

# ANALYSIS A POLICIES AND PRAXIS OF LAND ACQUISITION, USE, AND DEVELOPMENT IN NORTH SUMATERA

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North Sumatera is one of the few Indonesia countries that have implemented a revolutionary land reform program that still retains the relics of the socialist ideology, specifically, the state ownership of land. Since 1975, the country has undergone a major transformation in implementing land reform policies and other major economic programs that have contributed to the development of an unsustainable land use structure that has become a burden on the national economy. The purpose of this research is to examine the current land use system in the context of the various policies and programs of the government. The analysis reveals that the land use system in North Sumatera is riddled with a host of problems including insecurity of tenure, fragmentation and diminution of farm sizes, corruption associated with land stocking by individuals and corporations with strong political ties, the dis-placement of farmers and poor urban residents, and the issue of expropriation and unfair compensation for land taken from land owners. The study recommends major reform programs related to right of ownership, land confiscation and compensation, institutional capacity building, protection of prime agricultural land and local environment, and addressing problems of land grabbing and land banking.

## I. INTRODUCTION.

Land ownership rights in North Sumatera are defined in the 1945 Constitution, which states that land is owned by the Peoples of Indonesia (defined as Nations and Nationalities of Indonesia) and individuals have the right to free usage of land, protection from eviction, and the right to be compensated in case of expropriation (FDRE, 1995).<sup>1</sup> However, by not granting free holding of land with the rights of exclusivity and transferability, the land ownership system still retains the vestiges of the socialist system of the Derg era. The policies and practices of land management including state ownership of land, the lease system, ex-propritation and compensation practices parallel the land use and management systems of China.

Although the constitution has defined the basic rights to use land, the landholding system in Ethiopia has

become so complex that there is a growing feeling of uncertainty among landowners and investors. This problem is related to ambiguities in land use legislations and the system's failure to guarantee the core property rights associated with land ownership – the right to own and transfer land, the right to mortgage, and the right to exclude others. More importantly, there is no clear provision for land markets nor are there institutions to provide the legal security for land markets to function. A related problem is the issue of land redistribution. Although the Federal legislation (Proclamation 456 of 2005) rules out land redistribution, state legislations have enacted conflicting laws on conditions for redistribution. For instance, the Oromo legislation allows redistribution of irrigable land; Amhara and Southern regions allow redistribution depending on the wish of the community. Thus, the present landholding system has

created an am-biguous environment that discourages farmers from investing, and by not guaranteeing the core property rights associated with land owner-ship, the system has imposed an unsustainable land use structure that has affected both the security and efficiency of land use (Rahmato, 2009; Nega et al., 2003, Crewett et al., 2008).

The purpose of this research is to examine the current land use system in Ethiopia in the context of the various policies and programs implemented by the government. It is also to assess how the land-holding system is impacting land acquisition, use, and development including the major problems that have undermined the security of land ownership and contributed to loss of confidence by farmers as well as investors. The study will also examine issues of restrictions on use rights, the ensuing corruption associated with land stocking by individuals and corporations with strong political ties and the un-precedented profit that they are making from sale of land, the dis-placement of farmers and poor urban residents, and the issue of expropriation and unfair compensation for land taken from poor farmers.

The paper is organized into eight sections. Section 1 presents the purpose of the paper while Sections 2 outlines the framework and sections 3 and 4 examine the legal basis of land ownership and the debate on whether to privatize land respectively. Section 5 analyzes the different land use types and the legislative guide for development and acquisition, and section 6 examines land transaction and problems of corruption in land development. Section 7 focuses on land expropria-tion and compensation while Section 8 presents the conclusion and recommendations for change.

## II. Dynamics of state intervention and land ownership rights: a framework

Analyzing the dynamics of state intervention and the role of state agencies in land development is important in understanding how land use changes occur under different social and political structures. There is a wide range of literature examining land development in both so-cialist and non-socialist countries and how the role of the state and its agencies can impact land development (Lin, 2009, 2004; Marcuse 1996; North 1991; Bertaud and Renaud, 1994). In general, based on main-stream economic arguments, land in many western countries is closely tied with individual decision-making behavior where the individual is treated as a rational actor interested in maximizing benefits by ra-tionally responding to market situations (Healey and Bennett 1990; Dale, 1997). The state, in return for political and material support, develops rules and regulations on how groups or individuals can use land to reap maximum benefits (Evans 1997). These rules and regula-tions are expected to create the necessary environment for undertaking development initiatives and securing land rights. By contrast, in so-cialist countries, the role of the state occupies a primary position in regulating land development programs (Lin, 2009; Dale 1997). Land in socialist countries is treated as a means of production rather than as a commodity for transaction; and the state, that often has an intimate relationship with land development process, continues to enact reg-ulations and legislations, to meet socialist objectives (Lin, 2009; Marcuse, 1996).

This general framework that prevailed in many socialist countries began to make

a dramatic shift, as a result of the wave of political change that took place among East European countries (after the fall of the Soviet Union) and the globalization phenomenon that impacted many developing countries including China. This wave of change, among other institutional and economic reform programs, required states to undertake what [Lin and Ho \(2004\)](#) referred to as “institutional fixes” to liberalize their land holding system, specifically the institutions and laws governing the relationship between land and its users. As part of their reform programs, the states decided to commoditize land to attract local and foreign investments. Commoditization of land also meant taking specific measures to legitimize the right of ownership to land, providing security to property owners and investors, and responding to emerging land markets for development. They also had to deal with the problem of shortage of housing and deteriorating infra-structure in their cities, and inefficient use of land in their rural areas after many years of socialist experiment. Given such developmental challenges, the states had to clarify property rights and usage of land by modifying the legal basis for the rights of ownership of land.

This wave of change that swept through many socialist countries did not spare the land holding system in Ethiopia that existed under the Derg. Following the 1975 land reform, land under the Derg was owned by the state with no clear guidelines on the transactional values of land ([Proclamation 31/1975](#); [Rahmato, 1994](#)). The EPRDF that took power from the Derg in 1991 instituted several land reform programs that had wide range implications throughout the country. The

decentralization of local power and the creation of *killils* (ethnic-based administrative regions) with the power to enact their own laws and regulations governing land further complicated the relationship between landowners and users. Land rights became convoluted and ambiguous as one must deal with conflicting federal and local legislations as illustrated in the sections below. At the same time, the government purporting to manage a ‘developmental state’ continues to play a leading role in land development ([Clapham, 2006](#); [Abbink, 2011](#); [Fourie, 2011](#)). Also, the market driven property development industry has provided a powerful incentive to local governments for land development resulting in the displacement of thousands of poor farmers and urban residents ([Alemu, 2012](#); [USAID, 2004](#); [Teklu 2003](#); [Mulatu, 2015](#)). The outcome of these changes is to create an unsustainable land development system with a major impact on the national economy. In the succeeding sections, we will examine the land development system under the current government and how the new rules and regulations have impacted land use and ownership rights.

### **III. The legal basis of land ownership in North Sumatera**

The statutory framework for current land ownership system in North Sumatera starts with the 1945 Constitution ([FDRE, 1995](#)). In defining ownership rights versus use rights, Article 40 (3) of the Constitution states that “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.” Article 40 (7) also states that “every Ethiopian shall have the full right to the immovable property he/she builds

and the per-manent improvements ... on the land ... including the right to alienate, to bequeath ... or claim compensation for it." It also acknowledges, in Section 8, that "the government may expropriate private property for public purpose subject to payment ... of compensation to the value of the property." Thus, Article 40 and its various sub-sections make it clear that land in Ethiopia is owned by the State; individuals have only use right to a parcel of land but no right to sell or mortgage land directly; the government has the right of eminent domain, and individuals are entitled to claim compensation for property taken by the government. By contrast, there is no reference to some of the important principles of land ownership system, specifically the principles of security of land rights, equitable access to land, protection of fragile land resources, and management and administration of land.

In general, one can identify three major types of land holding systems based on geographic areas – rural, urban and peri-urban areas.

There are major differences on how one acquires and develops land in these three areas and they are related to the rights and privileges granted in the Constitution and other regional legislations, the land management systems instituted by local governments, and the reaction of land owners at the regional and local levels to deal with problems of uncertainty and land management. Fig. 1 presents a schematic illustration of the three types of landholding systems. At the top of the pyramid is the State (Federal Government), which owns land on behalf of the Nations, Nationalities and Peoples of Ethiopia. Article 5(1) of the Constitution provides the power to enact

laws on land use and conservation to the Federal government. Accordingly, in 1997 the Federal government enacted the Rural Land Administration and Land Use Law (Proc. 87/1997), later replaced with Rural Land Administration and Use Proclamation (Proc. 456/2005), which delegates regional governments to enact rural land use laws.

In rural areas, regional governments, through their woredas and kebeles (lowest administrative units) redistribute land to farmers. They also issue certificates that affirm the rights of individual farmers to a piece of property in perpetuity. In 2005, the federal government enacted Proc. 456/2005, Article 9, which states that there would be no further land redistribution except under special circumstances. However, studies by Rahmato, 2009; Nega et al., 2003; Ali et al., 2011 maintain that lack of security of tenure still prevails. Farmers have the right to transfer their land through inheritance or as a gift, but this right to transfer can vary from region to region. For instance, in Oromo areas, children with other means of income other than farming for their livelihood cannot acquire/inherit use rights, in Amhara areas the regional legislation allows inheritance of land by will to any farmer engaged in agriculture regardless of blood relations. Another major limitation of the federal legislation is its failure to address issues of land management in pastoral areas. Article 5 of the 1995 Constitution recognizes that pastoralists have the right to free land; however, farmers in pastoral areas traditionally follow a nomadic life, and individuals do not have a claim to a plot of land. Land in these areas is communally owned and there are conflicts on grazing

boundaries, water rights and land rights that regional governments try to address.

In urban areas, the management of land rests with municipalities or towns that serve as agents of the state. They allocate land to diverse groups based on use through two methods. The first method is to grant land to public institutions (schools, hospitals, government offices, etc.), with no time limit. The second method is to transfer land through a lease system which, according to [Proc. 80/1993](#), allows individuals to use land for a fixed period – residential for 99 years, commercial for 60 years, industrial for 70 years, institutions for 90 years and other uses for 60 years. Individuals and commercial entities bid or submit a tender for a piece of property and the winner has the right to use the property for the specified period of time. These two land allocation methods constitute the primary market for land use rights. The secondary market is the exchanging of the “use right” for other transactions, or for meeting obligations such as serving as a collateral. In 2011, the government enacted [Proc. 721/2011](#) to replace [Proc. 80/1993](#), which required all land, including inherited land to comply with the lease system at the time of transaction. The long-term objective of the government is to bring all land transactions under the lease system. The third major category is landholding in the peri-urban areas, which are transition zones that include the suburban areas as well as satellite towns and surrounding rural areas. Peri-urban areas are also areas where formal and non-formal tenure systems and land transactions (both legal and extra-legal) exist side by side. As land continues to be exhausted within the city boundaries, major political.

**Table 1.** Land Rent for selected regions (in birr per hectares/year).

Region	Maximum Rent	Minimum Rent
Kabanjahe	79.37	14.21
Deli Serdang	25.00	15.00
Binjai	30.00	20.00
Stabat	135.00	70.00
Parapat	117.00	30.00
Samosir	40.00	30.00

**Tables 2.** FDI in farming by country, 1995–2011.

Firm	Pre-Implementation		In Operation		Approved FDI	
	No. of	Land size in	No. of	Land size in	No. of	Land size in
Country	Projects	000 ha	Projects	000 ha	Projects	000 ha
India	88	894.1	10	41.3	117	1072.55
Saudi Arabia	95	432.1	9	8.7	109	441.1
USA	111	177.7	9	1.6	138	38.6
Israel	95	195.7	19	8.4	123	205.8
UK	44	90.8	10	2.9	61	144.8

#### IV. CONCLUSION

Over the past four decades, Ethiopia’s land system has experienced significant changes as ownership rights and land use regulations continue to be modified under both the Derg and the EPRDF governments. The recent changes are occurring in a politico-economic environment where the state is transitioning from a socialist system to a market-based economy, and the government is purporting to play a primary role as a ‘developmental state’. Whether the current Ethiopian state can be characterized as a ‘developmental state’ is a question that many scholars are presently debating (see works by [Clapham 2006](#), [Fourie 2011](#), [Abbink 2011](#)); but the land policies and programs are having a profound impact on land development. The government has intervened in a significant manner by enacting a series of legislation and implementing major development programs that have impacted the lives of many farmers and urban residents. It also has contributed to the

development of an unsustainable land use system that has become a burden on the national economy.

in Ethiopia including uncertainty of ownership, ambiguity of federal and state legislation regulating land, diminution of farm sizes, land grabbing, displacement of poor farmers and urban residents, corruption and bureaucratic inefficiency in land management, and lack of strong institutions to adjudicate land cases. The analysis shows that despite the government's claim that Ethiopia is a 'developmental state' that pro-motes a free market system, the land use legislation and programs still retain the relics of the socialist ideology. Indeed, many of the land use systems including state ownership of land, the lease system, confisca-tion and compensation practices, relocation of farmers and urban re-sidents and the characteristics of the regulations governing land use seem to parallel the land use and management system in China.

Given the diversity of criticism and problems that the landholding system faces, it is imperative that the government revise its land policy to formulate an appropriate policy framework that would address many of the land use and management problems raised above. Some of the key areas that need the government's attention include the following.

a. The right of ownership of land – The argument that “state owner-ship of land” protects the landowner from the vagaries of the free market and the chicanery of unscrupulous land speculators is not borne by the facts on the ground. Land in Ethiopia is highly valued both for its economic and social significance. Studies have shown that over 90% of the farmers are reluctant to sell their farms. Historically, ‘land grabbing’ of the scale

we have witnessed in the last 25 years has not occurred in Ethiopia. Therefore, the argument that state ownership is beneficial for the Ethiopian farmer is not borne by economic or social justification. Equality of ownership for every citizen is the other argument why state ownership of land is advocated. However, the equality argument ig-nores individuals’ effort and willingness to take risks, which usually can lead to a free-rider problem ([Betraud and Renaud, 1997](#)). Private ownership of land provides security of tenure, the right to own and transfer land including the right to mortgage or commoditize land for a free transaction. More importantly, private ownership gives the in-dividual “the right of exclusion,” including the exclusion of the gov-ernment from taking one's land without proper cause and with no “due process of law.” Also, private ownership improves the efficiency of land use. A related issue often associated with lack of tenure of ownership is the impact it has on quality of land because of lack of security and the reluctance to undertake long-term investment on the land. Studies on some of the highland areas of Ethiopia show that there is a severe problem of land degradation as the soil in many areas has deteriorated and farmers are apprehensive about undertaking long-term investment (see works by [Demeke, 1999](#), [Gebremedhin and Nega 2005](#), [Gebreselassie, 2006](#)). A major step that the government needs to initiate is to iron out the ambiguities in land ownership by eliminating the existing inconsistencies between federal and state regulations and to grant the right to free ownership of land with no restrictions or lim-itations.

b. The lease system as an alternative option – The lease system as an alternative land holding form for some type of

activities, for instance, commercial and industrial uses, is not necessarily an obstacle to an efficient land use development. Experiences in Hong Kong, Singapore, Australia, London, and Stockholm show that the lease system can create positive impacts if properly administered, particularly in countries where population density is high. The system allows the community to review landholding conditions periodically, and benefit by capturing future land value increases as the economy improves. More importantly, it is a major source of revenue for financing infrastructure and other urban development projects such as housing, transportation, and utilities.

c. Structural change in the economy and its impact on land use and development – As the economic structure of Ethiopia's agricultural sector changes, the surplus labor in rural areas is bound to exert pressure on land use. Farm sizes have become very small, with average size down to 0.93 acres. As new families are formed, there will be a shortage of land to accommodate the surplus labor.

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