

Daniel B. Gebreammanuel. 2015. *Transfer of Land Rights in Ethiopia: Towards a Sustainable Policy Framework*. The Hague: Eleven Publishing, p. xxv & 301.

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An indication of Ethiopia's current approach to land policy appears a convenient starting point for this book review. The approach to land may be termed as people's ownership of land. It is primarily embodied in the FDRE Constitution (the Constitution). The following are some of its fundamentals. The approach disaggregates land rights into ownership and use rights.¹ While land ownership is exclusively vested in the people and is inalienable, Ethiopian peasants and herders are given use rights for a living without payment, immunity against eviction, full ownership over the fruits of their land and the right to demand commensurate advance compensation for their property on the land upon expropriation.² The policy pledges farmers and pastoralists the right to receive fair prices for their products.³ Implied is social justice through the possibility of land redistribution to meet new demands from the land poor and the landless.⁴ Also envisaged is land for investors with payment with a clear proviso that doing so must not trump priority rights of small rural producers.⁵ The Constitution further empowers the Government as a trustee "to hold land on behalf of the People and to deploy [it] for their common benefit and development".⁶ It envisions local and plural land administrations with "direct [popular] democratic participation" and implies a bottom up approach to agricultural development.⁷

The people's ownership of land has been interrogated by various forces. Their thoughts fall under three broad perspectives: full privatization, revisionist and associative ownership. The full privatization perspective prescribes for full private ownership of land for poverty reduction, respect for human rights, stimulation of agricultural productivity and local industries and for environmental protection. It argues that too little inequality in land endowments in rural Ethiopia is the main source of the country's predicaments. The perspective draws inspiration from liberalism that views private property to encompass the right to exclusive possession, use and disposition of a resource on individual autonomy and efficiency grounds.

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¹ The Constitution, Article 40.

² *Ibid.*

³ *Id.*, Article 41 (8)

⁴ *Id.*, (Article 40 (4 &5)

⁵ *Id.*, (Article 40 (6)

⁶ *Id.*, (Article 89 (5)

⁷ *Id.*, Article 8 (3) *cum* Article 52 (2) & Article 55 (2).

The revisionist view states that full private ownership of land is not necessarily a panacea for the ills of the country's land relations. It rather argues that land tenure security can emanate from a prudent implementation of the people's ownership of land as embodied in the Constitution if its implementation allows use rights with detailed, clear and comprehensive land laws and if there exists unrestricted land use rights transferability and an effective means of checking undue administrative discretion in land administration. The associative ownership view claims that land ownership shall be vested in a village and that each member of a village community and outsiders including the government shall be given use rights including regulated tradability on the basis of the decision of each village representatives.

The current book is about restrictions over transfer of land rights in Ethiopia and their pernicious far-reaching effects. It subscribes to both the full privatization and the revisionist approaches. Yet, it gravitates more towards the latter perhaps in the short-run. I believe the book is the most trenchant articulation of the revisionist approach and critique of people's ownership of land. Telling lines can be quoted from it. The first is its bedrock assumption which reads: "well-articulated and defined property rights which foster transferability of rights over land leads to sustained growth and development in Ethiopia" (p. xxi). The second passage runs,

...long-term lease provides access to land to the most active and the capital holder thereby boosting agricultural production in the nation in its diversified way. In turn, this system almost immediately brings about the credit facilities or may facilitate credit access. ... Therefore, overall development can be tried out in this way, and over time the country must *go to the freehold system, which completely leaves land to the force of the market thereby unleashing the potential in land for development* (p. 26) (Emphasis supplied).

The lines suggest removal of restrictions imposed on land use right transfers and the attendant overall benefits. The quote also advises evolution towards complete land marketization over time. Beyond and above the preceding passages, the characterization of the theme of the book as falling within the rubric of the revisionist paradigm (and its vision for long term complete land privatization) become evident from the reading of its preface and seven chapters.

The preface sets the book's research agenda, focusing on core issues facing Ethiopia's extant land law. The catalogue includes legal restrictions on transferability of land use rights, tenure insecurity attendant to land redistribution, lax expropriation regime and lack of fixed term for land use rights. The book argues that the consequences of these problems are avoidance of permanent investment, land fragmentation and environmental degradation and overall massive poverty that leads to human rights violations. Subsequent chapters develop these themes.

The first chapter provides historical development of land tenure regimes since the imperial time. During the Imperial period, the northern population was shackled by the *rist* system that prevented land transfers and led to incessant land litigation and land fragmentation (perhaps meant land miniaturization). In the period, the southern population suffered injustice in the hands of exploitative tenancy and evictions. During the Derg period, even

if the social injustice attendant to feudal land relations were addressed, frequent land redistributions and other imprudent agricultural policies including the grain quota system produced equality of poverty, land fragmentation and environmental degradation. In the current system, the economic and social justice of land has been dwarfed by political manipulations even if “The deadlock appears ostensibly clash in principles, namely, the principle of fairness and the principles of efficiency” (p. 22).

The second chapter considers existing federal and regional legislative land frameworks. This chapter argues that the Federal Government has a mandate to enact framework land legislation. This federal land law should be evaluated in light of human rights, self-governance, plurality, sustainable development, poverty elimination and environmental stewardship. The chapter, after assessing the federal and regional land laws in light of these constitutional standards, finds,

Fostering equality and abating the imperial era, discriminatory land-accessing rights is still the guiding motive that shapes the spirit of the land laws in Ethiopia...The rural land laws grant free access to all citizens as long as one wants to live on agriculture, yet this fact has created land fragmentation, land degradation, and forest depletion and resulted in an ever-increasing land shortage as the population inflates. The same fact exposed the environment, caused forest clearing in search of extra arable land and subsequent soil erosion. Besides, subsistence agriculture and the fragile environment coupled with frequent rain failure exacerbated poverty condition in the rural mass. The rural land law also immensely restricted transfer of land use rights in many aspects; for instance, transfer via renting, sharecropping, gift, and inheritance has been severely curtailed. The restriction on transfer of use rights tied the rural mass to the subsistence land and further restricted freedom of movement in search of alternative livelihood elsewhere since use right is a condition on effective residence (p.75).

The third chapter treats informal land deals especially in cash crop and urban, peri-urban areas where land has high economic value. The chapter reveals that various disguised forms of informal land transactions which are clearly contrary to the spirit and letter of the country's land law. The book envisages three possible factors contribute to the prevalence of informal land alienations. The first reason is “the restrictions and prohibitions prescribed in the statute law...” (p. 145). The second is “... the incompetence on the part of the government to put the law in action” (p. 145). The third factor seems to be economic desperation. There are losers and winners in the process. The book says small “farmers are always at the losing end” (118). It adds that “illegal transfer of land rights is boosting productivity” even if “the beneficiaries are not legal landholders” (p. 143). Courts in the Southern Region including the regional Supreme Court gives sanctity to informal land transfers in favor of economic elites invoking a wrong and twisted application of non-eviction principle embodied in the Constitution. Land administration institutions are also depicted as culprits in this illegal enterprise; they offer a cover to and facilitate informal land transactions. Ineffectiveness, corruption and land speculation explain official behaviors in relation to informal land deals.

The chapter further documents that the state engages in land transfers for large-scale farms in favor of investors in a way that infringes human rights, undermines collective self-

governance, raises environmental concerns and aggravates conflicts. Subjecting land use rights to free market by eliminating the restrictions on transfer of land rights is counseled to combat the ills land deals, informal or mega-land transfers.

The fourth chapter is in search for global land policy standards. It is also about evaluation of Ethiopia's various land laws. By considering UN, EU and AU guidelines regarding land, the chapter argues that there is lack of a comprehensive land policy, one-size-fits-all approach, lack of taking and pastoral people distinct view about land into account. It suggests reforming the country's land taking the soft land standards of these international institutions which set forth "standards of land reform policy, which are directed at bringing about poverty alleviation, social and economic growth, social justice, equality, and environmental protection" (p. 176).

The fifth chapter considers compliance of land laws of Ethiopia with human rights enshrined in the Constitution and international human rights instruments. It finds that the land law in place violates aspects of human rights that include the right to adequate standard of living, the right to food, the right to work and freedom of movement. It also finds that land rights of some social groups are infringed. This means women's land rights are not respected due to defective implementation and discriminatory customary practices. Land access right of the youth is not respected either. And the right to land of indigenous people's is being violated because of absence of responsible land allocation to large-scale agricultural investors.

The sixth chapter relates to whether land laws are compatible with environmental protection ethos. National policy and legal norms as well as international environmental protection principles are considered. Though the share of climate change is conceded, the land laws in place are held responsible for colossal environmental problems particularly in highland Ethiopia. These are land degradation, soil erosion, deforestation, and freshwater depletion, loss of bio-diversity and wildlife loss. The element of land policy indicted is the social equity thesis, i.e., a pledge for redistributive land reform. Institutional framework for land governance weaknesses are also indicated as sharing the blame: institutional overlapping of power, incompetence, corruption, immense unchecked executive power over land matters and lack of "effective teeth to bite" (p. 243). The solutions offered to resolve environmental crises especially in highland Ethiopia are: encouraging transfer of land rights "accompanied by alternative economic activities" and "steady and rapid growth in urbanization which diffuses population pressure from the land" (p. 246). The last chapter essentially brings together the conclusions and suggestions made in relation to each chapter. It emphasizes lack of a specially designed comprehensive land policy and elaborates on the idea of a universal fixed-term land lease hinted in the preface.

Going through the chapters reveal two matters worth discussing: the book's market-based approach entailed by its revisionist stance and issues it misses out. The former should be dealt with first. The thrust of the book is that various restrictions imposed on social and market transfers of land rights should be removed to make land rights subject to market forces. This would help Ethiopia avoid the pernicious consequences of the restrictions and enable it to reap the benefits thereof. In focusing on the market, the book seems to neglect the harmful effects of market-led approach to land reform. Empirical evidence shows that

land privatization supported by titling does not automatically lead to tenure security. To the contrary, as happened in Kenya, the program of land privatization through the tool of land registration can lead to insecure tenure for the poor through exposure to elite capture.⁸ As the book rightly suggests, massive chronic poverty brings about desperation. That in turn becomes a significant factor forcing small landholders to engage in informal land deals, resulting in loss of a livelihood as well as cultural asset. The factor driving people into alienation of their only asset would not vanish into the thin air at the moment land use rights are liberalized. It is not uncommon for even supporters of the market paradigm to concede the existence of a degree of coercion under the veneer of free consent. They accept the principle of freedom of choice but question “whether every instance of market choice is truly voluntary... market relations can be considered free only when the background conditions under which we buy and sell are fair, only when no one is coerced by dire economic necessity”.⁹

And land privatization does not necessarily lead to more investment in land nor does land privatization always increase transfer of land to more efficient users or create more demand for bank credits or decrease land disputes. The assumed effects of land titling are contingent on a number of extra-tenure factors. The available evidence, both in Africa and elsewhere, shows that there is no inherent positive connection between land privatization and productivity.¹⁰ Besides, as the land tenure history of Ethiopia shows, there could be tenure insecurity in the context of private ownership of land while people could enjoy tenure security even in the context of people’s ownership of land.¹¹

⁸ Janine Ubink *et al* (eds) (2009), *Legalising Land Rights in Africa, Asia and Latin America: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America* (Leiden University Press).

⁹ Michael Sandel (2012), *What Money Cannot Buy: The Moral Limits of Markets: Penguin Book* p. 96.

¹⁰ Michael Trebilcock & Paul-Erik Veel (2008-2009), “Property Rights and Development: The Contingent Case for Formalization”, *U. Pa. J. Int’l L.*, vol. 30; for the critique of Hernando De Soto’s prescription, see Celestine Nyamu Musembi (2007), “De Soto and Land Relations in Rural Africa: Breathing Life into Dead Theories about Property Rights”, *Third World Quarterly*, 28:8 and Jan Michiel Otto (2009), “Rule of Law Promotion, Land Tenure and Poverty Alleviation: Questioning the Assumptions of Hernando De Soto”, *Hague Journal on the Rule of Law*, 1:1.

¹¹ In pre-1975 land tenure system, for example, there was wide-spread tenure insecurity in both private land ownership and communal ownership areas. And in this period, legally speaking even the landlords were insecure vis-à-vis the Emperor for the latter could confiscate their lands at his pleasure. In this regard, it is said “...the imperial state had what was called the right of ‘eminent domain’ which meant that a private owner could be dispossessed at any time by the order of the Emperor. Thus, private owners had less security here than in the capitalist countries.” Dessalegn Rahmato (2003), *Land Tenure in Ethiopia: From the Imperial Period to the Present, A Brief Description*” (hereafter Land Tenure), in *Topics in Contemporary Topics in Contemporary Political Development in Ethiopia* Tafesse Olika *et al* (eds.) Department of Political Science, Addis Ababa University) p. 86. Moreover, during the Derg period, initially, the peasants were secure in their land possessions and the fruits thereof; only later policy changes made their land possession insecure. Thus, it is unsound to

More broadly, land privatization does not automatically help an agrarian society transform socially and structurally through the instrumentality of agricultural development. At best the path may contribute to economic growth of a country by furthering the security of property of the few through the expropriation of the property of marginalized groups, which happens through “the reallocation of [property] into the hands of more politically powerful constituencies with access to the knowledge and capital necessary for efficient investment.”¹² In other words, “severe property insecurity for some groups often exists alongside very secure property rights for others. ...property rights can simultaneously be strong and secure for some groups and weak and insecure for other groups.”¹³

Turning to the gaps, the book has not examined the extent to which the course and direction of land policy and law has been actually influenced by global institutions. Are global forces determining the content of the country’s land law or are they having no influence over it? The issue merits an independent investigation. Notwithstanding this, the book has mentioned lifting restrictions on transferability of land use rights as the preference of international institutions. It has also discussed their support in the rural land certification project underway. It fittingly points out the utility of international standards regarding land to evaluate an existing land law of a country as well as to reform it. These are welcome attempts to drive a message home: a country’s land policy is not merely an internal matter as international forces have a role to play in its shaping.

The question of people’s resistance is not also dealt with. It is trite to say people are not a sitting duck. They respond to unfavorable laws and policies. When past regimes implemented harmful land policies, people in the country resorted to different forms of resistance. They continue to do so when they see unjust measures regarding their landholdings. Thus, the following questions are bound to arise: what are the forms and nature of people’s resistance to aspects of land laws and policies deemed unjust? To what degree grassroots resistance succeeded in the past? To what extent these people’s reactions are backed by national and transnational civil society and with what efficacy? These point warrant investigation.

say that private ownership of land invariably delivers tenure security as it is also incorrect to argue that the opposite is true with regard to a system of public ownership of land; that is, land privatization does not equal land tenure security; as use rights within the context of public ownership of land per se does not lead to insecure land tenure.

See Yigremew Adal (2004), “Some Queries about the Debate on Land Tenure in Ethiopia”, Institute of Development Research, Addis Ababa University, p. 5, for the argument that seen in light of past and current experiences both in the country and elsewhere in Africa, it is untenable to hold that unrestricted ownership over land would in itself give meaningful security to peasants. What is critical in is the way a land tenure arrangement is put in place and implemented. Yigremew also says “...the argument that either formal legal policy of individualized land rights or state paternalism will guarantee peasants’ access to and use of land is not strong...”

¹² Terra Lawson-Remer (2012), “Property Insecurity”, *Brook. J. Int’l L.*, vol. 38, p. 147.

¹³ *Id.*, 149.

Furthermore, the book implies the need to find out ways to deal with customs that are founded upon inalienable land rights, customary tenures that do not permit land commercialization. One cannot rather presume that customary land tenure practices permit market transfer of land rights. This is another issue that requires exploration. In this regard, the work should be appreciated for arguing for the case of plural land laws and policies. Plurality, as mentioned in the book, stems from agro-ecological diversity and diverse modes of life. Plurality pervades the country. Plurality in land matters exist both in the North and the South; in cities and rural areas. This a good stride.

Finally, the question of how a land tenure system replete with insecurity has triggered economic growth requires exploration. The official claim is that the secret of Ethiopia's high rate of economic growth for the last ten years lies in secure rural land regime that has led to a significant increase in agricultural productivity and production. Also mentioned as contributory factor are massive re-greening and sustainable land management projects. If these claims are not considered properly, it would raise the issue of whether there is a correlation between land privatization and productivity and hence national economic growth. This is a theme worth considering, too.

In fairness, given what can reasonably be included in a book of its size and the range of grounds already covered, such lacunas should however be taken as a source of inspiration for future research. The book's impressive achievements go beyond indicating research issues. It is organized coherently and composed lucidly. Its socio-legal methodology enables readers to easily relate land laws to societal realities. It covers cutting-edge primary literature as well as normative and policy documents. It rightly sees the land question as a complex cross-cutting matter. It is comprehensive in its attempt to transcend the often rural-urban land artificial dichotomy by treating both rural and urban land issues and by implicitly demonstrating their interconnectedness. One could not agree more with the book's proposal for empirically grounded especially formulated land policy for Ethiopia. The book should serve as a respectable source for teachers, researchers, practitioners and policymakers grappling with issues of land policy and law in contemporary Ethiopia.