program starts to convert pastoral degraded land in dry river valleys into farmland with great potential. This implies that the barren river bed would in time be converted into grazing pasture and private farming and hence influencing the lifestyle of the pastoral community. However, whether or not this practice of land use conversion from communal land into private farms would be in line with the customary practice and the land laws need to be settled.

Objective

The general objective of this study is to establish and underscore whether the project activity which will cause land use change in the pastoral areas of Afar and Somali regions are in line with the federal and regional laws as well as the customary practice of the people of these regions.

Methodology

This study is a desk review of laws and regulations with limited use of some empirical data. It employs both primary and secondary data as source of data. Primarily it is based on the analysis of the federal constitution, federal rural land administration and use proclamation, regional rural land administration and use proclamations as well as regional rural land administration and use regulations. Further, it was possible to interview elders from Afar and Somali regions who are considered representing the community and whose positions are reflected in this study. Accordingly, two clan leaders from Awra and Chifra wereda as well as two local land administration officers who are working in the project areas were interviewed in Semera town. Additionally, one clan head from project area in Amadle area and government officials from bureau of Agriculture were interviewed in order to learn the customary practice.

2. Over view of Ethiopian Land Laws and Rights: with specific emphasis in Afar and Somali regions

2.1 Historical overview

Land ownership and administration in Ethiopia varies depending on the ideologies of the regimes passed through history. During the old feudal regime of pre-1975 Ethiopia, land was controlled by few elites of the system leaving the mass to benefit little from it. While in the northern parts of the country, the peasant was able to control a risk, secure land right, in the Southern parts the peasant was lost its land starting from the second half of the 19th century and remained tenants of those who controlled the land for the next hundred years. Even the northern peasantry were not free from serving the nobles as they were forced to plough, fence, and harvest the land free of charge and hence allocating one third of their time to such activities.

In 1975, the old feudal régime was removed from power and in its place replaced a Marxist military junta. This junta, immediately after assuming power, passed a law that nationalized all rural and urban land.¹ Hence, all land becomes state property overnight. However, although the state becomes the sole owner of all land, the law guaranteed the land to remain in the use of the peasantry. This benefited especially the peasants of the south who used to be tenants of the land. In general, however, it denied the farmer to freely transact with the land as land lease,

¹ Proclamation 31 of 1975, Proclamation to provide for the Public Ownership of Rural Land

inheritance, gift and sale were prohibited. On top of that, farmers were denied to sale their produce at a market price. From land tenure perspective, there was repeated land distribution during this period and hence this makes little incentive for farmers to protect their land from erosion and degradation.²

After the fall of the military junta in 1991, a new constitution was adopted in 1995 which follows similar path in land ownership but with more liberal land rights. According to Article 40 of the FDRE Constitution, land is a common property of the state and the people of Ethiopia and is not subject of sale and exchange. Farmers and pastoralists are, however, guaranteed with lifetime use right of the land. Moreover, they are endowed with rights of lease and bequeath of the land. In the later case, they can inherit and give away the land to their family members. While the land in highland Ethiopia is characterized as agricultural land, the land in low land area is of pasture with limited area for agriculture.

Ethiopian pastoralists are believed to occupy about 10% out of the country's total population, and about 42%³ of the country's landmass.⁴ In both regimes, the land rights of the pastoral community of the low lands of Afar and Somali was affected little as the land was administered through traditional means. The land was generally held by the community. As the people have been living a nomadic life, they relied in cattle herding, moving from place to place in search of pasture and water. This leaves the use of the land to communal one with out members being restricted by border or specific ownership right to particular land.

From a formal land administration perspective, during imperial period, there was total neglect of pastoral lands. Pastoral lands were treated as parts of public domain during this time: "all property not held and possessed in the name of any person...including all forests and *grazing lands* are state domain."⁵ The 'Derg' tried to recognize possessory rights of pastoralists but with no implementing laws. The rural land proclamation No.31/75 under Article 24 declares that

²Yeraswork-Admassie 2000. Twenty Years to Nowhere: Property Rights, Land Management and Conservation in Ethiopia. Asmara, The Red Sea Press, Inc.

³ Regarding the total number of pastoral communities and the total land they hold different writers as well as different policy instruments tells different figures. For example, the Ethiopian environmental policy of 1997 show as if the numbers are 10% and land they occupy is about 42%. Majority writers use the average between 10-12 % for pastoral communities and 40-45% for the total land they occupy.

⁴ John Helland, Pastoral Land Tenure in Ethiopia, Norway: Michelson Institute, 2006, pp.8

⁵ Article 130(2) of the Revised Constitution of 1955

‘nomadic’ people shall have a possessory right over the land they customarily use for grazing or other purposes related to agriculture.

The current existing constitution was adopted in 1995 following a regime change in 1991. In here, a pastoralist is guaranteed with use right of the land for one’s lifetime, inherit it to legal heirs, transfer to others through gift and the ability to lease/rent the land by keeping a portion of land that would produce for his sustenance.

On broader level, the land issue in Ethiopia is addressed by the Federal Democratic Republic of Ethiopia’s Constitution (FDRE Constitution) and the FDRE Rural Land Administration and Use Proclamation No 456/2005 (hereafter as Proc. No 456/2005), and FDRE Expropriation Proclamation (Proc No. 455/2005). The FDRE Constitution gives a general highlight on who owns land in Ethiopia and its means of acquisition. The Proc. No 456/2005 is a detailed federal level legislation that puts general guidelines and principles. This proclamation puts mandatory provisions which shall be followed by regional governments and optional provisions that give further rights for regions to fill in. The land administration power is given to regional governments within the constitutional and federal rural land proclamation framework. Based on this one, regions also adopted their own version of Rural Land Administration and Use Proclamations. The expropriation proclamation governs the land taking and compensation in the event when government decides the taking of land from individuals.

2.2 Background of Project areas

2.2.1 Afar Regional State

The Afar Regional State is divided in to five zones and thirty-two woredas. The region exhibits a physical feature that is mostly plain and an altitude of less than 1500 meters above sea level, an altitude that further falls from west to east. The lowest point in the Country, Dallol depression that is 126 meters below sea level is found in here.

The land use policy of the region indicates that about 7.0% of the total area of the region is suitable for crop production; and 22.4% of the total area of the region could be developed for agricultural activity. However, only about 1.2% of the total area of the suitable area is used. The land use policy also shows that about 25.7% of the total area of the region is suitable for grazing purposes. About

70.9% of the total area of the region is denuded and devoid of vegetation. In the rainy season that is usually scarce, about 54.9% of this denuded part of the region gets little rainfall. The grass shoots that appear as a result of the little rains in this area are used for grazing purposes, though, for a short period of time.

A study for land use planning in the region, shows that there are about twelve soil types available in the region; and out of these soil types 49% is sandy and rocky. This has resulted in making 70.9% of the total area of the region denuded; and only about half of this area is used for grazing for a short period of time during the scanty short rainy season. Other than this, large tract of land has no use at all.

The climatic condition of the region is mostly hot, desert type and partially dry. As a result, the region exhibits high temperature, and low rainfall that is not distributed uniformly.

Rural lands in the region are mainly administered under clan leaders. The government also administers rural lands in few areas where there are state farms and national parks that are found in Zone two. There are certain areas where rural lands are administered by individuals in areas where sedentary farming prevails in Argoba Special Zone. Such lands are mainly used for agriculture and grazing purposes. The lands that are under clans and clan leaders are mostly used as communal grazing lands and communal farms.

As indicated earlier, the economic basis of the Afar people is animal wealth; and the land is generally used as communal grazing land. The recurrent drought, deforestation, salinity of the soil, the disproportion number of animal size to the grazing area, growing population, overgrazing, have all contributed to the decline of the quality of the soil.

2.2.3 Somali Regional State

In Somali Regional State, out of the total rural populations 85% practice pure pastoralism, while 15% are semi-pastoralist and the remaining 5% are farmers.⁶ This show the largest proportion of rural land in this region is still in the hands of 85% of the peoples practicing mobile pastoralism. As the regional rural land policy indicates, in Somali region only 350

⁶ See Somali Regional State Land Use and Administration Policy, Bureau of Livestock and Rural Development, JigJiga, 2003(draft)[here in after The Draft Rural land use Policy of Somali Region]

hectares are under actual cultivation out of 6 Million hectares potentially arable land of which even 600,000 hectares are irrigable lands. This means, the lands under private cultivations of the 15% semi-pastoralist and the 5% farmers in the region including state farms covers only 6% of the total land mass of the region⁷. Moreover, this cultivated 6% lands under private house hold is still under the control of tribal administrations and counted as part of the communal land. The land policy states that, “since all the lands in Somali region is still in the hands of different clans, the regional government could not administer rural land based on the provisions of the federal and regional constitutions that declare all lands and natural resources the property of the state and the people.”⁸ In other words, clan heads have greater role in administration of rural land.⁹

As provided under the Rural Land Policy of Somale Region “every clan has its own clan leader, which has the acceptance of all the members of the community and elected on the bases of their age, reputation, their achievements, personal integrity and sometimes for their wealth”.¹⁰ The clan leader heads the members of the clan council who represent the members of their lineage. Thus, “the clan leader and the clan council collectively form traditional authorities vested with the power of administering the clan land.”¹¹ They are the traditional authorities entrusted with the power to control the management and allocation of the right of access to clan land resources and to arrange negotiated rights of access to land and natural resources to their clans. They “control the allocation of exploitation rights to clan members, and shoulder community responsibilities as effective and efficient managers of clan land (communal) resources.”¹² Besides, they are vested with the power of resolving any land related disputes among the clan members or conflict among clans. Their tasks currently even expanded and such traditional authorities have the power to deal with some emerging issues like land expropriation and land lease to investors.

⁷ ibid

⁸ Id, pp. 9

⁹ ibid

¹⁰ See the Draft Somale Regional State Rural Land Use policy supra note,78, pp4

¹¹ PFE, IIRR and DF. 2010. Pastoralism and Land: Land tenure, Administration and Use in Pastoral Areas of Ethiopia,(printed in Kenya Nairobi), pp 27 -31.

¹² ibid

2.3 Land Laws

2.3.1 The Constitution

The FDRE Constitution under article 40, that deals with “Right to property”, provides details about land rights in Ethiopia. Article 40 (3) of the constitution answers the core question of land ownership issue 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.

Regarding its means of acquisition, sub-article 4 states that Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. Likewise, concerning the pastoralists of the lowland areas, sub-article 5 declares that *Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their possession*. Although the peasants and pastoralists are denied private ownership rights to the land itself, they are guaranteed a “full right to the immovable property they build and to the permanent improvements they bring about on the land by their labor or capital. This right includes the right to alienate, to bequeath, and, where the right of use expires, to remove their property, transfer their title, or claim compensation for it” (Art.40(7)). Thus, unlike the Derg era, peasants will have full right to their produce and can sell it at market value. Moreover, the constitution guarantees peasants and pastoralists against arbitrary eviction by the state without compensation. The Constitution clearly says: “... the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property” (Art. 40(8)).

2.3.2 Rural Land Laws

Access to Rural Land

As per the Federal Rural Land Administration Proclamation No 456/2005, farmers have the right to get land free of charge. Hence it is dictated that any person above 18 years of old and wishes to engage in agricultural activity shall have the right to obtain land free of charge. Women are also entitled to get land on equal manner with that of men.

Nature and Duration of Land Rights

Concerning the nature of right provided to the farmers, the Federal and Regional Land Proclamations uphold the constitutional principle that denies private ownership to land. Rather, the said proclamations provide farmers with a right termed as “holding right.” The Federal Rural Land Law defines the term “holding right” as right of peasants and pastoralists “to use rural land for purposes of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same” (Art.2.4 of Proc. 456/2005). Similar definitions have also been included in the other regional rural land laws. The general understanding today is that peasant farmers will have all the rights of an owner except sale and mortgage. They can use the land for agriculture production, have full ownership to the produce collected there from, have right to rent to fellow farmers (share cropping), lease to investors, and inherit and donate (as a gift) to family members.

Peasants shall have such right for life time and beyond, since they can donate and inherit it to others. It has been declared that “...rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit”. In a way, this gives tenure security to the holder of the land as the right of using the land and the investments made thereon will not be threatened by time limitation. It must be noted that the longer the duration of rights of using land are the better in terms of ensuring tenure security. On top of this the new land certification process also strengthens this security of tenure.

Means of Land Acquisition

There are different ways through which a person may acquire land in Ethiopia. The law recognizes the following methods for a person to get rural land: land grant from government, inheritance or donation from family members, and lease of land from fellow farmers or the state. As a matter of right, every person in rural area may claim land from the state provided that he/she attains 18 years and wishes to continue engaging in agricultural activity. Further, people may get land because of inheritance or gift transferred from parents or other family members. Finally, those who are landless may get land through lease or rental arrangements.

3. Land Rights of Pastoralists

3.1 Legal review of Land Laws in Afar

Land acquisition and land use conversion

The Afar and Somali regions are home to largest portion of pastoral community. As opposed to peasants, pastoralists live by raising cattle and other animals in arid areas. Therefore, the land laws of both regions, especially Afar, are designed based on the unique characteristics of their residents. Below is given brief analysis of the laws:

As already mentioned above, the federal laws declare that men and women of any region can get land freely for grazing and farming purposes. Likewise, the Afar Region's rural land law (Art.5 cum. Art.9) states that pastoralists and agro-pastoralists have right to get land freely and this right has no time limit. Land holders who use community land (such as grazing) have the right to bequeath it to legal heirs. Also a person may get land for farming activity, if he/she wishes to be agro pastoralist. Elders and disabled people who benefited based on customary laws shall continue to enjoy such right.

The law defines pastoralists as member of rural community of the region who raise cattle by holding range land and moves from place to place in search of water and food supply for their cattle (Art. 2.12). Similarly, an agro pastoralist is defined as one whose livelihood is based mainly on cattle raising and partially on crop production. Otherwise, the law doesn't recognize peasant farmers in the sense of the highland parts of the country.

This makes cattle raising the most important source of livelihood for rural communities of the region. From this perspective, the constitution and the Afar regional land laws accorded protection to this land right. The laws protect the range lands from arbitral state takings or investment activities which result in the displacement of pastoral and agro-pastoral communities.

To this effect, the proclamation under Article 5(8) states that communal pastoral lands used communally by pastoralists shall not be transferred into private holdings either through distribution or redistribution.¹³ More over, it is stated that communal lands which are used by community for grazing and social purposes may not be leased to investors.¹⁴ This protection is believed to limit

¹³ Also similar rule is inserted under article 6(3) of the Afar regions regulation No 4/2011

¹⁴ Art. 5(9) of proclamation No 49/2009 and Art. 7 of Regulation

unwise transfer of range lands to investors or other private uses by the state or clan leaders. This obligation is imposed both on government and individual clan leaders. This also entails criminal responsibility on those who transfer community land to investors or individual users.

This seems a closed door policy to avoid any requisition of land by other development organs. However, the proclamation in Afar also adopts a conciliatory clause stating: “Government, as owner of rural lands, may transfer communal lands or joint holdings of the agro pastoralists into individual holdings as deemed necessary and in consultation and agreement of the community.”¹⁵

One may think, government may have full power over the land resource transfers as it is the sole owner of all land. Nonetheless, this is misleading as the land belongs equally to the people and the state.¹⁶ Also this very idea is reflected in the second part of the provision stated above that requires the consent of the community to implement the land transfer action of the state.

Land transfer from communal range lands to private farming and other investment activities may be necessitated for different reasons. For example, Investment may be needed in the area of agriculture, cattle breeding, mining or other social activities such as education and health. Mostly, NGOs are participated in community based activities, such as water, health or redevelopment of the land. In this case, giz is considered as participating in redevelopment of eroded land resources in a bid to make use them again for faming and grazing activities. Similarly, young people from the region may want private lands for farming activities and such request may be made as a matter of right. There are also possibilities of settling pastoral community in one area to get necessary amenities.

Hence, to solve this deadlock, the law as exception permits range land transfer to investors, NGOs or private individuals. Government may convert communal lands to private uses¹⁷ or investors¹⁸ or NGOs¹⁹ with the consent of the local community who uses the land. This means, even if government has the power to administer the land, it must submit the issue first to the local affected

¹⁵ Article 5(9) cum 9(16) of the Afar proclamation

¹⁶ Also see the FDRE Constitution Art. 40(3) which puts ownership in the hands of the state and the people of Ethiopia

¹⁷ Article 5(9) of proclamation

¹⁸ Art 7(2) of Regulation

¹⁹ Art 6(1) of regulation cum Art 16 (1)(b) of Proclamation

community for discussion and must show them how the land transfer would transform their livelihood or a portion of it.

Obviously, the law allows this exception because sometimes distributing the communal range land to individual users or investors is more advantageous than keeping it in the hands of the community. This is for example the case in river bank areas where the land is suitable for crop production activities than grazing. Hence to this effect, for example, the Awash river is being used extensively by investors and agro-pastoralists equally for crop production. Likewise, range lands are sought in Afar region for mining activities.

In the case at hand, the land was sought to rehabilitate it by building water spreading weirs. By making small terraces along river beds, it has been possible to spread the flood into surrounding plain and hence reducing soil erosion at one hand and making the land suitable for grazing or farm activities on the other. Community leaders from both Awra and Chifra woredas confirmed that the project activity was important in changing the landscape from barren land to crop producing and grazing lands.

Land redistribution may also be initiated by the community itself where it believes that communal land should be transferred to local youth. This is the case where there is arable land in the areas and when the community wants to accommodate the interest of the local youth by giving land for farming activity. Indeed, this right of the youth to get land from the communal land is recognized under Article 9(6) of the region's proclamation:

The youth in rural areas who intend to be engaged in animal raising; crop farming; and natural resource development activities shall have the right to access to and use farm and grazing lands free of charge in communal or government land holdings found in their locality.

The law also recognizes the distribution of irrigable land which was not held by private users. The assumption is that the land was a communal or state held land and when it becomes feasible for irrigation activities, it may be distributed to private users based on priority arrangement adopted by the regulation. As per article 14 of the regulation of Afar region, land will be distributed to those who were registered by the local land administration office. And from this, priority would be given to elderly, incapable and orphans. The law seems disjointed from the actual practice though, for such decisions are usually reached by the clan heads with consultation of the people.

In Afar and Somali Regions where customary land tenure is still operational, most of the time, community leaders and clan chiefs are at the center of the allocation and enforcement of rights.²⁰

Redistribution

The proclamation under article 12 sets out the possibility of redistribution of land where circumstances created a situation where redistribution becomes the only solution. This power is given to the regional bureau and in this process the redistribution should not be made in a manner that may result in fragmentation of land. Irrigable lands, communal lands and state lands are subjected to redistribution to accommodate the interest of people who lost their land for the irrigation project and landless youths.

Role of Community Leaders

In Afar region where the community gives important place to clan leaders in its socioeconomic life, community leaders are the customary leaders in the administration of land resources. The region also establishes formal land administration organ to function up to kebele level and this organ is supported and works together with kebele level land administration committee.

Practically the committees are led by the clan heads of the areas.²¹ The following shows the roles of the committee in land administration:

Article 22 Functions and responsibilities of the rural Kebele Land Administration Committees

I. The rural kebele land administration committees that shall be established at kebele level shall have the responsibility to implement this Proclamation in collaboration with the person assigned or designated by the competent authority at kebele level. The functions and responsibilities of the Kebele Land Administration Committee is:

a. In cooperation with the land administration and use organ that will be established at woreda level, the Kebele Land Administration Committee shall administer land in the kebele; and in collaboration with the land administration institution that will be established at woreda level; with the participation of the community, it shall cause decisions on land use to be made.

²⁰See generally, KABTAMU-NIGUSE. 2012. *Land Tenure and Tenure Security Among Somali Pastoralists: Within the Context of Dual Tenure System*. LL.M thesis, Bahir Dar University, School of Law. As quoted in Kabtamu's thesis, the government land policy of the Somalie Regional State confirms the complete control of land by traditional chiefs rather than by government organs: "Because of the fact that all rural land in the region is administered by clan leaders under the traditional land administration system, government institutions, investors and others who are in need of rural land should negotiate with clan leaders who determine the amount of compensation. Thus, the willingness of clan leaders is necessary as both the access to land and the amounts of compensations are determined by the clan leaders and not by government agency." P. 128.

²¹ Interview with clan heads of Awra and Chifra woredas

b. The Kebele Land Administration Committee shall entertain applications regarding land matters and shall make decisions according to their submission and in cooperation with the community.

c. On the basis of directive given to it by the Regional competent authority, the Kebele Land Administration Committee shall maintain register of all land holders (who are issued with land holding certificates and who have not received one) in the kebele.

3.2 Assessment of land rehabilitation and distribution in project areas in Afar

This study tries to capture the land rehabilitation and subsequent use or distribution procedure from Chifra and Awra woredas of Afar Regional state. The informants in this case are local land administration and use officers and woreda based clan heads of the two areas. It is stated that the people in Chifra woreda were consulted starting from inception. Indeed, the clan head was a member of the inception team and he was all along in all major decision makings concerning the giz project activities. In this regard, the local land administration office was also instrumental in selecting the land areas where weirs were built together with the the branch office of the pastoralists affairs. After the weirs were built and land became rehabilitated, it was used by community or distributed to farming households.

As per the experts, the role of the local clan heads was detrimental in the allocation and distribution of land resources developed by project activities to end users since they are customary leaders of the people and the people have more trusts on them than on the state. In Chifra woreda, where the project activity created an opportunity for grazing and farming activity, land was said to be distributed based on the decision of the clan head. The clan head, in an interview, explained that he had prior discussion with the community and informed this to the government which on its part registered these rights. This means, the clan heads and by extension, the people are heavily involved in giving consent for project activities and determined the beneficiaries of the fruits of the project.

In Awra woreda, the clan leader and local land administration officer explained that the community was not involved during the inception of the project but at a later stage during rehabilitation activities of land. However, the community has fully accepted the project activities as it saw its potential for future development in terms of improving the grazing lands. This commitment was

said to be witnessed when the people was showed its readiness to rebuild the weirs which in one place was washed away by flood.²² Concerning land redistribution, the land redeveloped so far is used for communal grazing land and hence no issue of redistribution of land raised.

3.2 Legal review of Land Laws in Somali Regional State

Access to Land and land use rights

In a similar fashion with that of the Afar Regional State, the Somali Region's Rural Land Administration Proclamation No. 128/2013 also recognizes pastoralists and agro-pastoralists as rural community of the region. This means there is no full-time farmers who are engaged in farming activity, but only to some level. No rural land regulation has been adopted so far to further implement the proclamation, though.

The law also recognizes, under article 2, three types of land holdings: private holdings, joint (communal) holdings and state holdings. While private holdings signify land used for crop or perennial crop production and house construction, joint holding signifies land communally used by the local people for grazing, forestry, and other social events. On the other, state lands include such land areas as forest and wild life, mountains, lakes, rivers and other rural lands declared as state lands.²³ In this case, the vast range land in Somali region is held by different clans of the region who have exclusive rights by custom.²⁴

The proclamation under article 5 and 9 bestows pastoralists and agro pastoralists respectively a free access to communal grazing land and a private farm lands, when appropriate. This private farm land may be acquired by applying to the local land administration office. Those private holdings already in existence or granted by the government are freely transferable to heirs through gift and inheritance.

The community's access and right to communal land, specially grazing land, is not limited by time and it shall be delimited and registered to guarantee from state intervention. Pastoralists have also right to settle in one areas as sedentary farmers when conditions allow. Also the law guarantees

²²Ato Bori Sultan, clan head from Awra woreda mentioned that terracing work on the river bed was washed away by seasonal flood. During that time, the community asked local government office to supply them with technical advisor to rebuild the structures seeing that these project activities were important for themselves.

²³ See article 2 (11-13) of the Somali Region's Rural Land Proclamation

²⁴ Interview with Sultan Farhan Mohammed, Director of the Rural Land Administration and Use Directorate of Somali Region

agro-pastoralists right to the private or communal land by giving compensation in the event of loss of land by state expropriation measures.²⁵ This right does not however include pastoralist communities for unknown reason.

Agro pastoralist communities have additional rights on the land as they can transfer the private holding to heirs and children through gift and inheritance.²⁶ They can also, during their lifetime, rent²⁷ the part of the land to fellow farmers or investors for limited period of time.

Transferability of communal lands

Besides pastoralists and agro-pastoralists, other organs are also entitled to get rural land without affecting the rights of the rural community. To this effect, investors and non-governmental organs (NGOs) may also get land for economic and social development activities.²⁸

The question one may raise here is whether the communal land may be transferred to investors or NGOs and even private farms easily. Like the case in Afar, it is not easy for a government to convert communally held lands into one of the other purposes. And yet the door is not completely closed for such possibilities. In this case the relevant articles are reproduced here below:

Article 5(9)

“Communal pastoral lands used communally by pastoralists shall not be transferred into private holdings”

Article 5(10)

Communal lands that are used communally by pastoralists for grazing and social services shall not be given/leased to investors. This, however, shall not affect the power of the government, as owner of the lands, to transfer communal holdings into private holdings as deemed necessary and in consultation and in agreement with pastoralists.

Article 5(11)

Subject to giving priority to the interest of pastoralists, governmental, non governmental, and social and economic institutions shall have the right to use rural lands.

²⁵ See article 9(14) of the Somali Region's Rural Land Proclamation

²⁶ Article 13

²⁷ Article 11,

²⁸ Article 5(11) cum 15

Therefore, what we can learn from the above provisions is that communal lands which are used for grazing and social events may not be transferred into private farms or investment activities. However, where circumstances so demands, such as where the social interest so demands (example youth demand for private farm lands) or where the economic feasibility of the land is higher by transferring it to investors rather than keeping it in the hands of the community, or where it is in the best interest of the community to transfer the land to NGOs, then the government may decide the transfer of land from communal use into other forms of uses mentioned above. And yet the government needs to consult the community and specially clan heads. It seems government needs to secure the agreement of the community or its traditional leaders before commencing any transfer of land.

The Somali regional state rural land proclamation also puts an obligation on the regional rural land administration organ to establish woreda and kebele level land administration offices and kebele level land administration committees that shall be elected by the community. However, this has never been implemented so far.

Obviously, the clan heads are still the traditional land administration offices and government is working in consultation with them during any land development activities, such as urban expansion, land expropriation or any other land based investments which affect the range lands of the community.

4. Land use conversion, expropriation and compensation issues

In this section, we shall see the possible consequence of land use changes, loss or discontinuity of land use rights such as grazing rights, and closure of existing ways/tracks of the pastoral community. Although the law is not as such clear with the effect of loss of one's right crossing the land, it is perfectly clear with regard to the former two.

In this case there are two scenarios:

1. when there is conversion of land use and as a result former users of the land no longer gets access to the land

2. when there is total loss of land when the land rights because of project activities initiated by the state or other development agencies

Although by and large the purpose of the project activity is to rehabilitate the land and put under the direct use of the community, there might be cases where community members may be restricted from using communal properties or loss private properties. In this section, we shall investigate both scenarios. It must be noted the second case that involves loss of private property amounts to expropriation.

4.1 Types of Properties and rights in the Pastoral Community Regions

In the Afar and Somali regions, there are four types of properties recognized by their rural legislations: private holding, joint/common property, communal property and state property. A private holding is a plot of land provided or customarily held by a family for cultivation, housing, or pasture. A joint property is land held by two or more individuals for a common use and benefit. Communal property is mostly pasture, forest, and water bodies held for the common use of the local community. It also includes the rents and benefits accrue from the land. For this reason, rent collected by clan chiefs (on behalf of the community) from leasing community lands or compensation paid for an expropriated community land may be considered as community property destined to be divided by all the community members. State land includes mountains, rivers, and other part of the and not recognized as one of the above three types of proprieties.

The type of land right given to the peasants and pastoralists in Ethiopia is not ownership/freehold. Rather it is short of private ownership and known as “holding right.” A holding right provides to the holder of the land all rights except sale and exchange. Peasant farmers and semi-pastoralist who hold plot of land have the right to use the land for agriculture purpose, to lease/rent the land to a fellow farmer or investor, donate and inherit to family members, or use it together with investors. The land right provided is a lifetime right and can be acquired free of charge.

Mostly, the land right of pastoralist is generally a common use right. This right is open to all community members. Communal right may be exercised on pasture, water bodies, forest lands and even on the benefits (e.g. rent) gained from it. However, in Somali region clan leaders have authority to determine beneficiaries of communal land of their village.

4.3 Land use conversion and restrictions of land use rights

As mentioned above, although the assumption is that the project wouldn't cause loss or restrictions on existing property rights of the communities in both regions, such occasions may occur. When a community land in the form of grazing land, range land or barren lands are rehabilitated by the project, the land may be now suitable for farming activities. For example, there is a tendency in Somali region to settle more people in farming areas where there is such land available. This means the previous land use of communal grazing will be converted into private farming and hence will exclude some members of the community from using the land. In both regions the prevailing custom is to use the grazing land by the community of the areas and even by pastoralists coming from other villages. Therefore, a large portion of the pastoral may have a stake on a grazing land in one village. Now the issue is what would be the effect if the excluded community members raise a concern on the land use change and subsequent transfer of land to few people.

From legal perspective, the Federal Rural Land Proclamation 456/2005, the Afar and Somali Regional Rural Land Administration and use proclamations allow the government to convert communally used land into private uses. Similar cases happened in the other regions of Ethiopia where kebele and woreda administrations distribute communal lands in a village to land less youth of the locality. Although no condition for such measure in the Federal law, in Afar and Somali region there is one condition. This condition is getting the consent of the community. As mentioned previously, the state is duty bound to conduct discussion with the community before transferring communal lands into private ones.

The law does not give any compensation for those who lost the communal property right of usage and being restricted from passing through. Since the transfer is made presumably on the consent of the community, no compensation is due or expected from the state or new beneficiaries.

In this respect, we asked Somali Region state officials and community leader, how they could solve if such issue arises. The answer was that the community solves the conflict through discussion before the land transfer. The clan head has big influence and trusted by the community. The clan heads are guardians of their fellow community and what ever decision they reach is binding on the community.

However, when the measure causes complete loss of the communal land due to state or private investment activities, compensation is appropriate by law. This compensation is paid usually in the name of the community to clan leaders who in turn are supposed to put the money on community based development activities.

The loss of land and property thereon and rights of pasture or water right is known as expropriation.

Expropriation is a compulsory taking of property for public purpose activities and upon payment of fair compensation. The source of expropriation power of the state is Article 40(8) of the FDRE Constitution which empowers the government to “expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.” To this end, the FDRE government has adopted Proclamation No. 455/2005 and its implementing Regulation No 135/2007. The Afar and Somali regions as well dedicated some provisions for this matter in their regional proclamation. In Afar in particular the regulation also provides some articles concerning expropriation and compensation. By and large, the Afar region adopts a compensation guideline while in Somali region, they are still using the federal laws. As a matter of principle the Federal Expropriation and compensation proclamation and regulation are governing rules applied in all regions. Regions have the right to issue guidelines to implement the Federal laws. But they have the opportunity to address their unique characteristics without violating the Federal laws.

4.3 Expropriation Laws in Ethiopia

This expropriation may happen in Afar and Somali region, if the project work affects private property rights. Although the chance may be small, in future expansion of the project activity, private land and property thereon may be affected. This means, if private farm lands, houses, or crops on the land are taken for the sake of higher benefit to the community at large, the individuals who lost their property are supposed to be compensated as per the expropriation laws. In this subsection, an attempt is made to look into the expropriation laws.

Expropriation is a forced taking of property by the state for public purpose activities and upon payment of fair amount of compensation. It is an inherent power of the state like taxation, police power, and the power to ensure peace and security. As already mentioned above, the basis of expropriation in current Ethiopia is article 40(8) of the FDRE Constitution that gives the

government a power to take land and building if it is beneficial to society and upon payment of commensurate amount of compensation in advance. The word commensurate signifies that compensation must be equivalent to the property lost. Following this constitutional principle, the FDRE Government adopted an expropriation proclamation

Under the existing federal arrangement, it is the power of the Federal Government to enact laws concerning the “utilization and conservation” of land and natural resources in Ethiopia.²⁹ The power of Regional governments is “to administer land and other natural resources in accordance with Federal laws.”³⁰ Therefore, although regional governments may come up with their own land administration implementation legislations, the legislations should be consistent with the federal ones. Concerning expropriation, Regional governments have not adopted separate proclamations or regulations although some regions (eg. Afar, Ababa and Amhara) have passed compensation valuation directives and manuals. So what has been done in Afar and Somali region (like many regions) is that they incorporate the expropriation, valuation and compensation principles in their rural land administration and use proclamations. Further to that the Afar region has also passed a compensation guideline.

4.4 Expropriation Procedure

Expropriation includes a procedure (expropriation proceeding) for its completion. Proclamation 455/2005 provides this procedure in articles 3-6 of the proclamation, Also see Art 10 of Afar compensation guideline. What are the procedures?

1. An implementing agency (government body or private one, NGO) must first lodge an application that requests the land for the project work together with “detail data.”
(5.1)
2. Then the woreda or urban administration, after receiving the application, must make inquiries of the following:
 - 2.1 *Ensuring the legality of the applicant (whether the applicant is legitimate body)*
 - 2.2 *Approving that the taking serves a Public Purpose*
 - 2.3 *Weighing pros and cons*
 - 2.4 *Discussion with the society*
 - 2.5 *Inventory and identification of affected properties:*
 - 2.6 *Assessment of compensation*

²⁹ FDRE Constitution, Art. 51(5).

³⁰ Ibid. Art. 52(2)(d).

3. Notification: the woreda administration then must notify the land holder in a writing “indicating the time when the land has to be vacated and the amount of compensation to be paid” (4.1). The notice must be served, at least, before 90 days.
4. Make compensation payments to the landholder
5. Appropriate land and transfer to the implementing body.

Once a property/land is identified for project work and following the inventory of assets on the land for compensation purpose, the holder/s are not allowed make any improvement on the land that increases compensation payment at a later stage. In the Afar Region compensation directive (Art. 7.2) it is indicated that any person whose land is to be expropriated may not carry out any construction or improvement on the land that affects the inventory that has already been taken for compensation purpose. Similarly, in irrigable areas, any construction made after the irrigation project is presented and discussed with the people is not eligible for compensation (Art. 7.3-Afar). The cut of date is the date on which the inventory of assets for assessment purpose is completed. Any additional expansion or improvement on the land will not be considered for assessment and compensation.

In Afar, As per Article 8 of the region’s compensation guideline, the following are not subjects of expropriation:

1. Archeological sites identified by regional or federal government
2. Natural attraction places important for tourism
3. Natural biodiversity places
4. national parks
5. other places designated by federal government

4.5 Resettlement and Rehabilitation

Whether or not resettlement and rehabilitation program is a mandatory phase in the expropriation process in Ethiopia is not clear. Government organs that expropriate land do not consider the program as mandatory, since it is not clearly envisaged in the expropriation proclamation. Thus, resettlement and rehabilitation for the displaced becomes all the more difficult in the absence of state level policy and legislative mechanisms. Nonetheless, some projects, funded by the World Bank, such as, irrigation dams, hydro electric powers, and big road projects carried out resettlement and rehabilitation programs after the expropriation of land.³¹ This is because the World Bank puts it as an important prerequisite when it lends money to the government³² or finances private investments which are considered as sound investments by the Bank.³³

The nature and existence of resettlement program in Ethiopia can be inferred from what is envisaged in the FDRE Constitution, Article 44 (2), as follows:

All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.

At this juncture the above constitutional provision is not directly applicable to private investors. First, since it is a general principle, it needs detailed proclamation for its implementation. Yet, so far, there is no such type of legislation that deals with resettlement and rehabilitation programs. In other words, this one provision by itself is not enough to carry out resettlement and rehabilitation

³¹ See, for example, many Resettlement Action Plans (RAP) of various World Bank or African Development Bank funded projects of the Ethiopian Electric Power Corporation (EEPCo), Ethiopian Roads Authority (ERA), and Ethiopian Ministry of Water and Energy posted on the web.

³² The World Bank adopted an Operational Manual, of which, OD 4.30 has to do with “Involuntary Resettlement.” The directive on “involuntary resettlement” describes the Bank’s policy and procedures on involuntary resettlement, as well as the conditions that borrowers are expected to meet in operations involving involuntary resettlement. The purpose is, in short, to reduce the damage caused to the people by restoring their livelihood and by creating opportunities to make them sharing from the project.

³³ The International Finance Corporation (IFC) is World Bank Group’s private sector investment arm, and it adopts a policy that requires private investors in which the Bank has an interest to develop first a Resettlement Action Plan (RAP) before they start moving the people. The RAP is supposed to specify the procedures the company would follow and the actions it will take to properly resettle and compensate affected people and communities. See IFC 2012. *Policy and Performance Standards on Environmental and Social Sustainability* International Finance Corporation, World Bank Group.

works. Secondly, even if it may be said that the constitutional principle contains enough information for its applicability, it does not directly refer to private investments. *Displacement of people as a result of state program* does not refer to expropriation cases for private entities. What makes it uncertain is that all expropriations are not necessarily related to *state programs*; expropriation may also be made for private programs/investments. In other words, if a certain land is transferred to a private investor, neither the investor nor the government is duty bound to resettle or pay the cost of resettlement for the people, except the usual compensation, of course.

What seems to us is, though, this principle of rehabilitation applies in selected displacement/expropriation cases, where the government moves people, en masse, from one place for a certain huge program that affects the livelihood of many people. In such cases, payment of compensation may not be enough for the people are numerous in number and the effect of the damage is too big to ignore. In such cases, the government, besides payment of compensation, may prepare a program to resettle them and help them to regain their capacity. Resettlement program is different from the regular compensation in that on top of the compensation, the people may be assisted to resettle in one area and to rehabilitate. These cases include, for example, sugar, fertilizer, large scale agriculture investments.

In spite of the absence of separate resettlement program legislation, the existing expropriation legislation dedicates one provision to this program. Under the expropriation proclamation, it is declared that “With respect to the implementation of the proclamation, *woreda* and urban administration shall have the responsibilities and duties to...provide them [the displaced people] with rehabilitation support to the extent possible.”³⁴

One important point inferred from the reading is that the law imposes a duty of rehabilitation program only, not resettlement. Resettlement presupposes the preparation of host land to settle the people in one place, with all the necessary services. Lack of excess arable land in rural areas seems to discourage the government from pursuing resettlement program as a strategy. As we shall see soon, one of the possible compensation modalities is provision of land-to-land compensation in the event of expropriation. The land found may not be big enough to accommodate all displaced

³⁴ Art. 13 (1) of Expropriation Proclamation.

people. Rather the strategy is to insert and assimilate one or few farmers in one locality and disperse the others in other places. There is no need of complete resettlement programs.

The other point gathered from the reading of this provision is that the proclamation requires the *woreda* and urban administration to “do their best” in providing the rehabilitation support. This means, rehabilitation support is provided to the displaced people provided that the *woreda* or municipality has the ability and capacity to do so. In reality, except for the usual compensation package, since *woreda* and municipalities lack separate budgets for this purpose, rehabilitation assistances are not given to expropriated people. One of the noted problems, for example, with regard to farmers is that they squander out the money they got as compensation for lack of entrepreneurial skills.³⁵ So far, there is no clear practice on part of *woreda* or urban centers that helps farmers in investing their money.

4.5 Valuation and Compensation

The valuation system and compensation modality for expropriated properties is fully described under the Expropriation Proclamation No. 455/2005 and its implementing Regulation No. 135/2007 as well as the Afar Region’s compensation guideline. In this section first we shall see the compensable interests and then we shall proceed to the modality of calculating the compensation.

What is being discussed and described here is fully applicable to the two regions of Afar and Somali, as the Federal law perfectly applies to both regions also.

4.5.1 Compensable Interests

The following are the compensable properties under the expropriation proclamation (At.7&8) and its implementing regulation (Arts. 3-12) and Art.5 of Afar guideline

1. Land---displacement compensation
2. Property situated on the land (building, fence, animal shelter, trees, crops, grass)
3. Permanent Improvement to the land (clearing, terracing, irrigation tunnels, water wells etc)
4. Cost of removal, transportation and erection
5. Burial grounds—cost to cover their removal and new resting place.

³⁵DANIEL-WELDEGEBRIEL-AMBAYE 2009a. Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation 7th FIG Regional Conference. Hanoi, Vietnam, 19-22 October 2009 FIG (http://www.fig.net/pub/vietnam/papers/ts04c/ts04c_ambaye_3753.pdf).

4.5.1.1 Compensation for permanent or temporary loss of farm land

In Ethiopia there is no as such a compensation for the loss of land as land is considered public state property. Rather the approach followed in Ethiopia is to reduce the damage rather than fully redressing it. This is done in two ways: by providing land to land compensation or paying ten years' displacement compensation (Art. 7&8 of Proc 456/2005 & Art. 15,16, 17 &18 of Reg. 135/2007), Article 14 of compensation guideline of Afar region.

a) Land to land compensation

As far as possible a land to land compensation must be provided that is comparable to the expropriated one. A land to land compensation is given if excess land is available in the woreda. Sometimes when the expropriation encompasses two or more woredas, a host land may be found in one woreda to resettle displaced people from other woredas. But it needs detail discussion with woredas and zonal administration. If land to land compensation is made, the displacement compensation to be provided for the displaced people will be equal to **one** year's harvest price (Art. 8 of Proc. 455/2005 and Art. 16.1 Of Reg. 135/2007).

b) Displacement compensation

Another mechanism to reduce the harm caused to the displaced people through expropriation is paying them full displacement compensation. In the absence of replacement land, a ten years income (calculated by taking the average income of the preceding five years) shall be paid. The displacement compensation is not as such a compensation payable for the loss of the land. It has to be considered as part of rehabilitation program.

c) Compensation for Temporary loss of land

Where a rural land is expropriated only for a limited period of time, the multiplication factor for calculating the displacement compensation shall be the number of years for which the land is cleared; provided, however, that the compensation obtained by such calculation shall not exceed the amount payable [for permanent displacement] Art. 18 of Reg. 135/2005).

4. 5.1.2 Compensation for Property on and improvement to the land

According to Article 7 (1) of Proc. 455/2005, "A land holder who lost his/her holding by expropriation will be compensated for the property situated on the land and for permanent

improvements made to the land.” The law recognizes in this provision two types of interests: *property situated on the land* such as building, trees and crops and *improvements made to the land* such as terracing, clearing, and tunneling. This difference is made because of the different valuation method applied in both cases. While compensation for the property situated on the expropriated land should be determined “on the basis of replacement cost of the property”, the Compensation for permanent improvement to land should be “equal to the value of capital and labour expended on the land” (Art. 7.2 &4). Besides, the holder of the land will also be compensated for the costs he/she incurs for transportation and erection of the property (Art. 7.5).

a) Structure

Article 7 (2) of Proclamation No. 455/2005 states the amount of compensation for property situated on the expropriated land shall be determined on the basis of “replacement cost” of the property. Similarly, Article 3 of Regulations No. 135/2007 ensures that the amount of compensation for a building shall be determined on the basis of the current cost per square meter or unit for constructing a comparable building. Property valuation process for compensation for the structure shall include current cost of constructing floor tiles, septic tank and other structures attached to the building; and costs for demolishing, lifting, reconstructing, installing and connecting utility lines of the building.

These laws clearly stipulate that regardless of the type of property expropriated the amount of compensation shall be determined only on the basis of replacement cost of the property. These laws also assume that the recent catalogue of the costs of structure or building materials is available since in calculating the valuation of a building the committee shall take into account the current market price of construction or utility materials.

The economic interpretation of the above laws implies that replacement cost approach estimates the present cost of building a structure that is similar to the existing structure under assessment, with a subtraction of accrued depreciation from the total present cost of the substituted structure. However, there is no provision that indicates how accrued depreciation is estimated. Moreover, the above mentioned laws do not explicitly put what would be the fate of value of salvage materials from the destroyed structure: whether to be deducted when this approach is used for structures or no is not clear.

In fact, compensation shall be paid only for the cost of removal, transportation and erection for property that could be relocated and continue its service as before provided, however, that such payment shall be acceptable only where the condition of relocation property conforms with the requirements of the appropriate rural administration land use regulation or plan.

b) Other properties on the land

The formula for calculating the amount of compensation payable in accordance with Regulations No. 135/2007 shall be as follows:

Compensation for Crops	The total are of the land (in square meters) X Value of the crops per kilo gram X Amount of crop to be obtained per square mete + Cost of permanent improvement on land	If loss of land is without replacement land, compensation shall be multiplied by ten
Compensation for unripe Perennial Crops	Number of plants (legs) X Cost incurred to grow an individual plant + Cost of permanent improvement on land	If loss of land is without replacement land compensation only for one year
Compensation for ripe Perennial Crops	Annual yield of Perennial crops per Kg X Current price of total produce of Perennial crops + Cost of permanent improvement on land	If loss of land is without replacement land, compensation shall be multiplied by ten
Compensation for Protected grass	Area covered by the grass per square meter X Current market price of the grass per square meter	If loss of land is without replacement land, compensation shall be multiplied by ten
Compensation for trees	The level of growth of the tree, X the current local price per square meter or per unit (Alternatively, the owner of trees may, in lieu of compensation, cut and collect the trees.)	If loss of land is without replacement land compensation only for market price of trees

c) Improvement to the land

Article 9 of Regulations No. 135/2007 also recognized value calculation of permanent improvement on Rural Land for compensation purpose. Accordingly, the amount of compensation for permanent improvement made on a rural land shall be determined by considering the current cost of machinery, material and labor incurred for clearing, leveling and terracing the land, including costs of water reservoir and other agricultural infrastructure works. Improvement to the

land includes such works as terracing, leveling, water wells, irrigation canals, roads and clearance of land.

d) Valuation of loss of Trees

The amount of compensation for trees shall be determined on the basis of the level of growth of the tree, and the current local price per square meter or per unit. This means that the market value of trees of a similar age and use should be used in valuation. In other words, Compensation for trees is equals to (large No. of trees x unit price) + (medium No. of trees x unit price) + (small No. of trees x unit price).

It should be noted that the federal Regulation No. 135/2007 does not make difference on the type of trees. Whereas, in practice both regions for Eucalyptus or similar tree planted for firewood or construction will be multiplied by 3 fold assuming that it can germinate and produce 3 times.

e) Valuation for loss of Burial-ground or Grave yards

According to Regulations No. 135/2007 the amount of compensation for a burial-ground shall be determined on the basis of the estimated costs incurred for removing the grave stones , preparing other burial-ground, transferring and relocating the corpse and for conducting religious and cultural ceremonies in relation thereto (Article 12 (1)) . The regulation also asserts that the amount of direct and indirect costs for all the activities shall be determined on the basis of the local market prices of materials, transport services labor.

f) Valuation for loss of worship places (eg. Church or Mosques)

The compensation laws in Ethiopia settings do not provide direction for how compensation is calculated for special properties like churches or mosques in case of expropriation. Market value or fair market value is not, and indeed has never been, mandatory in the Ethiopian laws as standard for compensation of special-purpose properties such as churches or mosques. At the same time, in Ethiopia both worship places often play a major role in livelihoods. Therefore, not compensating for the loss of such property would absolutely fall short commensurate compensation and may bring unforeseen problems.

Theoretically, the cost approach is most applicable in valuing certain types of properties where the properties rarely change hands in the market, or the properties is not designed for income generating. In these circumstances, analysis of prices in the market or considering property income generating capacity will provide little evidence for a useful valuation. Therefore, the cost approach is more appropriate to develop an opinion of the fair value or use value of special-purpose properties such as places of worships. To compensate places of worship such as churches and mosques, cathedrals it is therefore, recommend appraiser to use a replacement cost valuation approach. This approach to estimating places of worship replacement costs is simpler, more precise and provides a greater degree of ongoing consistency with the statutory mandate.

4.6 Roles and Responsibilities of Institutions

There are different actors and organs that involve during the expropriation and land acquisition process. Besides the project owner, different government organs are also involving during expropriation, Valuation and resettlement processes. Their roles are listed hereunder:

4.6.1 Woreda Administration

The woreda administration is responsible for the expropriation of the land. The decision could be reached either by the woreda itself or a higher federal or regional government organ (Art. 3.1 Poc. 455/2005). This means the woreda is also responsible for the rest of the activities found in expropriation procedure such as public discussion (awareness creation), issuance of notice, setting up a valuation committee and following its work flow, and paying or following payment of compensation. The main roles and responsibilities of the woreda are:

- Organize and initiate public discussion and consultation
- Issue notice when the time is appropriate
- Set up a valuation committee that is constituted of 5 people from the land administration office, agricultural office, local elder and other relevant offices
- Assign chairman and secretary of the committee
- Determine time and place of valuation work
- Inform land holders, and neighboring land holders and kebeles to attend during inventory and measurement
- Ensure that proper documentation being taken by the committee
- Approve the compensation amount assessed by the committee and inform same to implementing agencies and paying organs
- Follow that compensation is paid, replacement land is given etc to the expropriated person
- Organize and implement resettlement program

4. 6.2 Valuation Committee

The valuation committee is responsible for inventory of assets and assessment of value of such assets. The members of the committee should not be more than five people including people from selected offices with relevant knowledge and expertise. People from agriculture office may be ones who involve in providing information about the crops and trees' age, productivity, yield and so on. Local elders may be relevant to provide market information for such goods. Woreda land administration office may be relevant in terms of assessing, calculating and provision of data on ownership and so on. The committee members are not expert surveyors and valuers. For this reason, they may be assisted by professional surveyors to capture data of size of land. In any case their responsibilities are listed hereunder:

- explain the purpose of valuation to property holders
- record and take inventory of land use, size, and productivity level;
- identify land holders and their legal right on the land;
- take inventory of all property and improvement made on the land such as house, fence, farmhouses, barn, shade, crops, trees, grass, terrace, water well, etc in the presence of the holder and neighbouring people as well as representative of the local kebele office
- ensure the presence of land holders and neighbours during land measurement and inventory of assets
- make all members of committee and owners of assets sign on the inventory documented
- present the result of the inventory to public for approval
- get necessary data on productivity of previous years from relevant sector offices
- analyze and calculate the amount of compensation without revealing it to anybody before its approval
- finalize the valuation and send the outcome with all the necessary document and minutes to the woreda administration

4.6.3 Zonal Administration

Zonal administration is an administrative apparatus found in between the woredas and the region. Concerning land expropriation, their role is limited to follow up and provision of logistical support to the woredas. But when the land required is located in two or more woredas, zonal administration may play the role of organizer and judge in case of intra-woreda boundary conflicts.

4.6.4 Regional Land Administration Bureau

The regional land administration bureau is mostly assists the woredas in their many endeavors to administer land. Its main task in relation to expropriation is listed below:

- Participate in public discussion, especially when the project is large

- Provide trainings to valuation committee
- Approve the expropriation of land (if it falls under its mandate)
- Facilitate land expropriation decision that comes from other federal or state organs
- Provide technical assistance to the valuation committee, such as surveying land

5. Land Registration and Certification in the project areas

Land Registration and certification is for long justified as a means to guarantee tenure security, a protection against arbitrary state intervention and expropriation. To this end, Federal and Regional Rural Land Administration laws do recognize the need for land registration and certification which was started in Ethiopia since 1998. Existing laws the need to register and certify all types of lands: private, community and state holdings.

During the past two decades, many regions have made considerable progress in registering rural land rights, mostly without surveying and mapping the boundaries of the parcels through a process known as first level registration. According to information from Ministry of Agriculture, since its start in Tigray in 1998 up to 2005, over 9 million first level certificates were delivered in Ethiopia, the largest delivery of non-freehold rights in such a short time period in Sub Saharan Africa (Deininger et al., in press)

In recent years, regions start to implement second level certification. The new registration and certification system involves recording the precise geographical locations and sizes of individual farm plots using technologies such as GPS, satellite imagery or orthography. Farmers receive plot-level certificates with maps rather than a household-level certificate as the case with the first level certification. This project is progressing well in the four main regions as well as the Benishangul Gumuz Regional state.

Both Afar and Somali Region's Rural Land Administration proclamations dedicated provisions which state that communal and private lands should be surveyed and registered using traditional or modern surveying equipment and issue certificates based on detailed laws which should be issued. However, this laws is not yet fully implemented in these regions.

Concerning implementation of certification in lowland Ethiopia, some studies were made especially in relation to the pastoral land governance system and possibilities of regularizing the land in the low land Borena zone of Oromia region. The need to protect pastoral land rights has also been felt by the government as well. There are different development factors that threatens

pastoral lands such as, urbanization, sedentary livelihood, and expropriation of land for big state projects.

With the help of the LAND project of USAID the Oromia Region managed to draft a regulation on the regularization/certifying of pastoral rights.

The draft regulation³⁶ contains important provisions that are critical to protect pastoral communal land holding rights including:

- i. pastoral communities are given the holding right to the communal lands under their control and they traditionally have been using for grazing and other purposes;
- ii. The right of pastoralists to move from place to place in their traditional grazing orbits is recognized and shall be protected;
- iii. Pastoral landholdings will be identified, surveyed and registered in the name of the community;
- iv. The boundary of pastoral communal landholdings is meant to give the land an owner/holder and not to prohibit other pastoral communities from using it under traditional arrangements and negotiations;
- v. The registered communal landholdings shall be managed by the customary institutions applying customary laws.
- vi. The customary leaders will represent each community in matters relating to the use of the communal lands. Customary institutions and customary laws are, therefore, recognized under the statutory law. Courts and government institutions are required to recognize the decisions of these customary land management entities with respect to land and natural resources management.
- vii. The customary land management institution, managed by the *abba dheeda*, is now modified and a management committee established for each *dheeda* that comprises all representatives of the *reeras* and *abba heregas*, (water managers), and clan representatives who are called *Ayu maddas*. Pastoral communities have to agree on the re-formation of the *dheeda* management and have to incorporate it in their bylaws. Each registered community has a bylaw that governs matters which are not included in the customary law, for instance, establishment of the *dheeda* management committee; finance management; election and recall of members of management committee; etc.
- viii. The community of a registered communal landholding is given legal personality under the regulation which will enable communities to own property and stand as a person in a court of law through their representatives.
- ix. Pastoral communities have the right to be compensated where government takes their landholdings for public purposes. (The regional Bureau is required to develop a communal land holding expropriation, valuation and compensation guideline.)
- x. With respect to transfer rights, communities are given communal landholding rights which comprises the right to:

³⁶ As reproduced in Solomon Bekure & et al, *Formalizing Pastoral Land Rights in Ethiopia, a breakthrough in Oromia National Regional State*, Paper presented in the 2018 World Bank Land Conference, Washington March 18-23,2018

- Indefinitely use the communal land according to the customary law and agreement of the community.
 - Lease portion of their communal land holding to investors where 75% or more of the constituents agree;
 - Contribute portion of the communal land as equity to a proposed investment with third parties. In other words pastoral communities have the right to jointly develop their land with an investors, provided 75% or more of members agree.
 - The regional land use plan is binding whenever a land use change is proposed.
- xi. One of the major problems is management of the revenue generated from communal land holdings. Management of such revenue is difficult because members of a communal land holding community are not registered and cannot be easily identifiable. Traditionally a person is a member of a community where he/she belongs to one or more of the clans in a particular community. A member of a clan could be living in different places but according to the people, even in Borana where land is held on ecological basis, such person is considered as community member and he/she has the right to share the benefits from the communal land whenever he/she comes back. So, creating a management system/method where the revenue will be used to the benefit of all is proposed. Under the proposed finance management, the revenue generated from lease or compensation, etc., will be deposited in a bank account opened in the name of a community and will be used for development or other purposes decided by the dheeda management committee.

There are also some fragmented efforts to introduce land certification and registration in Afar and Somali regional states. The effort is focused on registration of communal range lands as private holdings are assumed to be registered based on existing laws. To this end both Afar and Somali regions have started to implement registering privately held farm lands.

6. The Implication of land Use Change through Project Activity

In the project areas there are limited agro ecologies which give little space for diverse land use arrangements. Most of the land is dedicated for communal use purpose and only a fraction of the land is used for farming activities. Customary land administration identifies land areas dedicated for communal range land/pasture, water access points, farming and protected areas. There is a general direction, in the regions to introduce modern land use plans and categorize different agro-zones of the region for different land use purposes.

The general principle and assumption is that any project activity on land is carried out based on existing or modified land use plan. Modified means there may be case by case land use plan studies and adoption of land use plan in development corridors until region level land use plan is adopted. Land use plans are supposed to identify land territories as agricultural, forest, grazing, water

bodies, natural reserve, historical or archeological sites based on their productivity, suitability and natural and historical backgrounds. Therefore, any private or public projects on land need to adhere to this regulation. This means, a land which has been used as grazing land, may be declared in the land use plan as future agricultural land and hence the conversion of the grazing land to farm land is a legitimate one.

In other cases, a grazing land or an agricultural land may be re-distributed after irrigation canals are built in the area. The law says the existing land holders need to be accommodated in the new redistribution of land, and until such distribution is completed, compensation must be given for the time they remain idle and for the property (house and vegetation) removed from the site. The idea is, there will be some years lapse between land taking for irrigation and dam construction and redistribution of land to land holders.

Similarly, any land that is included in the giz project area and which is identified in the land use plan as land for small scale farming or irrigational agricultural activity may be converted from communal unused or grazing land to such land uses. As this land will be acquired in consultation with public officials, this as well guarantees the legality of the procedure.

When a certain land use is converted from one regime of land use to another one, the interest of land users may be affected one way or the other. For instance, in the regions under discussion, the users of the land may be pastoralists and the use of the land may be pasture or water. It may also be forest or farming communities. Upon conversion of this land to another type of use, previous land users may or may not be the end users or beneficiaries. For example, in irrigation projects, the people who used to hold or use the land on which the dam is to rest or irrigation canals to be constructed will be given new land in the command area where the irrigation activity will be taken place. In other cases, the end users may be other people or the public in general such as in road construction.

In any case, the usual approach is payment of compensation for those who have proven interest on the land. Proven interest means that if their right can be proven by producing a land certificate or if the community or clan leaders or land administration committee can prove this use right over the land. Compensation may be given for loss of property and temporary or permanent loss of land

rights. Farmers and pastoralists who lost their land temporarily (e.g. 3 years), will be awarded compensation for the time when they stay idle. This happens when they are given the land back that was taken for temporary project activities (camp site, detour road, irrigation site...). On the other, when land is taken for ever as in road construction, urbanization and the like, full compensation package is given as per the laws discussed previously. But in both cases, properties are lost (house, trees, pasture, water) and compensation is proper.

In the case of the giz project, the case seems different and simpler. Land is being rehabilitated by building weirs over eroded grounds. This measure may cause land use change which benefits some and excludes others. The affected right may be right of passage, right of pasture, water wells or private properties such as farming, vegetation, or housing. The law doesn't cover, compensation for termination of right of way. There is neither compensation payable when communal property is transferred to other community members like local youth. Perhaps the project needs to leave or arrange natural and historical routes giving services to the community. However, in the project areas where land is occupied privately and if this person is forced to loss the land, compensation issue may be raised. In this process, the role of giz is to get permission from public administration (land Administration or other appropriate organs) and where necessary conduct discussion with the public. As the project work is for the public, regional governments are usually take the burden of compensation payments.

Giz is also responsible to explain and describe the advantages of the project work to community in general and community leaders in particular. In Afar and Somali regions it is imperative to get the consent of the community leaders and by extension the community before commencing any project activity.

It is also responsible for the preparation of all project documents, maps and related documents to realize the project. It needs to estimate the size and location of land necessary for project activity.

The land administration office or other appropriate organs are responsible for preparation of land requested, verifying that it is in accordance with existing land use plan, conduct discussion with the community affected, and estimate and pay compensation, if needed, and allow giz access to land to implement works necessary.

The issue of conversion of grazing or communal land into farm land doesn't necessary be followed by issuance of 2nd level land certificate. The fact that land use change happens by itself is enough to classify it as farm land. The issuance of land certificates in Afar and Somali region needs some process (at government and regional level) before it is realized in these regions.

7. Steps to be taken by giz during rehabilitation of land

From the readings of the regional rural land laws, it is clear that any rural development activities must be initiated at regional land administration office. Project owners may start the process with other stake holders, such as bureau of Agriculture or bureau of pastoral communities. Gradually the regional rural land administration office must bring down the question of land acquisition/access and development activity to local level. Where the land is actually used or occupied by individual people, there will be a need for expropriation proceeding and payment of compensation. Most of the land in both regions is held by the community to be used communally and it is imperative to secure the consent of the community through its customary leaders before engaging in any land based activities and pay compensation.

Involvement of community leaders is based not only on the customary practice of the people but also being recognized by formal laws of both regions. As the traditional power of the clan heads cannot be removed, the government prefers to involve them in the administration of land.

We suggest the following steps in the getting access of rural land during implementation of project activity:

1. giz needs to approach regional land administration/pastoralists bureau to get land for land development activities. Obviously this must be supported by good proposal and justification. In many cases, such initiation also gets support from federal institutions such as ministry of agriculture or ministry of federal pastoral affairs.
2. At this point in time, giz obviously has passed this step and may be prepared for next large scale expansion of project activity This needs further engagement with federal and regional governments as well as getting feed back from community
3. Regional land administration office using its experts at bureau, woreda or kebele level must consult community leaders on the need of development activities. In this case,

project owner (giz) must present its case and show to community leaders on the advantages of the development activity. It must also show the possibilities of land use change and how that will affect the community. In Afar region, there is evidence that detail study has been conducted on these activities. It is also commendable, in Chifra woreda, to involve the woreda clan head during inception study. This makes him more responsible.

4. Government representatives must also show the compensation package, where there is a need to expropriate land for the project activity.
5. Community leaders must in turn consult with the community at large to get support and explain the benefits of the project. This avoids any later opposition or resistance of community members to frustrate the project activity.
6. When there is adequate public discussion on the advantages and if the land needed is occupied by people for grazing, farming or housing purpose or if the land is developed and covered with crops, expropriation proceeding must start by taking inventory of assets and arranging compensation
7. In such cases, regional governments are supposed to pay compensation and definitely to prepare alternative land for re-settlement and land to land compensation.
8. Alternatively, to reduce cost of expropriation and time of expropriation proceeding, giz may also focus on state held land or undeveloped vacant community land for its project activity.
9. Once projects activity started monitoring of the project is necessary to check whether the community is happy with the results or potential outcomes. Also it is important to identify any dissatisfaction of community with project work as sometimes, projects may affect the interest of community in getting enough food and water for their cattle or obstruct traditional pathways in the rangelands.

8. Conclusion and Recommendation

From legal perspective, the land rehabilitation activity under pilot testing by giz shall be considered inline with the legal requirements if the construction of weirs is economically more

important than leaving the land as it is and adequate discussion being made with the community. The law requires the agreement of the community that uses the land. However, custom prevails in the area and hence abiding by customary practice is also part of the second legal requirement. The law impliedly recognizes the importance of customary leadership of the clan heads and hence a detailed discussion with them. What is more is as the pastoral community lives in mobile location and as more groups from different areas can have claim over a grazing area, the need to consult with and securing agreement of clan heads is a paramount importance.

This is the case as far as the land would be maintained under the community's use. But if the land is to be distributed to individual land holders, then how this shall be made and who would determine beneficiaries is a grey area. In reality, it is always the clan leaders, in consultation with community, who select beneficiaries of new farm lands. However, this needs a firm legal backing by formal laws.

Another area that needs a legal confirmation is the post rehabilitation period of the land. Whether or not after rehabilitation the community or some members of it will surely be the beneficiary should be known. What if after rehabilitation the land becomes suitable for agriculture and the state gives to investors? In principle, the state can do that unless some legal limitation is put on it.

The laws are not clear how to compensate members of community who are denied access to community land when the land is transferred to exclusive use of others. Whether temporary agreement of the community would be enough guarantee for individual holders of land is not surely known. Of course, clan leaders confirmed that their decision would be a final one as community would not challenge that. But the contrary may happen during drought and shortage of adequate resource which warrants legal backing for such rights.

Hence, we give following recommendations to fill the gaps:

1. GIZ shall initiate in consultation with regional appropriate organs a procedure that maps out the whole process of the rehabilitation which shall be followed by all stakeholders.
2. There shall be a new regulation or a rule to be included in new regulation to be adopted that addresses the post rehabilitation of communal land:

- a. if land is suitable for agriculture who should decide whether the land to be distributed to private individuals?
 - b. who should nominate beneficiaries?
 - c. What guarantees should be given to new holders/owners besides consent of the community, such as certificates?
 - d. Should the rest of the community be compensated when they are denied access to communal land? If yes, how this to be assessed and distributed?
 - e. What protection should be in place to guarantee that rehabilitated community land would remain in the use of the community or its members? Not to be transferred to investors.
 - f. who will be in charge of protecting and maintaining the weirs?
3. If there is a need to expropriate farmlands or trees for rehabilitation purpose, laws must be clearly set out that regional governments would be responsible for compensation
 4. GIZ should conduct some sort of assessment from time to time to verify community is satisfied with the process and the project activities.
 5. GIZ should push for regional government to adopt land use regulation that would be used as direction on project activities.
 6. GIZ shall encourage regional governments to issue land certification for private lands acquired in in this process

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