# Power of Land Administration under the FDRE Constitution

*Habtamu Sitotaw,[*] Muradu Abdo[♣] & Achamyeleh Gashu[*]*

**Abstract**

*This Article inquires whether there is federal interference against the constitutional power of regional states to administer land in the federal system of Ethiopia. It further scrutinizes underlying reasons for apportionment of power over land between the Federal Government and regional states under the present constitution of Ethiopia. The Article builds on primary and secondary data sources to find there are several existing federal land laws which allow the Federal Government to undertake land administration, which is constitutionally entrusted to regional states. It further concludes that relevant federal institutions mandated to defend the FDRE Constitution have failed to resist this upward flow of power in relation to land. It then recommends that federal laws unjustifiably empowering the Federal Government to entertain land administration issues shall be revised and such mandate shall be given back to the states. Also, it advises the Federal Government to refrain in the future from enacting legislation related to land administration in the interest of honoring the federal system. Moreover, it is counselled that upward flow of power over land administration should get proper scrutiny by relevant institutions.*

**Key terms:** Federal Government, Ethiopia, States, Power Centralization, Land Administration, Land Utilization

## Introduction

This Article interrogates the issue of whether there is federal interference against regional states' constitutional power to administer land in the contemporary federal system of Ethiopia, building on primary and secondary data sources.

[*] LLB, MSc, Lecturer and PhD candidate in Land Policy and Governance at Bahir Dar University, Institute of Land Administration; habtamusit@gmail.com

[♣] PhD, Associate Professor at School of Law, Addis Ababa University; muradu.abdo@aau.edu.et

[*] PhD, Associate Professor at Bahir Dar University, Institute of Land Administration; agachamyeleh@gmail.com or achamyelehg@bdu.edu.et

Pursuant to the Constitution of the Federal Democratic Republic of Ethiopia (the FDRE Constitution), the Federal Government has the authority to enact laws on land utilization and conservation while the power to administer land belongs to regional states.[1] The Federal Government has so far issued several land laws including Urban Landholding Registration Proclamation No. 818/2014, Urban Lands Lease Holding Proclamation No. 721/2011, Expropriation of Landholding for Public Purposes and Payment of Compensation Proclamation No. 455/2005 (now revised by Proclamation No. 1161/2019), Industrial Parks Proclamation No. 886/2015 and Rural Land Administration and Land Use Proclamation No. 456/2005. Analysis of these federal laws reveals that there is a substantial move to extend the mandate of the Federal Government to include the power to administer land and implement its laws that should otherwise fall within the competences of regional states.[2] Moreover, a study undertaken under the auspices of the Council of Constitutional Inquiry (CCI) indicated that some aspects of the above federal land laws encroach on land administration powers vested to the regional states under the FDRE Constitution.[3]

Despite the presence of upward flow of power over land administration contrary to the letter and spirit of the FDRE Constitution, such an affair has not been subject to scrutiny. There have been no instances whereby states openly challenged that kind of legislative tendency displayed by the Federal Government.[4] Also, institutions responsible to defend and protect the constitutional order and the federal system are not living up to expectations in this regard. The available scholarship has not given the deserved attention to the question either. The scanty available literature on the matter fails to consider the reasons why both orders of government possess authority over land under the FDRE Constitution, the notions of 'land administration` and 'land utilization' within the rubric of the FDRE Constitution and most importantly the constitutionality of aspects of the above mentioned federal rural and urban land laws that have allowed the Federal Government to play administrative role with respect to land. The present Article intends to fill this void. It finds that the Federal Government has acted beyond the powers vested in it under the FDRE Constitution in matters of land administration. The Article recommends that federal laws which empower the

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[1] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, *Federal Negarit Gazeta*, 1st year No.1, Arts 51/5 and 52/2/e.

[2] Assefa Fiseha, *Federalism and Development: The Ethiopian Dilemma*, 25 INTERNATIONAL JOURNAL ON MINORITY AND GROUP RIGHTS 333, 356 (2018).

[3] *See* የኢ.ፌ.ዴ.ሪ. የሕገ-መንግስት ጉዳዮች አጣሪ ጉባኤ ፅ/ቤት, የጠቅ መሪት ይዞታ ስለሚተላለፍበት አግባብ ከኢ.ፌ.ዴ.ሪ. ሕገመንግስት አንፃር, 2011 E.C., Pp. 15 – 16.

[4] Adem Kassie, *Umpiring Federalism in Africa: Institutional Mosaic and Innovations*, 13(4) AFRICAN STUDIES QUARTERLY 59 (Winter 2013).

Federal Government to undertake land administration issues shall be revised and such mandate shall be left to regional states. It further suggests that the Federal Government shall refrain from enacting laws having provisions dealing with land administration.

The rest of the Article is organized as follows. Following this introduction, section one examines the power allocation in relation to land under the FDRE Constitution. This section further conceptualizes the essence of land utilization and land administration as they are the fundamentals to understand the relative powers of the federal and state governments over land. Section two investigates the rationales why both orders of government have authority over land. Section three assesses some of the indicators of federal interferences over states' mandate to administer land through different laws. The section is followed by a discussion on institutional responses to the growing centralization of power over land administration. The final section provides concluding remarks.

## 1. Constitutional Division of Power on Land in Ethiopian Federation

The FDRE Constitution apportions power between the federal and state governments, and the power sharing scheme can be seen in the following categories. The first group contains exclusive powers vested to the Federal Government.[5] The second group constitutes 'residual powers' that are neither exclusively given to the Federal Government nor concurrently to both, but they are regional states' mandates,[6] and some specific powers are assigned to states along with residual powers.[7] The third group takes concurrent power on taxation.[8] The fourth relates to the undesignated power of taxation whose fate shall be decided by a two-thirds majority vote upon the joint meeting of the House of Federation (HoF) and House of Peoples Representatives (HPR).[9] Still, some scholars argue that there is another group of power arrangement – they call it framework power.[10] In this arrangement, the Federal Government shall

[5] FDRE Constitution, Articles 51, 55, 62, 96 and other provisions that give express powers to the Federal Government.

[6] FDRE Constitution, Article 52(1).

[7] FDRE Constitution, Art 52/2 lists seven items as exclusive state competences, including adopting a state constitution, establishing state police, enacting legislation regulating state civil service, formulating and approving policies on state economic and social matters, and administering land and other natural resources.

[8] FDRE Constitution, Article 98.

[9] FDRE Constitution, Art 99.

[10] See, for instance, Assefa Fiseha and Zemelak Ayele. *Concurrent Powers in the Ethiopian Federal System, in* CONCURRENT POWERS IN FEDERAL SYSTEMS MEANING, MAKING AND MANAGING 241, 241 (F. Palermo, and J. Marko eds., Koninklijke Brill Nv, 2017).

adopt framework policies and issue framework legislation on certain functional areas, leaving the details to be regulated by states. The arrangement is to secure a certain measure of uniformity and in guiding states' efforts.[11]

There are three approaches to apportion power in relation to natural resources, which are also relevant to land: decentralized, centralized or middle way approaches.[12] In the decentralized approach, the authority on land and other natural resource governance belongs to the state and local level governments.[13] The decentralized approach is central to promoting sustainable management, participatory governance and equitable benefit sharing from local resources.[14] This approach requires the decentralization of decision making powers to "enhancing efficiency, equity and justice in the management and use of natural resources to support local development".[15]According to Daniel Esty,[16] the justifications for decentralized land and natural resource governance might be five: (a) to benefit out of diversity in a federation; (b) a counter for "Race-to-the-Bottom" justification; (c) "public choice argument"; (d) on account of moral grounds; and (e) "the insignificance of externalities".

The second approach to federal governance of land and other natural resources is centralized approach where power is concentrated and assigned only to the national level government with the view to enhancing uniformity of standards.[17] During the late 1960s and early 1970s, for example, natural resource governance in the United States was centralized. Three broad reasons were forwarded for such centralized resource governance. These were: - (a) interstate spillovers of pollution; (b) poor performance of states in regulating the resources; and (c) effects of interstate competitiveness as a result of divergent standards.[18] As land, in most cases, is a local endowment,[19] it is rare to get

[11] RONALD WATTS, COMPARING FEDERAL SYSTEMS 38, (Queen's University Press, 3rd ed., 2008); K.C. WHEARE, FEDERAL GOVERNMENT 9 (Oxford: Oxford University Press, 4th ed., 1963).

[12] Food and Agricultural Organization (FAO), *Compulsory acquisition of land and compensation*, 10 LAND TENURE STUDIES 13 (2008); Andrew Bauer, Natalie Kirk and Sebastian Sahla, *Natural Resource Federalism: Considerations for Myanmar*, POLICY PAPER SUMMARY 5 (Natural Resource Governance Institute, 2018).

[13] FAO, *supra* note 12, at 13.

[14] United Nations Development Program (UNDP), *Decentralized Governance of Natural Resources: Part 1 - Manual and Guidelines for Practitioners* 1 (UNDP Drylands Development Centre, 2006).

[15] *Ibid.*, at 2.

[16] Daniel Esty, *Revitalizing Environmental Federalism*, 95 MICHIGAN LAW REVIEW 570, 606-613 (1996).

[17] Brightman Gebremichael, *The Power of Lad Expropriation in the Federation of Ethiopia: The Approach, Manner, Source and Implications*, 7(1) BAHIR DAR UNIVERSITY JOURNAL OF LAW 1 – 36, 13 (2016),

[18] Daniel Esty, *supra* note 16, at 601 – 602.

[19] The reasons for this could be three-fold, as Marci Hamilton states. First, as land is immovable, its uses will be more relevant to those who are nearby than those who are far away. Second, the manner land resource

experiences of states with a power allocation that excludes state governments from land affairs.

In the third approach – the middle approach –, both national and local governments are entitled to administer and manage land and other natural resources. There is concurrency of power between the two orders of government.[20] In this case, the national government supervises local authorities while governing land and other natural resources.[21] This is especially common when broad-based support is important.[22] This approach is best reflected in the Russian federation in which power over use and disposal of land, subsoil, water and other natural resources fall within the purview of concurrent jurisdiction.[23] In Germany as well, transfer of land, natural resources and means of production to public ownership or other forms of public enterprise are the joint mandate of the two orders of government.[24] In Canada, differences in resource endowments among the provinces have resulted in increased concurrency of federal and provincial powers.[25]

In Ethiopia, the roles of the federal and state governments vary from one natural resource to the other – meaning Ethiopia has not subscribed to any one of the three approaches. It is possible to see the variations in three settings. With regard to some natural resources, states have the authority to administer natural resources without sharing it with the Federal Government provided that the particular natural resource is found exclusively in the territory of states. The ideal example here is the power on land in which states have broader power of managing it as they are entitled to administer land and issue land administration laws. The only role of the Federal Government in

is used is vital for communities to develop their character and pursue shared purposes. Land use laws enable people to come together to set priorities, establish their character, and meet fiscal, aesthetic, and lifestyle needs. Third, by making land use law local, citizens will be in a position to directly access their representatives and their voices in the land use process that directly affects them will likely be heard. This is to say, as land use laws are enacted at state and local level and implemented by local authorities elected at the local level, this paves the room for the local communities to be active participants both in altering the law and in applying it [Marci Hamilton, Federalism and the Public Good: The True Story Behind the Religious Land Use and Institutionalized Persons Act, 78 (1) INDIANA LAW JOURNAL 335 (2003)].

[20] Bauer, Kirk and Sahla, *supra* note 12, at 5.

[21] FAO, supra note 12, at 13.

[22] Andrew Bauer, Natalie Kirk and Sebastian Sahla, *supra* note 12, at 5.

[23] Hao Bin, *Distribution of Powers between Central Governments and Sub-National Governments*, (Conference Paper Presented to Committee of Experts on Public Administration, Eleventh Session New York, 16-20 April 2011).

[24] Germany Basic Law, Article 74(15).

[25] Canadian Constitutional Act, Section 109 and 117.

this case is enacting laws over the utilization and conservation of land, and the mandate to administer land belongs to the states.[26]

In some other natural resources, which include rivers, forests, and lakes linking two or more regions, the power of management is shared between the two orders of government. In these natural resources, the power of issuance of laws is in the hands of the Federal Government. For instance, regarding the management of natural forests, the Federal Government legislates on the development, conservation and utilization of forest resources but regional states shall administer same in accordance with federal laws.[27] In other category of natural resources, the management is exclusively left to the Federal Government. This government level has both legislative and administrative authority over the resources. States play no role in these natural resources.[28] This way of resource management is centralized, and its importance seems to avoid conflict of interest among states that are sharing the resources.

The manner in which power over land is apportioned between the two orders of government is a little bit blurred though. Although the language used in the FDRE Constitution does not imply the federal law should be framework legislation, in practice, states are considering federal legislation as framework while adopting their land administration laws.[29] The FDRE Constitution, in the presence of residual power clause, lists state governments' power to administer land in accordance to federal laws.[30]

The actual mandates of the federal and state governments over land lies, *inter alia*, in the following scenarios: (a) in the general approach to division of powers and functions in the FDRE Constitution; (b) the contextual meaning of 'utilization' 'conservation' and

[26] FDRE Constitution, Arts 51/5 & 52/2/d.

[27] This can be inferred from Articles 52/2/d and 55/2/a of the FDRE Constitution, as the phrase "other natural resources" can be interpreted to include natural forests as well. With this, on forest resources, the legislative mandate is vested to the Federal Government through the HPR and administrative mandate shall be left to the states.

[28] FDRE Constitution, Art 51(11), which states that the Federal Government shall determine and administer the utilization of the waters or rivers and lakes linking two or more States or crossing the boundaries of the national territorial jurisdiction.

[29] Gedion Hessebon and Abduletif Idris, *The Supreme Court of Ethiopia: Federalism's Bystander, in*, COURTS IN FEDERAL COUNTRIES 176 (Nicholas Aroney and John Kincaid eds., University of Toronto Press, 2017).

[30] FDRE Constitution, Article 52(2(d)).

'administration' of land; (c) the constitution makers' deliberations on the prevailing land policy;[31] and (d) a case presented to the CCI.

One way to understand the precise role of the federal and state governments is by looking at the general power arrangement in the FDRE Constitution. Under the same Constitution, regional states have the mandate to administer land while the Federal Government has the prerogative to enact laws on the utilization and conservation of land. Having this, what is missing in this general power sharing scheme is the legislative power in relation to matters of land administration. The residual clause in the FDRE Constitution can be of an important clue here. On this basis, regional states' constitutionally grounded legislative power over land can be inferred from the residual clause in the FDRE Constitution. The relevant provision reads that, "all powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States".[32] From this, of powers relating to land that is not openly vested to either or both orders of government is related to the legislative power on land administration. In view of this residual clause, the legislative mandate on the administration of land shall belong to regional states.

The deliberations made during the making of Proclamation No. 456/2005 further ascertain regional states' legislative mandate over land. One of the debates focused on Article 17 of the proclamation. The Minute of the Proclamation states that the Federal Government's legislative role under Article 51 of the FDRE Constitution is restricted to the utilization and conservation of land only. A member of the drafting committee stressed that Article 51 of the FDRE Constitution allows the Federal Government to legislate on the use of land and natural resources, and Article 52(d) empowers regional states to enact laws concerning land administration. However, the power to formulate land use policy shall be vested in the Federal Government.[33] This observation is important to further understand the legislative mandate of regional states over land administration.

However, given the lack of definitional clause in the FDRE Constitution for the phrases 'utilization', 'conservation' and 'administration' of land, it appears difficult to have a clear boundary of federal and state powers with respect to land. To determine what

[31] Brightman Gebremichael, *The Post-1991 Rural Land Tenure System in Ethiopia: Scrutinizing the Legislative Framework in View of Land Tenure Security of Peasants and Pastoralists* 366 (LLD Dissertation, University of Pretoria, 2018).

[32] See the FDRE Constitution, Article 52(1).

[33] **በኢትዮጵያ ፌደራላዊ ዲሞክራሳዊ ሪፐብሊክ፥ 2ኛው የህ/ተ/ም/ቤ/ት 5ኛው አመት የስራ ዘመን** (1997 ዓ.ም.) **የጸደቁ አዋጆች የህዝብ ይፋ ዉይይቶች እና የዉሳኔ ሃሳቦች፥** 1997 **ዓ.ም. ስለ** 455/2005 **የተደረገ ዉይይት**, Volume 2, p. 20.

these phrases mean, it is good to consider available definitions for the terms. Subsidiary land laws have defined land administration without however defining the term 'land utilization'. Even the literature seems to neglect the articulation of this later term despite the evident significance of doing so. Given the absence of definition of the term 'land utilization', one mechanism to determine issues to be included in it may be by way of exclusion.[34] The exclusion approach to pin down the contents of land utilization means that if a definition of land administration can be ascertained, activities out of the domain of land administration shall fall within the legislative competence of the Federal Government – land utilization.

The federal and regional rural land laws have determined elements of 'land administration'. Accordingly, the Federal Rural Land Administration and Land Use Proclamation No. 456/2005 defines the term under consideration as,

> a process whereby rural landholding security is provided, land use planning is implemented, disputes between rural landholders are resolved and the rights and obligations of any rural landholder are enforced, and information on farm plots and grazing landholders are gathered, analyzed and supplied to users.[35]

The Amhara National Regional State (ANRS) Rural Land Use and Administration Proclamation defines land administration in the following manner,

> The process whereby rural landholding right is provided, guarantee is secured, the rent and lease value of land is estimated, the land use plan is implemented, disputes arising between land users are resolved and obligations are enforced as well as data is distributed to users being collected and analyzed concerning the above indicated issues.[36]

Also, the Benshangul Gumuz Regional State rural land use and administration defines the term land administration as follows,

> rules and procedures on rural land and this proclamation by which agreements between land users and any rights and duties of them, system of land distribution by the proper procedure, protection of land, giving guarantee on

[34] Brightman, *supra* note 31, at 366.

[35] FDRE Rural Land Proc. No 456/2005, Art. 2(2).

[36] ANRS Proclamation No. 252/2017, Article 2(2).

possession of land, land use plan implementation and conflict resolution among users is executed.[37]

From the definitions above, the following elements in land administration can be identified,

a) Right on rural land is provided and secured
b) Enforcement of rights and obligations over land
c) Gathering, handling and make available information on land to users
d) Determination of lease and rent values
e) Resolution of disputes in relation to the use of land
f) Land use plan implementation
g) Agreements between land users and any rights and duties of them
h) System of land distribution

The definition of land administration under the federal rural land law appears narrower in the sense that it does not incorporate land valuation. The definition of land administration under the ANRS rural land law incorporates land valuation. The differences can be taken as evidence of "federal-state governments' power conflict as the federal law seems to limit the regional states' constitutional power and gives some aspect to the Federal Government."[38] Yet, both definitions fail to incorporate the issue of land taxation that is commonly mentioned as a core element in land administration. Under the FDRE Constitution, state governments have the authority "to determine and collect fees for land usufractuary [sic] rights".[39] This issue is an aspect of land administration that should have been boldly stated in the above definitions. Moreover, the definition of land administration under the Benishangul Gumuz Regional state land administration and use proclamation does not include land valuation, land information system and that of land taxation. Relying on the definition given by this regional state's rural land law means the above three core issues in land administration would not be counted in the purview of land administration.

Since constitutional division of power over land hinges on determination of the metes and bounds of the phrases 'land administration', 'land utilization' and 'land conservation', a formal constitutional interpretation of these terms would be more

[37] Benishangul Gumuz Regional state Land Administration and use Proclamation No. 85/2010, Article 2(2).

[38] Brightman, *supra* note 17, at 24.

[39] FDRE Constitution, Art 97(3).

instructive.[40] So far, there is no such authoritative interpretation to that effect. Relying on these domestic subsidiary laws' definitions on land administration could mean that we are missing the elements that should have been incorporated in land administration and this further frustrates and diminishes regional states' constitutional mandate to administer land.[41] This is not a theoretical issue. As briefly highlighted in the definition of the concept given under Proclamation No. 456/2005, the Federal Government defined the term restrictively to narrow the elements of land administration by leaving out land valuation. All the federal, ANRS and Benshangul Gumuz rural land laws do not include land taxation in their respective definitions for land administration. Moreover, under the definitions in these rural land laws, some specific activities to be performed in land administration are not mentioned in detail. For instance, whether land allocation to investment purpose[42] and establishing land administration institutions fall under land administration in Ethiopian context is not clear from the definitions in the above federal and regional rural land laws.

In the absence of clear constitutional and legislative guidance on this, the determination of the actual constitutional mandate of the two levels of government with respect to land forces us to resort to other available insightful and instructive definitions and clues. Of the several definitions given to the notion of land administration, the following one adopted by the United Nations Food and Agriculture Organization (FAO) offers elaborate elements and appears comprehensive,

> the way in which the rules of land tenure are applied and made operational; and it includes an element of enforcement to ensure that people comply with

[40] Brightman, *supra* note 31, at 367.

[41] *Ibid.*, at 367.

[42] The issue of land allocation for investment purpose is included under a definition given by the Council of Ministers for land administration in the context of agricultural investment land. Accordingly, "land administration" is "an act of identification of agricultural investment lands on the basis of study and demarcating, entrusting, transferring, supervising and controlling same" [Ethiopian Agriculture Investment Land Administration Agency Establishment Council of Ministers Regulation, Regulation No. 283/2013, 19th year No. 32 Addis Ababa 4th March 2013]. In this definition, various elements that should have been included in land administration are missing. While the definition simply provides identifying an agricultural land in respect of investment purpose and demarcate, entrust, transfer, supervise and control on the land as aspects of land administration, it failed to incorporate the other major elements in land administration like planning, land valuation as well as taxation issues and other specific details.

In fact, this definition of land administration is relevant for the Federal Government since the concern is to empower this level of government to allocate lands above 5000 hectares to investors taking the power of regional states through delegation. But, in this definition one thing appears clear: that land allocation for investors is an aspect of land administration, which is lacking in the definitions on land administration in the regional and federal rural land laws observed above.

the rules of land tenure. It comprises an extensive range of systems and processes to administer:

1. land rights: the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party to another through sale, lease, loan, gift or inheritance; and the adjudication of doubts and disputes regarding rights and parcel boundaries;
2. land use regulation: land use planning and enforcement, and the adjudication of land use conflicts;
3. land valuation and taxation: the determination of values of land and buildings; the gathering of tax revenues on land and buildings, and the adjudication of disputes over land valuation and taxation.[43]

This definition contains several elements of land administration: land rights, land use regulation and land valuation. The definition takes enforcement of rules of land tenure as key component of land administration. The definition does not include the determination and specification of land tenure issues under the realm of land administration. Rules of land tenure, according to FAO, define "how property rights to land are to be allocated... how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints…who can use what resources for how long, and under what conditions."[44] In effect, the specification and determination of "land rights, the manner to acquire rights over land, the scope of these rights, the manner they operate in the holding, transfer and inheritance of land, and when and how rights over land shall extinct" are elements of land utilization.[45]

[43] FAO, *Access to Rural Land and Land Administration after Violent Conflicts*, 8 LAND TENURE STUDIES 23 – 24 (2005). Land administration encompasses the following elements: land tenure, land use, land valuation, land development and these four shall be integrated through information management system. Moreover, land registration is considered one component of land administration [See Ian Williamson, Stig Enemark, Jude Wallace and Abbas Rajabifard, LAND ADMINISTRATION FOR SUSTAINABLE DEVELOPMENT 119 (Esri Press, 2010); FAO, *supra* note 43, at 23; Daniel Steudler, *A Framework for the Evaluation of Land Administration Systems* 17 (PhD Thesis, The University of Melbourne, 2004); Enemark, S. *et al.*, *Fit-For-Purpose Land Administration*, 60 FIG PUBLICATION 13-14; Land Tenure and Development Technical Committee, *Land Governance and Security of Tenure in Developing Countries* 109 (White Paper: French Development Cooperation), available at: http://www.agter.asso.fr/IMG/pdf/land-governance-and-security-of-tenure-in-developing-countries.pdf], (Last accessed on 14/03/2020).

[44] FAO, *Land Tenure and Rural Development*, 3 LAND TENURE STUDIES 7 (2002). Available at, http://www.fao.org/3/a-y4307e.pdf, (Last accessed on 24/08/2020).

[45] Brightman, *supra* note 31, at 368.

Based on this, determination of issues of land tenure is the mandate of the Federal Government in its legislative power over land utilization whereas enforcement of rights over land, administering the acquisition of land, transfer and inheritance of land based on federal laws shall fall under states' jurisdiction to administer land. Likewise, if one follows the FAO approach, states' power to administer land includes the following activities: delimiting parcel boundaries; adjudicating disputes over land use, valuation, taxation and parcel boundaries; and determining and undertaking land valuation for the purpose of compensation, taxation and similar activities. It also includes gathering revenue from land related taxes; registration of land rights and issuance of certificates; and allocation of land for investment purpose. Moreover, land administration encompasses gathering and administering information on land; making information on land available for its users; determination of the amount of land to be mortgaged, leased, and rented and the period of time. Moreover, establishing and administering land administration institutions would fall under states' mandate to administer land. These are different from land utilization and conservation issues and may not necessarily require uniformity in their regulation and application.

As indicated in the forgoing, even if the Ethiopian land laws do not define the terms 'land utilization' and 'land conservation', such land laws use the kindred concept of land use. For example, the Federal Rural Land Administration and Land Use Proclamation No 456/2005 defines 'land use' as "a process whereby rural land is conserved and sustainably used in a manner that gives better output".[46] This definition appears to equate land utilization with land use and further it seems to state that the expected role of the Federal Government is to determine how land shall sustainably be used and conserved. With this inference is palatable, federal laws are expected to identify the areas that can suitably and productively be used for each land. For instance, the land utilization laws shall locate the areas that shall be designated for agriculture, built-up areas, sports fields, grazing, greenings, and determine land use plan at the national level. However, this definition does not properly indicate the very essence of land utilization.

The other important clue to appreciate the precise mandates of both orders of government in relation to land is by looking into the Minutes of the FDRE Constitution. This best tells us the nature of federal power in relation to determining land utilization. As can be read from the Minute of the FDRE Constitution, one of the justifications to reject the proposal to adopt private ownership of land was due to the difficulty to achieve uniform land tenure system throughout the country. In a country

[46] FDRE Rural Land Proc. No. 456/2005, Art 2(3).

where diverse landholding systems co-exist, achieving uniform tenure system appears difficult.[47] The Ethiopian land tenure system fundamentally constitutes the tenure of pastoralists and semi-pastoralists in addition to peasants, urban dwellers, investors and communal land tenure systems. Of these, the issue of pastoralists and in some cases semi-pastoralists is not suitable to adopt and maintain private ownership of land. The movable nature of pastoralists and the nature of land possession thereof are difficult to adopt private ownership of land. The designers of the FDRE Constitution reportedly held that uniformity in land tenure can be achieved by maintaining state ownership of land and enactment of a coherent national land policy.[48] This requires, *inter alia,* empowering an organ with legislative mandate to define land tenure issues to achieve a certain level of uniformity – the Federal Government is given this task.

Moreover, one can mention the decision of the CCI in a practical case presented to it several years ago to further elaborate regional states' legislative mandate over land administration. In the case between *Biyadglegn Meles, et al vs. the ANRS,*[49] the applicants claimed that the ANRS rural land law[50] on land allocation and redistribution contravenes the FDRE Constitution and demanded the declaration of unconstitutionality of the state law. However, through another development, the HPR has enacted the Federal Rural Land Administration Proclamation No 89/1997,[51] which permitted states to proclaim laws on rural land based on federal baselines. The CCI passed its verdict on the matter upholding the constitutionality of the law on two grounds: (a) it is part of the residual power of the states; and (b) it has been retroactively endorsed by the federal proclamation. Nevertheless, it is doubtful why the HPR can retroactively endorse the state law if it falls within the residual power of the states. In relation to this, Assefa inquires, "…as to whether the mandate of the states extends to include enacting laws and if so whether administering implies the setting of norms".[52] From this, the decision of the CCI seems to indicate that states have constitutional base to enact laws on matters pertaining to land administration. The decision particularly indicated that legislative power on land allocation and redistribution falls under regional states residual power in the FDRE Constitution.

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[47] The Constitutional Minutes Vol. 4, *Deliberation on Article 40.*

[48] Brightman, *supra* note 31, at 368.

[49] *Biyadglegn Meles et al.* v. *the Amhara Regional State*, petition, Miazia 30, 1989 E.C. (unpublished), as cited in Assefa Fiseha, *Constitutional Adjudication through Second Chamber in Ethiopia*, 16 ETHNOPOLITICS 295, 313 (2017). DOI: 10.1080/17449057.2016.1254407

[50] Amhara Regional State, 1996, Proclamation No. 17/1996, A Proclamation to Provide for the Amendment of Proclamation No. 16/1996. Bahir Dar.

[51] Proclamation No. 89/1997, Federal Rural Land Administration, *Federal Negarit Gazetta*

[52] Assefa, *supra* note 49, at 299.

Apart from their inherent constitutional legislative power over land administration, states are also authorized by federal land laws to enact rural and urban land laws on matters that fall under federal jurisdiction. So far, states have enacted their rural land administration and use laws routinely citing federal authorization as authoritative source. However, confining states' legislative power on this federal authorization appears to diminish their roles over land administration and this raises, at least, the following issues. Firstly, the Federal Government, if it thinks that its transfer of power to regional states to enact detailed laws to what is regulated by federal land laws is no more relevant, can take back this transferred legislative power. This makes regional states current legislative power over land uncertain and contingent upon the willingness of the Federal Government. Secondly, it makes states to behave only to the extent of the terms they are dictated by the federal laws. This is to say, state laws shall not contradict with the delegating laws: if there is contradiction, state laws will be void. Finally, since the delegation is up to the wish of the Federal Government, there are areas where the Federal Government fails to explicitly delegate states to enact laws. Cases in point are Proclamation No. 818/2014, Proclamation No. 721/2011 and Proclamation No.1161/2019. The former law has totally denied law-making power over urban land registration to states while the latter two laws have delegated to the regional states the mandate to enact laws meant to implement land proclamations passed by the federal legislature.[53]

## 2. Justifications for Relative Federal and State Authority over Land

This section considers reasons for vesting authority in the Federal Government to enact laws on the utilization and conservation of land as well as the rationales for bestowing upon regional states the power of land administration.

### a) Maintaining uniform nationwide regulation of land

One of the hallmarks of a federal system is vertical power division between orders of government.[54] Most federations intend to stand united for certain purposes while retaining autonomy for other motives. Some powers are almost always assigned to the federal government and others to subunits.[55] The federal government is often

[53] *See* A Proclamation to Provide for Lease Holding of Urban Lands, Proclamation No. 721/2011, Art 33/2; Expropriation of Land Holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation No. 1161/2019, Art 26/2.

[54] Wheare, *supra* note 11, at 10-11.

[55] G. ANDERSON, FEDERALISM: AN INTRODUCTION 24 (Oxford University Press, 2008).

empowered with those powers that are shared in common and have national implications.[56] These are matters requiring nationwide regulation and hence to be left for the national government to help maintain uniformity of standards throughout the federation. Likewise, subunits usually retain authorities vital for the full exercise of regional autonomy and self-governance. On this basis, regional units shall entertain functions that are not primarily in the list of common interests to the general nation.[57]

In the Ethiopian federation, some matters deemed to have national importance and require uniform regulation are entrusted to the Federal Government.[58] Specific to land, the FDRE Constitution authorizes the Federal Government to "enact laws for the utilization and conservation of land and other natural resources…".[59] Laws on the utilization and conservation of land require uniform regulation as evidenced by the Minutes of the FDRE Constitution. The Minutes of the FDRE Constitution in relation to Article 40 states that state ownership of land as well as national governance of some dimensions of land is desired to maintain uniformity in land governance and tenure.[60] This requires, *inter alia*, empowering an organ with legislative mandate to define land tenure issues to achieve a certain level of uniformity. On this basis, it can be established that the nature of powers vested to the Federal Government with respect to the utilization and conservation of land is to maintain uniformity on those issues. The main point here is that makers of the Constitution left it clear that uniform regulation on certain issues can evidence the nature of federal mandates in relation to land.

The Federal Government's involvement in determining land utilization and conservation has to do with nationwide uniform land tenure issues. Particularly, the Federal Government shall determine the right to access land by the vulnerable group of the society. Considering their disadvantaged position in a state, uniform standards and protection concerning land should be in place. For this, the Federal Government's legislative mandate on land utilization and conservation is to assure such uniform protection to land rights. In addition (as discussed in detail in Section 4) the decision of the HoF on the draft rendition of the Urban Landholding Registration Proclamation No. 818/2014 was justified and maintained fundamentally due to its relevance to create

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[56] Thomas Hueglin, and Alan Fenna, Comparative Federalism: A Systematic Inquiry 147-148 (Broadview Press, 2006).

[57] *Ibid.*, at 147-148.

[58] See, for instance, the provisions of Arts 51/2, Art 51/3, 51/20, Art 51/11, 51/8 and 51/9. According to the FDRE Constitution, these issues entail federal regulation in the interest of uniformity.

[59] FDRE Constitution, Art 51/5.

[60] The Constitutional Minutes, *Deliberation on Article 40*, House of Peoples Representatives Library, Addis Ababa.

uniformity in urban land and real property registration. Likewise, this Proclamation itself has specified this as its purpose is ensuring uniform protection of landholding rights.[61]

### b) Incorporating local contexts in land administration

The need to inject local context into land administration is keenly related to decentralized governance. Local communities have particular needs; some of which may well and ought to be beyond the purview of national policy.[62] By decentralizing government functions, it is possible to respond to such particular local needs. Particularly, federalism offers an institutional means of recognizing community needs and the chance to reflect their opinions in government policies and strategies affecting their interests.[63] Federalism enables local people to monitor issues that are properly under local control[64], while it places those issues that must be governed at a federal level in the hands of more distant representatives.[65]

Anwar Shah[66] stated different theoretical underpinnings in favor of strong rationales for decentralized decision-making and strong roles for local governments on account of four grounds: efficiency, accountability, manageability, and autonomy. For the purpose of this Article, Shah`s three justifications of local governance and central-local relations are considered. The first is 'Stigler's menu' which identifies two principles of jurisdictional design: "(a) the closer a representative government is to the people, the better it works; and (b) people should have the right to vote for the kind and amount of public services they want".[67] In this case, decision-making should befall at the lowest level of government.

The second justification articulated by Shah for local decision-making is 'the decentralization theorem'. It states that, "each public service should be provided by the jurisdiction having control over the minimum geographic area that would internalize

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[61] See Art 4/1 of Proc no 818/2014.

[62] Scott Bennett, *The Politics of the Australian Federal System*, 4 RESEARCH BRIEF 20 (2006), available at, https://www.aph.gov.au/binaries/library/pubs/rb/2006-07/07rb04.pdf, (Last accessed on 13/02/2020).

[63] Ibid., at 20.

[64] Hamilton, *supra* note 19, at 321.

[65] Ibid., at 321.

[66] Anwar Shah (ed.), *Local Governance in Developing Countries*, PUBLIC SECTOR GOVERNANCE AND ACCOUNTABILITY SERIES, (The World Bank, 2006), Pp. 3 – 4.

[67] George Stigler, *The Tenable Range of Functions of Local Government*, *in* FEDERAL EXPENDITURE POLICY FOR ECONOMIC GROWTH AND STABILITY 213–19 (Joint Economic Committee, Subcommittee on Fiscal Policy ed., U.S. Congress, 1957), as cited in Anwar, *supra* note 66, at 3.

benefits and costs of such provision."[68] This is justified because local governments better understand the concerns of the local community, and local decision-making is receptive to the intended people. This, in turn, encourages fiscal responsibility and efficiency; eliminates unnecessary layers of jurisdiction; and enhances competition among governments and stimulates innovation.

The third justification is 'the subsidiarity principle', which provides that unless a convincing case can be presented for assigning them to higher orders of government, taxation, spending, and regulatory functions should be exercised by the local governments. This principle empowers local governments to undertake activities which are local in their nature. Moreover, according to Marci Hamilton, among several functions that shall preferably be undertaken at the local level, land use is the central one. His analysis shows that "[t]he smaller the polity in geography and in population, the easier it is for the people (1) to monitor what their government is doing, (2) to criticize or praise, and therefore (3) to affect public policy".[69]

The FDRE Constitution allows states to administer land in their locality as this allows them to undertake matters of land administration by taking their local contexts into account. Since states have relative access to the local community, this helps to have feasible and desirable executions of land policies and laws. The issue then is states' constitutional mandate to administer land can be justified on the basis of incorporating local contexts and realize decentralized administration in the process of land administration. These are issues that do not require uniform regulation and execution throughout the country. For example, the manner of resolving disputes over land may vary across states. As uniformity may not be the desired end, regional variations in this regard may not worry the federation so long as due process of law is adhered to in the process of land dispute resolution. This means diversity in this regard is to be tolerated and even actively sought after provided parties in dispute are summoned timely; they got equal chance to be heard; they are allowed to produce their evidence; appeal opportunities are availed; and the decisions can be enforced equally.

### c) Contributing to realization of the right to self-determination

The right to self-determination is a fundamental and inalienable right gaining recognition in different human rights documents.[70] It is keenly related to the protection

[68] Anwar, *supra* note 66.

[69] Hamilton, *supra* note 19, at 321.

[70] Hurst Hannum, *The Right of Self-Determination in the Twenty-First Century*, 55 WASH. & LEE L. REV. 773, 773 (1998).

of the cultural, religious, linguistic, and ethnic identity of individuals and groups; and the right to participate effectively in economic and political spheres.[71] Of these issues, the right to self-determination's close linkage to the right to participation on economic spheres can be central to this particular issue. As land has central importance in the economic sector apart from its diverse implications, empowering the concerned group can help to realize the right to self-determination in its best. Yet, in the absence of genuine empowerment on this fundamental economic resource, one cannot confidently talk about the full realization of the right to self-determination in a particular state.

The fact that Ethiopia gives recognition to ethnic diversity and displays willingness to accommodate such group diversity through the right to self-determination, which opens room for regional states to exercise functional autonomy in their jurisdiction basically on resource control. As land has important place in the social, political, cultural, and economic lives of ethnic groups in Ethiopia, in the absence of power over it, it would be vain to fully exercise right to self-determination. This makes regional states' partaking in land administration central to maximize the exercise of their right to (economic) self-determination.[72] Assefa observes that,

> Given that the [FDRE] Constitution gives emphasis to the right to self-rule to ethno-national groups, it is hardly possible to think of the right to self-rule without a defined territory and control over land at constituent state level. This conception of land and its strong links with the right to self-rule provides a broad constitutional safeguard to nationalities as joint owners of land with the state.[73]

The right to self-determination may not necessarily give states sole ownership of land under their territorial administration as land is jointly owned by the nations, nationalities and peoples (NNPs) and the state.[74] Instead, the right to self-determination shall allow regional states to administer their lands. Regional states' mandate to administer land, as it is discussed in section 1, shall include valuation, registration, and taxation on land; enforcement of land rights; resolution of disputes

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[71] *Ibid.*, at 777.

[72] FDRE Constitution, Art 39; Fasil A. Zewdie, *Right to Self Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession*', 2013(1) LAW, SOCIAL JUSTICE & GLOBAL DEVELOPMENT JOURNAL (LGD). Available at: http://www.go.warwick.ac.uk/elj/lgd/2013_1/zewdie, (Last accessed on 26/12/2019); WUBSHET MULAT, ARTICLE 39: THE RIGHT TO SELF-DETERMINATION IN ETHIOPIA (2015) (published in Amharic).

[73] Assefa, *supra* note 2, at 355.

[74] FDRE Constitution, Art 40/3.

between landholders; allocation of land; and issuance of land holding certificate for landholders. This land administration power also includes legislative power over matters pertaining to land administration. In effect, regional states' involvement in land affairs (through administration of land) is justified to fully realize their (economic) self-determination.

## 3. Indicators of Federal Interferences in States' Affairs over Land

This section examines some indicators of federal interferences into states' mandates to administer land. The discussion reveals that some federal land laws empower the Federal Government to exercise administrative power with respect to land. Three federal laws are selected and examined in this section. The Industrial Parks Proclamation No. 886/2015 is indirectly related to the use and administration of land while two of them are purely land laws (Proclamation No. 818/2014 and Proclamation No. 456/2005).

### 3.1. Land administration in federal industrial parks

Ethiopia aspires for the construction of industrial parks by the government, private sector and/or jointly by the government and private investors. The plan is to make land and finance available for the construction of these parks.[75] In partnership with the private sector, the government shall engage in the establishment and development of such industrial parks thought to have far-reaching positive externalities in the wider economy.[76] The plan is to make medium and large-scale manufacturing industries export-oriented thereby alleviating foreign exchange shortages and contribute to technology transfer.[77] The aim is to make Ethiopia a leading manufacturing hub in Africa and globally intended to transform the Country into a lower middle-income economy by 2025.[78]

To institutionally support industrial parks, the Council of Ministers established Industrial Parks Development Corporation (IPDC) in 2014.[79] Also, the normative

[75] The Federal Democratic Republic of Ethiopia, *Growth and Transformation Plan II (GTP II) (2015/16-2019/20), Volume I: Main Text* 144 (National Planning Commission, 2016).

[76] GTP II, P. 136

[77] Bayisa Tesfaye, *Prospects and Challenges of Industrial Zones Development*, 2(1) ACJTB 3 (2016).

[78] GTP II, *supra* note 75, at 136.

[79] Regulation No. 326/2014, Industrial Parks Development Corporation Establishment Council of Ministers Regulation, *Federal Negarit Gazette*.

framework is put in place to further lay the legal and regulatory foundations for the development and operation of industrial parks. With this, the HPR enacted Industrial Parks Proclamation No. 886/2015 and Regulation No. 417/2017 is promulgated by the Council of Ministers. The laws permit different ways of developing industrial parks: (a) fully developed by the Federal Government or regional governments; (b) developed by public-private partnership with the IPDC; and (c) fully developed by the private sector.[80]

The IPDC has the mandate to facilitate land bank and provide infrastructure for private industrial park developers if they decide to invest in such area of investment. The IPDC is mandated to prepare a detailed national industrial parks master plan based on the national master plan of states or federal city administrations. It is also empowered to serve as industrial land bank in accordance with the agreement concluded with states and the city administrations.[81]

The establishment and operation of industrial parks require land; access to land is central in the realization of such parks. Article 22 of the Industrial Parks Proclamation No. 886/2015 regulates access to land for industrial parks. Accordingly, the industrial park developer may possess industrial park land through lease system and sub-lease is possible for developed industrial parks.[82] The industrial park operator may possess and administer the industrial park land which he has acquired via agreement from industrial park developer.[83]

The Industrial Parks Regulation No. 417/2017 stipulates that the IPDC is responsible to keep the lands it gets from regions through agreement in its land bank and develop it or transfer to other developers.[84] It is responsible to develop the land itself, secure leasehold certificate that enables it to do so from an appropriate regional institution.[85] Also, it shall transfer land in leasehold from the land bank to another industrial park developer(s) having secured investment permit. Following the conclusion of such leasehold, the industrial park developer shall get leasehold certificate from the Ethiopian Investment Commission.[86] In all these cases, it is the Federal Government

[80] Arts 5 – 8 of Regulation No. 417/2017; Arts 5 and 25 of Proc. No. 818/2014.

[81] Reg. No. 417/2017, Art 10 and Art 5 of Regulation No. 326/2014.

[82] Art 22(1).

[83] Art 22(2).

[84] Reg. No. 417/2017, Art 10(1).

[85] Reg. No. 417/2017, Art 10(2).

[86] Ibid, Art 10(3).

through the IPDC that administers the lands leaving no room for the states to allocate land, issue certificates, and lease the lands in their territorial jurisdiction.

The Industrial Parks Proclamation No. 886/2015 leaves powers to issue regulation and directives to the Council of Ministers and the Ethiopian Investment Board,[87] respectively.[88] This takes the power to determine the manner land shall be transferred both to the IPDC and investors through lease out from states' jurisdiction. This diminishes states' constitutional power to administer land in their territory, which includes the transfer of land to investors or any other through lease.

The other important thing worth consideration is the fact that delegation is explicitly sought for the IPDC to acquire land from the states. However, such delegation of regional mandates to a federal agency runs counter to both the FDRE Constitution and the federal system.[89] In effect, in relation to federal industrial parks, the claimed delegation of power to acquire land in regional territories by the Federal Government shall be in a shaky constitutional basis. This can be taken as a strategy to centralize matters of land administration by taking away local decision making in relation to the lands to a central organ.

## 3.2. Registration of urban landholding

Over the years, urban land registration has been at lower stages. Corrupt practices in the urban land governance were considered the major sources of rent-seeking. One of the solutions to tackle such practices, according to Ethiopia`s Growth and Transformation Plan II (GTP II), is technology-based registration of urban land and real properties with the view to encouraging long-term development and economic transformation.[90] To create uniformity in urban lands registration and facilitating the total registration of real properties in urban areas, the Federal Government passed Proclamation No. 818/2014. The need to realize real property rights of individuals;

[87] Under Art 2(18) of the Proclamation, the "Board" is defined as the Board established under the Ethiopian Investment Board Establishment Council of Ministers Regulation No. 313/2014.

[88] Art 32 of the Proclamation.

[89] As discussed in section 5, the FDRE Constitution does not clearly regulate upward delegation of power. The Minute of the Constitution prohibits the practice for upward delegation of power. Hence, the practice of upward delegation of power does not have a steady constitutional basis.

[90] GTP II, *supra* note 75, at 199.

providing reliable land information to the public; minimizing land-related disputes and modernizing the Country's real property registration system justify the proclamation.[91]

Also, the need to establish transparent and accountable working system and making government services efficient and enabling the possessor to enjoy the property he develops further justify the proclamation.[92]Article 4 of Proclamation No. 818/2014 provides the objectives of urban land registration in two broad themes. Its first sub-article states: ensuring uniform protection of landholding rights of different groups by enabling urban centers know the land available at their disposal through inventory. Its second sub-article provides that accelerating the economic, social and environmental development of urban centers by ensuring security of landholders and recognition of title to immovable property through certification.

Proclamation No. 818/2014 further demands the creation of urban land 'registering institutions' at a regional level and defines the powers and responsibilities of these institutions and makes them directly accountable to a federal agency – the Federal Urban Real Property Registration Information Authority.[93]As real property registration laws of the Country are scattered in different laws, it is believed that passing a law containing issues for uniform land registration is desirable.

However, the fact that Proclamation No. 818/2014 deals with elements of land administration and authorizes federal institutions to undertake land administration matters raises an issue of constitutionality. Assefa and Zemelak correctly remarked that some of the provisions in the Proclamation allowed the Federal Government to play administrative roles in urban land registration.[94]

Proclamation No. 818/2014 gives adequate coverage to the issue of urban land registration. It, *inter alia,* determines rules on prerequisites for landholding adjudication;[95] the manner how unique parcel identification code is made;[96] detailed rules about the principles on landholding adjudication system.[97] It also regulates implementation of landholding adjudication system;[98] matters to be suspended during

[91] FDRE Urban Land Registration Proc No 818/2014, Preamble.

[92] See Proc. No. 818/2014, Preamble, paragraph 3.

[93] Assefa and Zemelak, *supra* note 10, at 253.

[94] *Ibid.*, at 253.

[95] Proc. No. 818/2014, Art 5.

[96] *Ibid.*, Art 8.

[97] *Ibid.*, Art 10.

[98] *Ibid.*, Art 11.

landholding adjudication;[99] the expected obligations during adjudication.[100] Moreover, the manner in which grievance procedure and decision-making should be handled;[101] about surveying and surveying equipment;[102] cadastral survey control points and boundary marks;[103] application for landholding registration;[104] and other rules that are elements of land administration are regulated in the Proclamation.

By virtue of this Proclamation, it seems that the Federal Government in detail determined matters of urban land and property registration issues. The Proclamation leaves no room for states to enact laws in relation to urban land and real property registration. According to the Proclamation, the Council of Ministers may issue regulations necessary for the implementation of this Proclamation[105] and issue directives to implement the regulations.[106] The Proclamation does not allow states to exercise any legislative role on matters covered in it. Moreover, while matters pertaining to land administration shall be undertaken by the states, this law has established a central institution to undertake matters of land administration.[107]

Furthermore, the Federal Government, using this Proclamation, defined the powers and duties of regional governments regarding registration of urban lands. Accordingly, states have several duties in relation to urban land and property registration. In view of that, the first obligation is related to establishing or designating an appropriate body at regional level and landholding registration and information institution at urban level. States shall also ensure the proper enforcement of regulations and directives issued in accordance to the Proclamation. They also shall direct and coordinate the entire activities in accordance to the Proclamation and regulations, directives and standards to be issued. Besides, they have to determine, step-by-step, urban centers in which landholding registration may start in accordance to this Proclamation; and they shall fix the appropriate service fees chargeable for registration and other services it provides.[108]

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[99] *Ibid.*, Art 13.

[100] *Ibid.*, Art 15.

[101] *Ibid.*, Art 17.

[102] *Ibid.*, Art 22.

[103] *Ibid.*, Art 23.

[104] *Ibid.*, Art 27.

[105] See *Ibid.*, Art 54/1.

[106] See *Ibid.*, Art 54/2.

[107] Assefa, *supra* note 49, at 299.

[108] Generally, see FDRE Urban Lands Registration Proc. No. 818/2014, Art 50.

These mandates assigned to regional states have a far-reaching contribution to aid the enforcement of the Proclamation. This helps to safeguard the land tenure of urban dwellers and creates opportunity for the government to expand tax bases to collect revenues from land and other real properties.[109] This being fine, the determination of regional powers and functions through a proclamation should be seen with serious scrutiny. Under the FDRE Constitution, there are no working procedures to empower the Federal Government to instruct states to behave in a certain way in relation to urban lands registration. Moreover, to assign its mandates to the states, the Federal Government shall have legal authority in those powers. In the assignment of authorities to regional governments with respect to urban land and property registration appears self-contradictory since such tasks can be covered under the land administration responsibility of states under the FDRE Constitution. This is really debatable and at times surprising for the Federal Government to do so as if a primary power holder of the menus assigned to the states.

### 3.3. Regulation on rural land administration and use

Proclamation No. 456/2005 regulates the manner in which land shall be acquired; about rural land measurement, registration, and holding certificate; the duration of rural land rights; the transfer and expiry of land rights; and distribution of rural land. It also stipulates the obligation of rural land rights; determining minimum rural landholding size and about land consolidation; dispute resolution; and restrictions on rural land use.[110] The Proclamation allows regional councils to enact rural land administration and land use laws based on federal guideline.[111] It also proclaims that "no law, regulation, directive or practice shall, in so far as it is inconsistent with this proclamation, be applicable with respect of matters provided for in this proclamation".[112] The Proclamation has recognized free access to land right of peasants, pastoralists and semi-pastoralists. Any citizen who wants to engage in agriculture for living shall have the right to access rural land for free.[113]

The Proclamation, furthermore, deals with rural land dispute resolution. There is a constitutional base to take justiciable matters in a court of law.[114] Principally, judicial

[109] Interview with Solomon Kebede, Director, Federal Urban Land and Land Related Property Registration and Information Agency, at Bahir Dar, May 17, 2019.

[110] *See* FDRE Rural Land Administration and Use Proc. No. 456/2005, Arts 5 – 13.

[111] *Ibid.*, Art 17(1).

[112] *Ibid.*, Art 20/2.

[113] *Ibid.*, Art.5(1)(a).

[114] FDRE Constitution, Art 37.

power is vested in the courts.[115] However, for various practical necessities, this power could be given to other legally-established entities.[116] As a result, taking cases to a court of law and/or any competent body with judicial authority is constitutionally guaranteed. With this possibility, disputes relating to rural land could be presented to a court of law or to other competent organs. Dispute resolution is an aspect of land administration, and this mandate has to be the authority of the regional states. The federal proclamation deals with the issue of dispute resolution under its Article 12. This provision does not engage itself in determining the manner disputes concerning rural land shall be resolved. It rather leaves the determination of the mechanisms to resolve disputes regarding rural land to the regional states themselves.

Federal interferences into regional matters with respect to rural land administration can be evidenced if one looks at the draft proclamation to amend Proclamation No. 456/2005.[117] This draft proclamation contains several provisions that in detail govern matters of rural land administration, use, registration, and measurement. It brings on several additions to the existing proclamation. Details of land use plan are demonstrated in consecutive provisions of its chapter six.[118] Under chapter seven, the draft allows states to determine, by law, communal land administration and use of pastoralists and semi-pastoralists.[119]

The draft also stipulates the establishment of rural land registration office and rural land surveying office at regional level – leaving their establishment to regional laws. It further provides the manner rural lands shall be registered, the adjudication process, issuance of certificates[120] and many other issues that should otherwise are matters of land administration. Identification of parcels; unique parcel identification number; the details of landholding certificate; updating registration information; the effects of registering rural land and failure to register; the right to access to information; payment issues upon registration of rural land; and others are governed in the draft. Advanced to Article 12 of Proclamation No. 456/2005, this draft law provides detail rules regarding dispute settlement on rural land use. It also offers states to determine land dispute resolution mechanisms based on their contexts. Yet, at any cost, land related dispute resolutions cannot be handled out of arbitration and the court system.[121] It seems that

[115] *Ibid.*, Art 79 (1).

[116] *Ibid.*, Art 78(5).

[117] Federal Draft Rural Land Administration and Use Proclamation (2015).

[118] *Ibid.*, Arts 28 – 34.

[119] *Ibid.*, Art 35.

[120] *Ibid.*, Art 20.

[121] *Ibid.*, Art 40.

even if states could have other devises to resolve disputes over rural land, they cannot resort to them other than arbitration and the court system.

The draft also deals with information exchange between the federal and state governments. Accordingly, states are required to continually send updated information regarding rural land to the Federal Government. Also, the Federal Government has the authority to determine the type and nature of information to be sent. The draft urges the establishment of a national information archive by the Federal Government.[122] The specific federal organ entrusted with the establishment and administration of such information archive is the Ministry of Agriculture.[123] States shall establish information system that shall be compatible to the national one.

This law, though still in a draft stage, follows the approach of the Urban Lands Registration Proclamation No. 818/2014 and a similar criticism can be forwarded to the draft Federal Rural Land Administration and Use Proclamation as well. The draft proclamation expresses an intention to deepen interference in states' mandate to administer land. The title of the draft proclamation tells that administration of land is its center. As can be read from the law, many of the provisions in it are addressing elements of land administration. Even if states are allowed to enact their land laws pursuant to this federal law, one wonders to what extent it is possible to achieve that in a condition where the federal law governs land administration matters in rather detail fashion. In general, the degree of federal regulation over rural land by this draft law shall be seriously corrected towards an effective federal-state relationship. It can be said that, in paradox to the constitutional power allocation, the Federal Government has continued to regulate matters of land administration without any contest from the side of states.

## 4. Institutional Responses to Centralized Land Administration

Considering the series of federal interferences against states' land administration power analyzed in the preceding sections of this Article, it is evident that the Federal Government is going well beyond powers vested in it under the FDRE Constitution. This, in turn, diminishes states' constitutional competence to administer land. Having said this, it is also important to raise an issue as to whether such centralized land administration has gained deserved scrutiny and response by relevant institutions. This section finds that pertinent federal institutions responsible to defend the FDRE

[122] *Ibid.*, Art 68.

[123] *Ibid.*, Art 72.

Constitution are not living up to expectations, despite the presence of laws having the effect of centralizing some aspects of land administration.

According to the FDRE Constitution,

> Federal and State powers are defined by this Constitution. The States shall respect the powers of the Federal Government. The Federal Government shall likewise respect the powers of the States.[124]

These provisions reiterate the need for mutual respect of the federal and state governments in respect to the powers assigned to each other. The FDRE Constitution provides the way federal powers and functions can be transferred to state governments.[125] Moreover, under this same constitution, the HoF may require the HPR to enact civil laws which it "deems necessary to establish and sustain one economic community".[126] The core in these provisions is that if the HoF deems it can establish and sustain one economic community, it may order the HPR to enact laws. Civil law matters are basically left for states to legislate but that ceases if the HoF makes a determination that national level regulation is necessary for creation of one economic community. Except this possibility, the FDRE Constitution nowhere states that regional states can transfer their constitutional powers and functions upward to the Federal Government. Even the Minutes of the FDRE Constitution has openly rejected the proposal for upward transfer of power.[127] The final version of the Constitution does not contain a statement permitting the possibility of transferring regional mandates upward to the Federal Government.

Actually, defending the FDRE Constitution is an obligation imposed on several institutions, which urges all citizens, organs of state, political organizations, government officials have the duty to obey and ensure its observance.[128] Among the different institutions responsible to defend it, the HPR, the HoF, and the judiciary can be mentioned.

The HPR is expected to make all its laws consistent with the FDRE Constitution. If it makes laws that contradict the FDRE Constitution, the laws will remain void.[129] Apart from checking whether its laws do not violate the Constitution, the HPR is also

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[124] FDRE Constitution, Art 50(8).

[125] *Ibid.*, Art 50(9).

[126] *Ibid.*, Art 55(6).

[127] Minute of the FDRE Constitution, deliberations made on Article 50/9, HPR Library.

[128] FDRE Constitution, Art 12.

[129] *Ibid.*, Art 9(1).

expected to call and question the overall performance of the executive and the judiciary organs.[130] The HPR has thus the opportunity and responsibility to defend the FDRE Constitution from any unconstitutional legislative practice, decisions, customary practices and similar kind. The HPR has nevertheless remained silent in the face of enactment by itself of different laws that give land administration power to the Federal Government examined in Section 3 of this Article.[131] Even though such laws have gone through scrutiny of the HPR, it has failed to defend the FDRE Constitution basically from upward flow of power over land administration.

The other relevant organ responsible to defend the Constitution is the HoF. This house is composed of representatives of different ethnic groups and plays pivotal role in the prevention and management of conflicts.[132] Contrary to other federal systems having a second chamber – which actively involve in federal law making – the HoF barely has any legislative power.[133] The primary role of the HoF is interpreting the Constitution. In federations, disputes that require interpretation are likely to occur basically where conflicting or contradictory laws are passed by different orders of government.[134] For this, federations have to find a way to resolve these contradictions in advance. In most cases, the referee is the judiciary whose authority extends to declare a statute that violates the constitutional power allocation invalid on federalism grounds.[135] On top of this, the last word in settling disputes over constitutional matters must not rest either within a Federal Government or with constituting states alone:[136] it shall be entrusted to an independent organ constitutionally established for that purpose.

Under the FDRE Constitution, the power to interpret the Constitution is openly vested within the HoF.[137] The HoF gets advises/recommendations from the CCI in dealing with constitutional matters. The procedure is that when there are alleged interferences over provisions in the Constitution, claims will be presented to the CCI. The latter shall

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[130] *Ibid.*, Arts 55(16), 79 & 81.

[131] Interview with Zewdu Kebede, Member of the HPR and chair of Trade Affairs Sub-committee, Addis Ababa, on 19/11/2019.

[132] FDRE Constitution, Art 61.

[133] Adem, *supra* note 4, 65.

[134] Felix Knuepling, *Federal Governance and Weak States*, *in* FEDERALISM AND DECENTRALIZATION: PERCEPTIONS FOR POLITICAL AND INSTITUTIONAL REFORMS: PERCEPTIONS FOR POLITICAL AND INSTITUTIONAL REFORMS 15 (Wilhelm Hofmeister and Edmund Tayao eds., Local Government Development Foundation, 2016).

[135] *Ibid.*, 15.

[136] Assefa Fiseha, *Constitutional adjudication in Ethiopia: Exploring the experience of the House of Federation (HoF)*, 1(1) MIZAN LAW REVIEW 1, 4 (2007).

[137] FDRE Constitution, Art 62.

critically consider whether the matter calls for constitutional interpretation. If so, the CCI will present its findings on the matter to the HoF.[138] All the time, the role of the CCI is recommendation: it is not a decision by itself since the HoF has the authority to accept, modify, reject or call the CCI for further elucidations regarding the recommendations.[139]

As stated in Section 3, there are indicators for centralized land administration in the country. Nevertheless, the different indicators of upward flow of power over land administration did not get deserved scrutiny by the HoF. While the Constitution provides the forum for alleged unconstitutional legislation and practices to be entertained by the HoF, the practice does not cope with it. Considering the form of government we have, i.e. parliamentary one, confusions between the executive and the legislature at the central or regional level on whether to submit federalism disputes to the constitutional adjudicators are unlikely to arise.[140] Due to this, there is no authoritative declaration on the constitutionality of federal administration of lands.[141] Interviewees both in the HoF[142] and CCI[143] told these researchers that they are not receiving cases about the constitutionality of federal encroachment over regional states' mandate to administer land. .

In general terms, several reasons hinder the flow of cases to the HoF including (a) the perception that challenging the constitutionality of a government act before this House would be a futile effort; (b) the broad nature of federal powers makes the chances of any constitutionality claims on the basis of federalism slimmer; and (c) the lack of real political plurality among the parties that control the orders of government.[144] The dominant party system has been seriously hindering both states and private individuals from bringing matters requiring constitutional remedy. The dominant party system did not allow states particularly to openly oppose upward flow of their mandates.

Likewise, as almost all of the seats in the federal and regional parliaments across all the national elections have been dominated by a single party – the Ethiopian People's

[138] See Art 84(1) of FDRE Constitution; Interview with Getachew Gudina, Director, Research Directorate in CCI on 12/11/2019.

[139] *Ibid.*

[140] Adem, *supra* note 4, at 66.

[141] Gedion and Abduletif, *supra* note 29, at 68.

[142] Interview, *supra* note 138.

[143] Interview with Mustefa Nasir, Conflict Resolution and Peace Building Team Leader, HoF, on 14/11/2019; interview with Aschalew Teklie, Director of Peace Building, Research and Constitutional Studies Directorate, HoF on 14/11/2019.

[144] Gedion and Abduletif, *supra* note 29, at 190 – 191.

Revolutionary Democratic Front (presently predominately by the Prosperity Party) –, has been practically witnessed that representatives both at the state and federal levels were not opposing the free transfers of state powers to the center.[145] This, in turn, created chance for both orders of government to end the controversies before getting any public attention.[146] In effect, there have been unfavorable conditions for upward flow of power over land to be resisted within and outside the state and party structures.

Given this, it is less likely for the HoF to rule against the Federal Government when adjudicating sensitive constitutional matters.[147] Actually, allowing a political institution to have a final say on constitutional (particularly federalism) disputes may be challenging in federations that exhibit a vanguard single party system. The worry then is being dictated by strict party system, people may fail to oppose or make it in the agenda when it is evident that the Federal Government interferes into regional states' constitutional competences.[148] The constitutional adjudication system does not significantly contribute to bring matters of upward flow of power over land in the table and get proper constitutional interpretation. Adem Kassie's observation tells that constitutional adjudication scheme in Ethiopia is not contributing to develop a culture of constitutionalism,

> …the constitutional adjudication system is the most potent mechanism to ensure that unconstitutional measures are purged and to contribute to the entrenchment of a culture of constitutionalism. Unfortunately, the constitutional adjudication system in Ethiopia is designed to avoid mishaps to any government of the day and does not guarantee effective mechanisms to quash illiberal laws and other unconstitutional measures.[149]

In the same vein, Assefa Fisseha further comments on the serious issues challenging the system of constitutional adjudication in the country. He basically pinpointed that the system's alignment to the political structures is affecting the development of rule of law as "it failed to set limits on power reducing the rule of law merely serving as instrument

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[145] Interview with Namsy Alka, Communication Affairs Officer at HPR, Member of the HPR in the last three election terms, Addis Ababa (Dashen Building), on 15/11/2019.

[146] *Ibid.*

[147] Chi Mgbako *et al.*, *Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and Its Impact on Human Rights*, 32(1) FORDHAM INTERNATIONAL LAW JOURNAL 259, 285 (2008).

[148] Interview, *supra* note 138.

[149] Adem Kassie Abebe, *From The 'TPLF Constitution' to the 'Constitution of the People of Ethiopia': Constitutionalism and Proposals for Constitutional Reform*, *in* CONSTITUTIONALISM AND DEMOCRATIC GOVERNANCE IN AFRICA: CONTEMPORARY PERSPECTIVES FROM SUB-SAHARAN AFRICA 51, 75 (Pretoria University Law Press, 2013).

of power".[150] Moreover, "constitutional design that provides majoritarian body to be a judge on its own case is partly the explanation for this state of situation. It is also partly the result of one party controlling all political institutions including the HoF".[151]

There is a rare exception in this regard, though. It is about one case which has gained the attention of HoF regarding the constitutionality of centralized land administration; it is in connection with the draft phase of the Urban Landholding Registration Proclamation No. 818/2014. This is the first and only legislative matter relating to land administration that has raised issues of constitutionality by the HPR in recent years.[152] Even the members of HPR, after receiving the draft of this proclamation, were in doubt whether it was consistent with the FDRE Constitution. In other words, the issue was whether the draft proclamation is in line with states' power to administer land.[153] They were particularly claiming that the draft proclamation encroaches into states' legislative mandate over the administration of land, as several provisions in the draft deal with matters of land administration. Also, the fact that this law directed the establishment of a federal agency and authorized to undertake matters of land administration at the federal level runs counter to states' mandates in relation to land administration.[154]

The HPR referred the matter to the HoF for further clarification. The case was scrutinized by the CCI, which recommended the draft proclamation does not interfere in the power of states to administer land; the CCI argued that even if some of the provisions encroach into states' competences such encroachment was necessary for sustaining the economic union of the Country as envisaged under Article 55(6) of the FDRE Constitution.[155] Following this recommendation the HoF decided that the draft legislation was consistent with the FDRE Constitution.[156]

The decision of the HoF on the draft proclamation in question may not be relied, at least, on the following grounds. Article 55/6 can be mentioned as one mechanism of power transfer upward to the Federal Government so long as a decision to that effect is made by the HoF. The arrangement is that the HoF shall be convinced that allowing the

[150] Assefa, *supra* note 49, at 306.

[151] *Ibid.*

[152] Interview with Zewdu, *supra* note 10.

[153] *Ibid.*

[154] See Assefa and Zemelak, *supra* note 10, at 253.

[155] FDRE HoF First Emergency Meeting (Tahisas 24, 2006, E.C.), as cited in Assefa and Zemelak, *supra* note 10, at 254; Interview with Solomon Kebede, Director, Federal Urban Land and Land Related Property Registration and Information Agency, at Bahir Dar, May 17, 2019.

[156] Interview with Solomon Kebede, Director, Federal Urban Land and Land Related Property registration and Information Agency, at Bahir Dar, May 17, 2019.

HPR to enact matters of civil laws is important for the creation and sustenance of one economic community throughout the country. This cannot be interpreted to seek the HoF to decide on the constitutionality of a particular civil matter after the HPR has enacted a law on it. It is the later kind that happened in relation to the Urban Lands and Property Registration Proclamation. It is not when the HPR enacted a law and referred it to the HoF to rule on its constitutionality. Hence, procedural irregularity can be mentioned against the manner Article 55/6 is sought to justify the constitutionality of the Proclamation. The situation may also call another approach of looking the matter. It could be argued that in the absence of any normative framework that says the HoF shall make such determination only in its own motion, procedural irregularity shall not be mentioned against this decision. If we follow this line, the permission on enactment on civil matters may come from any party so long as the matter helps to create and sustain one economic community.

The authors appreciate this later way of looking at the issue and this Article maintains that the HPR can seek the HoF to allow it enact laws on certain civil matters. However, Article 55/6 does not seem to envisage the case where a law on civil matters is drafted by the HPR without the knowledge of the HoF and the former seeks the latter to determine the constitutionality of the law. One thing relevant to this decision is that the HoF is contacted for the determination of the constitutionality of the draft law. In other words, had it not been opposed by members in the HPR, the draft may not get the attention of the HoF, meaning that there could be a chance for the law to be publicized without this HoF's knowledge.

Second, Article 55(2) (a) of the FDRE Constitution is cited as a source of authority to enact the Proclamation.[157] If the Proclamation was enacted based on the direction of the HoF, the authority should have been Article 55/6 of the FDRE Constitution. The motive rather seems to be to broaden the authority of the Federal Government in relation to land administration. Third, it is possible to contribute to the creation and sustenance of one economic community, in respect to this proclamation, by having effective decentralization on matters of urban land and real property registration to states and local level governments. While the HoF could dictate the HPR to enact civil laws that help for economic unity, this may end affecting regional states' constitutional authority. The creation and sustenance of one economic community shall not make the Federal Government a sole responsible organ to that end. States should also be given a fair share contribution in the process. In effect, "the constitutional aspiration of one economic community shall be viewed as an outcome rather than having any bearing on

[157] *See* Proc. No. 818/2014, Preamble, paragraph 6.

the process".[158] This should remind the government to further localize important decisions rather than centralizing states' mandates on the justification of creating one economic community. It is possible to achieve this desire through genuine decentralization of power and making states part of it rather than putting the central government as the sole responsible entity.

Fourth, this decision has the effect of broadening the authority of the Federal Government in relation to land and the impartiality of the forum is doubtful. Even such decision of the HoF could mean it is serving as an instrument of centralization of power at the detriment of states in matters of land administration. It is noted that "the political practice of centralization and the HoF's latest decision indicate the HoF is likely to fall into the influence of the party that wields power at the center and become an instrument of centralization".[159] From this, although the HoF has constitutional mandate to dictate the HPR to enact civil laws with the view to create and sustain common economic community, this particular decision is serving as an instrument to centralize regional mandates over land administration. This may negatively affect the prospect of building "a federalist jurisprudence".[160]

The other relevant institution in relation to protecting the constitutional order from possible intrusions is the judiciary. The judiciary assumes a key role in the process of ensuring democracy and rule of law. Due to the absence of "judicial review" in the Country's administrative practice, the judiciary is unable to review decisions of especially the executive.[161] While there are instances for centralized land administration and this is an alleged breach of the FDRE Constitution, the judiciary has not been entertaining the matter. An interviewee in the Federal Supreme Court replied that the courts cannot fully enforce human and democratic rights and freedoms since the power to judicial review is withheld.[162]

Whether courts can adjudicate constitutional disputes is still debatable.[163] The practice is that the judiciary is now entertaining the constitutionality of laws having a status below proclamations. The constitutionality of laws at the level of proclamations and

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[158] Belachew Mekuria, *Op-Ed: The Virtues of True Decentralization*, ADDIS STANDARD NEWSPAPER, https://addisstandard.com/oped-the-virtues-of-true-decentralization/ June 18/2019.

[159] Assefa, *supra* note 49, at 299.

[160] Gedion and Abduletif, *supra* note 29, at 191 – 192.

[161] Interview with Melaku Kassaye, Judge, Federal Supreme Court, Addis Ababa, on 18/11/2019.

[162] Interview with Kifletsion Mamo, Judge, Federal Supreme Court, Addis Ababa, on 18/11/2019.

[163] Gebremeskel Hailu and Teguada Alebachew, *Increasing Constitutional Complaints in Ethiopia: Exploring the Challenge*, 2 HAWASSA UNIVERSITY JOURNAL OF LAW 39, 54-55 (2018).

above cannot be entertained by the courts.[164] Adem Kassie observes that, "judicial safeguards should generally be used as a final resort and courts should encourage and facilitate negotiated political settlements to resolve disputes between the different levels of government …"[165] Getahun Kassa further said that, the HoF's empowerment to interpret the Constitution shall not be construed to prevent the judiciary from applying the Constitution in the day-to-day exercise of their duties and responsibilities.[166] This is further supported by Donovan who noted that the Constitutional Drafting Committee did not intend to take the power to invalidate primary federal or regional legislation away from ordinary courts.[167]

In contrast, other scholars argue that the FDRE Constitution does not empower the judiciary to umpire constitutional disputes. For instance, Getachew Assefa has concluded that based on the deliberations made on Articles 62(1), 83 and 84 of the FDRE Constitution; the power to interpret the Constitution belongs to the HoF and not to the judiciary.[168] In addition, Yonatan Tesfaye holds the same argument and concludes that courts do not have the power to interpret the Constitution.[169]

While such debate is going on, the clear case is that the judiciary has not been entertaining constitutional matters. The judiciary has remained silent when various acts of power centralization over land were undertaken by the Federal Government; in fact, even when cases reach its dockets, the judiciary has been avoiding politically sensitive matters and transferring them to the CCI; this constitutes "judicial violation of the courts' constitutional mandate of adjudicating justiciable matters".[170] Having this in mind, it is not promising the judiciary, in the current framework, will entertain issues pertaining to unconstitutional upward flow of power in relation to land administration.

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[164] Interview with Melaku, *supra* note 161. He stated that when a particular legislation is below the status of proclamation, the Federal Supreme Court has the mandate to check the constitutionality of such laws once a case reaches the court.

[165] Adem, *supra* note 149, at 67.

[166] Getahun Kassa, *Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System*, 20 AFRIKA FOCUS 75, 81 (2007). DOI https://doi.org/10.21825/af.v20i1-2.5069

[167] D. Donovan, Leveling the Playing Field: The Judicial Duty to Protect and Enforce the Constitutional Rights of Accused Persons Unrepresented by Counsel, 1 ETHIOPIAN LAW REVIEW 31 (2002).

[168] Getachew Assefa, *All about Words: Discovering the Intention of the Makers of the Ethiopian Constitution on the Scope and Meaning of Constitutional Interpretation*, 24 JOURNAL OF ETHIOPIAN LAW 150 (2010).

[169] Yonatan Tesfaye, *The Courts and Constitutional Interpretation in Ethiopia: Judicial Review and Democracy: A Normative Discourse on the (Novel) Ethiopian Approach to Constitutional Review*, 14(1) AFRICAN JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW 134 (2006).

[170] Takele Soboka, *Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory*, 19(1) AFRICAN JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW 99, 118 (2011).

## Concluding Remarks

The Article analyzed the power of land administration in Ethiopia. It particularly tried to sort out the elements in land administration and land utilization by analyzing the general power sharing arrangement under the FDRE Constitution, the deliberations made during the making of the same Constitution, subsidiary land laws and the literature. It is hinted that determining issues of land tenure is the mandate of the Federal Government in its legislative power over land utilization. On this basis, the specification and determination of land rights, the manner to acquire rights over land, the scope of these rights, the manner they operate in the holding, transfer and inheritance of land and when and how rights over land shall extinct are elements of land utilization and fall under federal legislative authority.

The Article further identified and analyzed some indicators for federal interferences into regional states mandate to administer land. Federal land laws empower the Federal Government with the power to administer land. Through federal land laws, it is apparent that there is a considerable move to extend the mandate of the Federal Government to include the power of administering land and implementing land legislation. The laws expand the mandate of the Federal Government to comprise even mandates of urban and rural land administration that should otherwise fall to regional states.[171] The laws are meddling into regional states' constitutional competence to administer land since they plainly vested the power to administer land to the Federal Government.

Moreover, the Article demonstrated the absence of institutional responses on the centralizing tendency in land administration in general. The analysis elaborates that the supreme institutions entrusted to defend the FDRE Constitution from possible intrusions are not living up to expectations. In this regard, the HoF/CCI, the HPR, and the judiciary are not entertaining matters relating to upward flow of power over land. Despite the existence of indications for centralization of power in land administration having the effect of overriding both the FDRE Constitution and the federal system, they did not get proper attention of these forums. The HPR does not consider the matter so far; even it has been enacting rural and urban land laws having overtaken the legislative mandate of regional states over land administration. Besides, the judiciary is not entertaining matters pertaining to vertical transfers of power. Even whether it has constitutional ground to consider such kind of matters is debatable. Both the HoF and the CCI are not actively entertaining matters pertaining to upward flow of power over

[171] Assefa, *supra* note 2, at 356.

land administration. The only exception is the Urban Lands Registration Proclamation No 818/2014 where the HoF/CCI gave determination on its constitutionality.

While a number of reasons could be considered for this, the fact that the Country's politics has been led by strict centralized party system is hindering cases to get public attention. For this, private individuals, regional states and other stakeholders alleging the interference of the federal system by the Federal Government are unable to bring their cases to the forums. Although the different institutions are established to chiefly defend the FDRE Constitution, the manner they are established (their structures) and the manner they are practically operating appears limited in constitutionally regulating centralization of power especially over land.

The continuation of the Ethiopian federation requires, *inter alia*, non-interference in the powers assigned to each order of government. Increased centralization of state mandates implies the existence of federal interference against states' affairs that might weaken their contribution to the federation. This Article has revealed that the Federal Government is acting beyond the powers vested to it under the FDRE Constitution in matters of land. In a federal context, this is a violation of constitutional principles. For a federation to operate successfully, among other things, it requires a particular kind of "political environment", with the necessary traditions of political cooperation and self-restraint.[172] The absence of this kind of political environment has been the critical challenge facing the Ethiopian federal system. The nature of the political system in place has hindered people to participate in the decision-making of important matters.

The center-state relationship in Ethiopia is usually dominated by the Federal Government. States have been subordinated in policymaking and agenda settings.[173] The reluctance of states to be assertive and the coercive federal-state relationship over the years have contributed for them to remain silent and led the Federal Government to keep on arrogating to itself matters pertaining to land administration. This is evidence of constitutional violation by the central government without formal complaint from state governments.

The nature of the federal system at work may change over time and states may reclaim their taken powers. One might surmise that recent developments in the country are turning points to have strong state governments than they were in the past decades. This opportunity might pave the room for states to assert their powers taken by the

[172] DANIEL J. ELAZAR, FEDERALISM: AN OVERVIEW 35 – 36, (HSRC Publishers, 1995).

[173] Kalkidan Kassaye, *Center - State Relations in the Ethiopian Federal Setup: Towards Coercive Federalism? A view from the Practice* 139, (LLM Thesis, School of Law, Addis Ababa University, 2010).

Federal Government. This Article counsels the Federal Government not to interfere into states' mandates over land administration. Regional states shall be the sole seat of power to administer land in their jurisdiction and issue legislation on matters of land administration.

This Article did not cover all essential matters surrounding land administration and land utilization. It has attempted to travel a long way to clarify the mandates of the federal and state governments in relation to land. However, the matter is not a settled subject. Federal Government interferences in land matter in Ethiopia go well beyond legislative intrusions considered in this Article. For instance, states' potential abuse of their delegated legislative power in relation to land utilization and conservation by the Federal Government merits a separate investigation.

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