



Comparative Analysis Of Land Governance System In Ethiopia: Reflection Towards Land Reform In Ethiopia

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Abstract

Land is a critical resource and asset and has been taken as a driver of growth in most countries, including Ethiopia. This study offers a comparative analysis of Ethiopia's land governance system by selecting a model nation. Making this comparison evaluation is extremely helpful, and there are several valuable lessons and success stories that we can gain from their experience. The country's legislative and institutional structure addressing land governance has been blamed for a lack of defined policies, weak institutional structure, and lack of periodical assessment and adjustments to the land governance system. Moreover, the land governance structure in Ethiopia does not allow for the use of a multiple tenure system, compared to the model nation. Therefore, it is better to establish a complete and unified legislation and policy that might enable the nation to realize its aims of eliminating poverty. Any reform that might occur in the country should address the reality and intention of the population at large, and not the political agenda of the administration.

Keywords: Land, Land Governance, Land Tenure, Reform, Policy.

INTRODUCTION

Land is one of the world's greatest resources, a vital resource, and a driver of development in most countries.¹ It also serves as the main economic, political, social, and cultural asset that is a crucial source for generating livelihood income for societies in different parts of the world.² In addition, it remains an asset that farmers must accumulate wealth and transfer to future generations. Moreover, the issue of land has not simply remained an economic affair³ but it also very much intertwined with people's culture and identity, specifically in Africa and other developing countries.⁴ Likewise, Land has been the primary source of livelihood for Ethiopians due to its largely agrarian society.⁵ The value of land in Ethiopian society extends beyond its economic value to its cultural and social significance.

On the other hand, land governance is the way property rights to land are defined, exchanged and transformed;⁶ and how public oversight over land use, land management, and taxation is exercised; how land is managed, acquired, and disposed of; the nature and quality of land ownership information available to the public and the ease with which it can be accessed or modified; and how disputes are resolved and conflicts are managed.⁷ Apart from this, the land governance system in Africa, particularly sub-Saharan Africa, has presented a variety of challenges due to its historical, social, political, and cultural diversity.⁸ High-profile land grabs and illegal state land capture, land insecurity, and a lack of public participation in the land decision-making process are being exposed across several African nations. Ethiopia is no exception to this, since there are so many drawbacks visible in the country's land governance system.⁹ Furthermore, different historical events have shaped Ethiopia's land governance structure and policy, and land is regarded the basic instrument for political, economic, social, and cultural growth as well as identity in Ethiopia;¹⁰ and its governance system to some extent is complicated one. Hence, as

¹Klaus Deininger and others, 'Market and Non-Market Transfers of Land in Ethiopia: Implications for Efficiency, Equity, and Non-Farm Development' [2003] *Equity, and Non-Farm Development* (March 2003).

²Muradu Abdo, 'Interrogating Land Policy Perspectives: Ethiopia in Focus' (2023) 12 *Oromia LJ* 48; Daniel Behailu Gebreamanuel, *Transfer of Land Rights in Ethiopia* (Eleven international publishing 2015).

³Temesgen Solomon Wabelo, *Approaches to Rural Land Dispute Resolution Mechanisms in the Ethiopian Rural Land Legislations: Regional States Based Analysis*, 16 *Law, Environ. Dev. J.* 95 (2020).

⁴Kunqiu Chen and others, 'Land Use Transitions and Urban-Rural Integrated Development: Theoretical Framework and China's Evidence' (2020) 92 *Land Use Policy* 104465; Jean Philippe Colin, 'Securing Rural Land Transactions in Africa. An Ivorian Perspective' (2013) 31 *Land Use Policy* 430.

⁵Solomon Dessalegn Dibaba, *Ethiopia History of Land Tenure and the Present Land Governance: The Case of Oromia Region*, 22 *Int. J. Acad. Res. Dev.* 33 (2020); Solomon Dessalegn Dibaba, *Assessing the Tenure Security and Social Equity under Ethiopia Land Policy*, 12 *Int. J. Sci. Eng. Res.* 600 (2021).

⁶Tony Burns and others, 'Implementing the Land Governance Assessment Framework', *FIG Conference in Sydney, Australia* (2010).

⁷Zerfu Hailu, 'Land Governance Assessment Framework Implementation in Ethiopia' (2016).

⁸Fraol Udessa, Dagnachew Adugna and Liku Workalemahu, 'Urban Land Management Legal and Institutional Framework from Governance Dimension - The Case of Gelan and Lega Tafo Lega Dadi Towns' (2021) 10 *American Journal of Geographic Information System* 1.

⁹*ibid.*

¹⁰Dessalegn Dibaba (n 5).

land is an important asset, it should be handled and properly governed for better usage. Besides, in Ethiopia, most of the time, land reforms are genuinely improved hurdles in its governance system.

This study seeks to make a comparative analysis of Ethiopia's land governance system by adopting Botswana as a model nation to undertake this comparative evaluation of Ethiopia's land governance system. The reason behind selecting Botswana as a model nation is that among the countries located in South Africa, Botswana's land governance system is noted for its success in the land governance system in the area. In addition, the historical land governance system in Ethiopia and Botswana passed different historical points as Botswana was colonized, and the footprint of colonization had its own contribution to history. Therefore, this study proposes that Ethiopia's land governance system should analyze different characteristics or parts of the finest land governance system and perform thorough reforms to advance the sector and play a crucial role in national economic growth and development. To fulfill the paper's purpose, a doctrinal research technique was adopted. Thus, it highlighted the study of laws, legal and policy documents, relevant research, journal articles, books, book chapters, and other relevant literature employed as data sources to conduct this study.

1. LAND GOVERNANCE IN ETHIOPIA AND BOTSWANA

1.1 LAWS AND POLICIES OF LAND GOVERNANCE

2.1.1. CURRENT LAWS AND POLICIES IN ETHIOPIA

The FDRE constitution states that land ownership is a group right exercised by the government.¹¹ It lays out the principles by which land governance is conducted. Under the constitution, land is effectively excluded from the private property regime. The Constitution outlines what power levels have over land matters through its federal structure. In this way, the federal government enacts laws for the utilization and conservation of natural resources, whereas the regional government is responsible for their management. As a result, the Constitution established guiding principles that were detailed in the framework of legislation by the federal government.

In addition to the Constitution, there are different federal and regional laws governing land matters in Ethiopia. Urban Land Lease Holding Proclamation No. 721/2011 governs land issues located in urban areas. This proclamation prohibits the allocation of urban land other than through lease holding and designs a general direction through which all urban land holdings will in the future be converted to the lease system.¹² It recognizes tender and allotment as the basic

¹¹ Temesgen Solomon Wabelo, 'Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries' (2020) 11 Beijing L. Rev. 64.

¹² ARAYA ASGEDOM TAREKE ADDIS, 'College of Law and Governance Studies Salient Features of the New Ethiopian Urban Land Lease Holding Economy By Economy By' (2013).

means of leasehold rights transfers from the government to citizens.¹³It also provides that a landholding use right or immovable property ownership right on landholding may not be set up against third parties unless registered in the landholding register.¹⁴

Furthermore, Federal Rural Land Administration and Use Proclamation No. 1324/2024 is currently the governing law that regulates rural land administration. The preamble of the proclamation is revealed as it is enacted to ensure tenure security, strengthen the property rights of farmers, sustainably conserve and develop natural resources, and establish a land database and conducive land administration in the country.¹⁵In addition, while prohibiting land sale and the proclamation permits collateralization, land leasing (rental arrangements) and inheritance rights to be exercised and also limited forced land distribution only to irrigation development.¹⁶Besides, the “Expropriation of Land Holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation No. 1161/2019”. As provided under Article 3 of this proclamation, it shall apply throughout the country in rural and urban centers in matters relating to land expropriation, payment of compensation, and resettlement of displaced people.¹⁷Proclamation is applicable within the entire federation.¹⁸

On the other hand, in many countries, land ownership is not a constitutional issue, but in Ethiopia, because of its socio-economic importance, land ownership goes beyond a mere policy matter.¹⁹Rather, it is inserted in the constitution, and the issue of its ownership has become a settled subject.²⁰The government of Ethiopia has not developed a separate and fully fledged policy document that exclusively deals with land tenure security and social equity.²¹However, the constitution of the federal democratic republic of Ethiopia explicitly states that the right to ownership of rural and urban land is exclusively vested in the state and peoples of Ethiopia.²²Land is an inalienable common property of the nations, nationalities, and peoples of Ethiopia, and shall not be subject to sale or other means of transfer.²³Accordingly, the policy objective is to ensure the equality of citizens in accessing the land.²⁴Tenure security is another policy objective and concern for the state. State ownership of land is the best mechanism to

¹³ibid.

¹⁴Rosalind Lee and Geoffrey Waterson, ‘Legal Update’ (2004) 22 Property Management 3.

¹⁵Rural Land Administration and Land Use Proclamation No. 456/2005, See preamble.

¹⁶ibid.

¹⁷Expropriation of Land Holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation No. 1161/2019 Art. 3.

¹⁸ibid.

¹⁹Dessalegn Dibaba (n 5).

²⁰Dibaba (n 5).

²¹Abebe Mulatu, ‘Compatibility between Rural Land Tenure and Administration Policies and Implementing Laws in Ethiopia’ [1991] Land law and policy in Ethiopia since 1.

²²Dibaba (n 5).

²³Constitution of Federal Democratic Republic of Ethiopia (Proclamation No. 1/1995), Article 40(3).

²⁴Dibaba (n 5).

protect peasants against market forces.²⁵ However, land policy in Ethiopia is not yet well articulated, comprehensive, and harmonized, except for the constitutional provision that decides on the issue of ownership of land. The lack of comprehensive land policy and strong institutions that help in the implementation of the policy at a federal level has been a major flaw in the land governance regime. The laws lack consistency and coherence because they lack a policy guide that gives general guidance to the laws put in place.

2.1.2 CURRENT LAWS AND POLICIES IN BOTSWANA

The legal framework governing Botswana's land is a combination of formal and customary laws, with much of the formal law reflecting longstanding principles of customary law.²⁶ Currently, the basic land laws in Botswana are the Constitution of Botswana, the State Land Act, the Tribal Land Act, and the Town and Country Planning Act.²⁷ In Botswana, the tribal land is administered in the new Tribal Land Act (TLA, hereinafter) No. 1/2018. This Act is divided into eight parts and intends to protect Botswana from self-inflicted deprivation since many willingly engage in legal and illegal land dealings with non-citizens.²⁸ Section 5 (5) of the 2018 TLA states that when formulating policies, the Land Board should consult the District Council and the Tribal Administration, which is not provided for in the operational Act. This supports the spirit of participatory democracy, which stresses citizens' active and genuine participation in all stages of development.²⁹ Land Boards can allocate land, cancel customary rights, and rezone agricultural land for commercial, residential, and industrial uses. Additionally, if tribal land is required for a public purpose, the land board can decline the requests made by the concerned bodies if they are dissatisfied with it for due reasons.

The State Land Act of 1966 provides for the management of state land (urban land, parks, and forest reserves) by the central government and local government councils, and the allocation of urban land to individuals and entities. State land, most importantly urban land, is administered according to the State Land Act by central and local government councils. In urban areas, state land is allocated to citizens for residential purposes as a 99-year fixed-period state grant, which is registered in the Deeds Registry. For business or industrial purposes, grants have been in place

²⁵Daniel Weldegebriel Ambaye, *Land Rights and Expropriation in Ethiopia* (2013).

²⁶Martin Adams, Faustin Kalabamu and Richard H White, 'Land Tenure Policy and Practice in Botswana - Governance Lessons for Southern Africa' (2003) 19 *Journal fur Entwicklungspolitik* 55.

²⁷ibid.

²⁸Boga T Manatsha, *Reflections on Botswana's Tribal Land Act No. 1 of 2018*, 2 *African J. L. Policy Geospatial Sci.* 73 (2019).

²⁹Adams, Kalabamu and White (n 26).

for 50 years.³⁰ State land is also occupied by the state as wildlife and forest reserves, research stations, roads, military purposes, large dams, and so on.

In Botswana, several policies were formulated in the past to address issues of land management and administration, starting from 1985.³¹ The current comprehensive land policy was approved in 2019.³² The process for formulation of Botswana's latest land policy started in 2001 to conduct a comprehensive review of the land policy to review, integrate, and consolidate all land-related policies, procedures, and programs employed in the administration, management, acquisition, development, and disposal of land in all tenure systems found in the country. The overarching goal of the new Botswana Land Policy, as stated in the 2019 revised version, is to protect and promote the land rights of all landholders and promote sustainable human settlements.

The policy has two sets of objectives: specific and overall. The specific objectives are to guide all land operations for sustainable human settlements, land utilization, and socio-economic development, and to promote access, equity, efficiency, land rights security, and transparency in the land.³³ The policy also notes emerging challenges such as globalization, economic diversification, rural-urban migration, environmental sustainability, and competing needs for social, economic, and political harmony. Finally, Land Policy seeks to involve stakeholders in advising the government on land issues and change management.³⁴

1.2 REFORM EFFORTS AND GAINS SECURED

1.2.1 REFORM EFFORTS AND GAINS SECURED IN ETHIOPIA

Land reforms took place in Ethiopia during different regimes. At the time of the imperial regime, the ultimate thrust of the land policy and reform was taken as part of the overall nation-building project, which aspired to forge pan-Ethiopianism founded on capitalist modernity. In search of a uniform land tenure system reflecting Western property conception, the regime endeavored to wipe out customary tenure systems.³⁵ However, the land policy of the Dergue that unseated the imperial regime decisively shifted to the equality principle.³⁶ In confronting land issues inherited from their predecessors, the Dergue made equality the center of their land policy, which was implemented through the redistribution of rural land to small farmers and the allocation of urban

³⁰ibid.

³¹Clement Ng'ong'ola, 'Reflections on Botswana's 2015 Land Policy' (2017) 24 U. Botswana LJ 113; Ministry Of Lands, 'Botswana Land Policy'.

³²Faustin Tirwirukwa Kalabamu, 'A Commentary on Botswana's 2019 National Land Policy' (2021) 108 Land Use Policy 105563.

³³ibid.

³⁴Phineas G Kadenge & Charles Chavunduka, Land Governance in Zimbabwe, in Land Governance in Southern Africa Symposium, Windhoek, Namibia-3-4 September 2019 3 (2019).

³⁵Dessalegn Rahmato, Land, Peasants, and the Drive for Collectivization in Ethiopia, 4 Land in African agrarian systems 274 (1993).

³⁶Ethiopian Civil and Commercial Law Series, Volume-XI, 'Reforming Property Law of Ethiopia'(2021). (ed. Murado Abdo), Addis Ababa University - School of Law,

land and urban extra-houses to the urban masses. This initial government reallocation of land and urban extra houses was accompanied by legislative measures.

After the downfall of the Dergue regime, the new government that came into power also reshuffled the politics of the country, but a comprehensive change concerning land was not indicated at this time. Privatization of farm collectives took place rapidly, and the expectation at this time was that in this process of post-socialist transition, a move towards privatization and registration of land titles would follow, which was regarded to increase the productivity of Ethiopia's smallholder agriculture; however, these expectations were soon disappointed.³⁷ The new constitution of 1995 approved and confirmed the state ownership of land in Ethiopia. However, the current government has also pursued a populist land reform agenda. There has been neither substantial improvement nor changes to the land policy put in place by the military regime for a quick fix in garnering popular support.³⁸

The gain secured was that the radical land reform that took place during Dergue abolished the feudal land system entirely, the tillers did receive the land, but with no tenure security, and the fruits of their labor were subjected to state exploitation.³⁹ The shift to collectivization was decided soon after the radical land reform with heavy investment in state farms, followed by the push for what was known as peasant-producer cooperatives.⁴⁰ Besides, the radical reform of the military regime was a success in some respects, but a dismal failure in many others. The new measure transformed rural Ethiopia into a society of small, self-laboring peasants whose livelihoods became increasingly precarious on account of the dynamics of the reform itself; to promote social equity and reform undermined peasant confidence. The reform structured the land system, but in doing so and in its practicalities, it made the insecurity of tenure an enduring element. The state replaced the landlord as the judicial owner of the land and, because of this, provided the former greater hegemony over the peasant.⁴¹ Furthermore, the promise of the reform left enduring confusion and poverty. Finally, even if the current government essentially pursued the populist land reform agenda, there has been neither substantial improvement nor changes to the land policy put in place by the military regime for a quick fix in garnering popular support.

2.3 REFORM EFFORTS AND GAIN SECURED IN BOTSWANA

The first reform made in Botswana on land destroyed the feudal order, changed landowning patterns, particularly in the south, in favor of peasants and small landowners, and provided the

³⁷Wibke Crewett and Benedikt Korf, 'Ethiopia: Reforming Land Tenure' (2008) 35 Review of African Political Economy 203.

³⁸Gebreamanuel (n 2).

³⁹Dessalegn Rahmato, The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s - 2000s, 358 (2009).

⁴⁰ibid.

⁴¹ibid.

opportunity for peasants to participate in local matters by permitting them to form associations.⁴² During the colonial period (1895-1966), some of the land in the country was allocated to individuals and companies on a freehold basis. In the late 1960s and the early 1970s, Botswana's land administration system underwent major changes. The Tribal Land Act took the right to allocate land away from the chiefs and put it in the hands of land boards. Land use in the tribal areas of the country was also decided upon, with the most important decision being the promulgation of the tribal Grazing Land Policy. The underlying reasons for launching a land reform effort in Botswana are spelt out in a Government of Botswana White Paper published in the 1975 Republic of Botswana 1975. To achieve the aims of conservation, production, and equality, the document suggested that grazing land in Botswana be divided into three zones: commercial, communal, and reserved. In commercial areas, leasehold rights would be granted over blocks of rangeland; in communal areas, the basis of land tenure would remain the same as before, and reserved land would be set aside for the future. Large-scale cattle owners would be encouraged to move to commercial areas where they could establish fenced ranches in exchange for rent to the district's land board. This would relieve grazing pressure in communal areas, thus enhancing herd productivity and simultaneously providing a more equitable distribution of land among rural people.

Even to a large extent, land reforms since independence in 1966 can be regarded as existing on the same continuum as the preceding hundred years.⁴³ Land management has been a priority for Botswana since independence, as demonstrated by the legal, institutional, and policy frameworks that were put in place. There has been notable economic progress in this country, which brought about new concepts in land development, land rights, and land management. Botswana continues to adapt its land administration, based on customary rights and values, to a rapidly urbanizing economy and expanding land market. Its land tenure policy has been described as a careful change that responds to needs with specific tenure innovations.⁴⁴ Botswana's land institutions are often held as a model of democratic development.

In Botswana, after the independence of the country, the government took comprehensive measures to enhance and secure issues related to the land and considered the land as a basic tool for the country's development. In Botswana, land reforms started during the colonial period, processes, and trajectories of change that could impact land tenure practices in the country. Even to a large extent, land reforms since independence in 1966 can be regarded as existing on the

⁴²RK Hitchcock, 'Land Reform, Ethnicity, and Compensation in Botswana' (1990) 14 Cultural Survival Quarterly 52.

⁴³Bayo Ijagbemi, 'Land Tenure Reforms and Social Transformation in Botswana: Implications for Urbanization.'

⁴⁴Adams Martin, Land Tenure Policy, and Practice in Botswana; Governance Lessons for Southern Africa Martin Adams 1, 1 (1966).

same continuum as the preceding hundred years.⁴⁵Land management has been a priority for Botswana since independence, as demonstrated by the legal, institutional, and policy frameworks that were put in place. There has been notable economic progress in this country, which brought about new concepts in land development, land rights, and land management. Botswana continues to adapt its land administration, based on customary rights and values, to a rapidly urbanizing economy and expanding land market. Its land tenure policy has been described as a careful change that responds to needs with specific tenure innovations.⁴⁶Botswana's land institutions are often held as a model of democratic development. As periodic land policy reviews and commissions have revealed, problems have generally been acknowledged and rectified after investigation and discussion. Therefore, these are the basic lessons we could take from Botswana towards reforms of the land regime.

2. COMPARATIVE EVALUATION OF THE LAND GOVERNANCE SYSTEM

2.1 NATURE OF GOVERNANCE SYSTEM IN ETHIOPIA AND BOTSWANA

The nature of land governance in Ethiopia is that all land is located under state ownership and is not subject to sale or other means of exchange. The government recognizes the use of rights and holdings.⁴⁷ The country's legal and institutional structure concerning land governance has been very weak, uncoordinated, and criticized for being unnecessarily complicated. The laws that govern the issues related to the land are scattered and found in different legislations and again backed by different customs.⁴⁸ Therefore, a typical feature is the plurality of laws and institutions. Moreover, Ethiopia's federal structure gives its regions a lot of autonomy, which, in turn, has led to the coexistence of different laws and institutions with at times unclear responsibilities at different levels.⁴⁹

Urban Land Administration is given under the federal constitution to city governments and municipalities across the country. Even if there is no common system to administer land in urban areas, urban land is essentially governed by the lease system and a perpetual permit system, as well as separate legislation for condominiums.⁵⁰ On the other hand, rural land administration is afforded to these regions. In rural areas, both land administration institutions and investment authorities have the mandate to allocate land to investors; therefore, it may lead to overlaps of

⁴⁵Jagbemi (n 43).

⁴⁶Martin (n 44).

⁴⁷Daniel Behailu and Adisu Kasa, 'Land Governance in Ethiopia: Towards Evaluating Global Trends' (2018) 4 Journal of Social Sciences Research 35.

⁴⁸ibid.

⁴⁹ibid.

⁵⁰Melkamu Belachew & Shewakena Aytenfisu, Facing the Challenges in Building Sustainable Land Administration Capacity in Ethiopia, in FIG Congress 2010/TS 8A - Land Management 11 (2010).

power and responsibilities. The Ethiopian Constitution maintains that all rural residents are entitled to indefinite-term use rights to land and free land use for rural farmers, but fees are collected during rural land registration, namely for certificate costs.⁵¹ Generally, Ethiopia does not have sufficient land record-keeping systems, and this risk may undermine the land registration process itself. It has been argued that tenure insecurity leads to informality and hinders rural income diversification.

The major challenges the land governance in Ethiopia is the political agenda of government towards the land governance system, the perception of land by the citizens of the country as their identity, the absence of a strong national institution that gives clear policy, legal, technical, and financial guidance for land in an integrated approach across the Ethiopia land governance history, the absence of good governance, poor land management legal regimes and lack of adequate land administration system, outdated and/or rigid development plans, lack of uniformity in different level of government and among regional government in land legislation, institutional arrangement and capacity problems prevail especially in urban areas, likewise, scarcity and landlessness of young peasants, women, and re-settlers characterize the country's land resource administration in the rural areas.

The nature of land governance in Botswana is that unlike that of Ethiopia, there is a separate ministry that undertakes every aspect of land and land related in the country. Under the Ministry of Land Management, Water and Sanitation Services, state land and freehold land tenures are administered by the Department of Lands and Tribal land by the Department of Land Boards.⁵² There are twelve (12) main Land Boards in the country, which are assisted by thirty-nine (41) Subordinate Land Boards to administer Tribal Land. Tribal land accounts for 71% of the country's total land mass.⁵³ The land allocated by the land board is allocated free of charge to citizens. The allottee would be issued with a customary grant certificate, which guarantees that the land ownership over this land shall be perpetual as long as the allottee remains in occupation of the same unless the allottee no longer needs the land for the purpose for which it was allocated to him or her; the land reverts to the land board for re-allocation to others in need of the land.⁵⁴ On the other hand, state land accounts for 26% of the country's land mass. The President has, in turn, assigned responsibility for administering and allocating state land to the Minister responsible for land matters within his government.⁵⁵ The day-to-day administration of State

⁵¹Behailu and Kasa (n 47).

⁵²Kadenge and Chavunduka (n 34).

⁵³ibid.

⁵⁴African Natural Resources Center & African Development Bank, Review of Land Tenure Policy, Institutional and Administrative Systems of Botswana: Case Study, 52 (2016).

⁵⁵Kadenge and Chavunduka (n 34).

Land is however under the control of the Department of Lands which is an organ under the Ministry of Land Management, Water and Sanitation Services. State land is allocated to those who apply and qualify to be allocated the same on either a 99-year or 50-year Deed of Fixed Period State Grant.⁵⁶

Unlike Ethiopia, Botswana has adopted a Deeds Registry System that operated under the Deeds Registry Act to recognize land rights that had been formerly allocated to specific entities. The Deeds registry system presently caters for Freehold land as well as State Land tenure-held land.⁵⁷ In the case of Tribal land which forms the bulk of the land in the country, it currently not formally registered at any central repository, like the Deeds Registry.⁵⁸ Copies of customary grant certificates issued by each respective land board are kept by said Tribal land can only be used as collateral when it is surveyed, and the customary grant is converted to a common-law lease which can then be registered at the Deeds Registry.⁵⁹ Besides, there is no rural-urban land dichotomy, likewise, the freehold land tenure is open for sale and as any means of exchange. Further, there are clear separate and strong land laws and comprehensive policies that govern the regime.

2.2 LAND ADMINISTRATION PILLAR IN ETHIOPIA AND BOTSWANA

2.2.1 LAND TENURE IN ETHIOPIA AND BOTSWANA

The Ethiopian has exerted considerable influence on local land tenure regimes throughout different political regimes.⁶⁰ The new constitution of 1995 approved and confirmed the state ownership of land in Ethiopia, Article 40 of the 1995 Ethiopian constitution states that the right to ownership of rural land and urban land, as well as of all natural resources is exclusively vested in the state and the peoples of Ethiopia, and the land is a common property of the nations, nationalities, and peoples of Ethiopia.⁶¹ Broadly speaking, while the 1995 constitution largely confirms state ownership of land as a continuation of the Dergueregime, they also provide some specifications that seek to take into account the necessity for rural land and labor markets to emerge. Thus, even though the new government adopted a free market economic policy, it has decided to maintain all rural and urban land under public ownership by justifying the continuation of land as public/state property rests solely on the issue of security.⁶² The FDRE constitution and following land laws broaden the use right and allowed those rights of inheritance, lease, and

⁵⁶ibid.

⁵⁷ibid.

⁵⁸African Natural Resources Center and African Development Bank (n 54).

⁵⁹Kadenge and Chavunduka (n 34).

⁶⁰Wibke Crewett, Ayalneh Bogale & Benedikt Korf, Land Tenure in Ethiopia: Continuity and Change, Shifting Rulers, and the Quest for State Control, L. Tenure Ethiop. Contin. Chang. Shifting Rulers, Quest State Control (2008).

⁶¹Federal Negarit Gazete Constitution of Federal Democratic Republic of Ethiopia (Proclamation No. 1/1995) (n 23).

⁶²Temesgen Gebeyehu, Land Tenure, Land Reform, and the Qalad System in Ethiopia, 1941-1974, 46 J. Asian Afr. Stud. 567 (2011).

donation of land. Additionally, even though it is the state that controls land ownership, rural peasants and pastoralists are guaranteed lifetime holding rights that give all rights except sale and mortgage.⁶³

The challenges of land tenure in Ethiopia are part of complex policy problems that stem from failed attempts at agricultural modernization and the consolidation of state power. There is insecure land tenure and transaction, farm households may have less incentive to invest in land management.⁶⁴ Most of the laws that are governing land tenure in Ethiopia are conservation policies, laws, and practices impacting negatively the livelihoods of the communities. Besides, the land is fragmented and more often in the hands of the title owners who are not interested in agriculture. Therefore, this inhibits the large-scale production of agricultural products. Therefore, land reforms are necessary to ensure large fertile arable lands are cultivated on a commercial basis. The current government has effectively eliminated the possibility of flexible application of land policy assuming that all land issues have been addressed and resolved by the constitution. The reliance of the current government on old land policies and the inclusion of this in the constitution will make a land policy reform process very slow, as such process requires constitutional amendments.

Besides, land tenure in the case of Botswana there is three categories of land tenure; tribal land, state land (crown land before independence) and freehold land.⁶⁵ The tribal land tenure owner has a right to perpetual use which can be transferred and inherited, while the tribal land remains the property of the state.⁶⁶ As such, the land can be repossessed for developmental purposes, with the owner's receiving compensation determined by the government. Tribal land can be allocated under two types of grants: customary grants and common law leases, which are allocated under customary law and common law, respectively. Customary grants are only available to citizens, and land held under the customary grant cannot be encumbered. However, customary grants may be converted to common law leases.⁶⁷ These are allocated for residential, commercial, industrial, civic, and agricultural purposes, especially for arable land and boreholes for livestock watering in communal areas. Land allocated for residential, commercial, civic, industrial, and arable agricultural purposes gives the rights holder exclusive and perpetual use of that land. In the case of freehold land, the land is held under perpetuity and the owner is free to sell, lease and

⁶³Bhawana Baniya and others, 'Land Tenure System in Ethiopia: Issues, Challenges and Opportunities' 1.

⁶⁴ibid.

⁶⁵Adams, Kalabamu and White (n 26).

⁶⁶Jagbemi (n 43).

⁶⁷L Bornegrim and L Collin, 'Administration of Tribal Land in Botswana' (2010) Bachelor's Faculty of Engineering and Sustainable Development; Kadenge and Chavunduka (n 34); African Natural Resources Center and African Development Bank (n 54).

mortgage the property to both citizens and non-citizens subject to the Land Control Act.⁶⁸ Thus, freehold title is inheritable, freely transferable, and registerable. The rights under this tenure system are the most secure as land parcel owners can dispose of their land to anybody at prices agreed between the owner and the buyer.⁶⁹ The seller does not need to have developed the land or obtained consent from the land authorities before selling.

Concerning state land, state land is owned by the government under the State Land Act and is found in every area of the country.⁷⁰ The allocation of state land is done through grants i.e., deeds of state grants, and certificates of rights. The owner of land allocated under the deed of state grants becomes the full owner of the property in perpetuity. The holders are free to sell, lease or mortgage their properties to citizens or non-citizens; there is no time limit to this kind of title. Generally, in terms of differences in tenure security between the various systems in Botswana, the freehold land tenure system offers the most secure land ownership. Under the system, owners are free to sell their land to the highest bidder without consent from any authority. The state also has some form of security as landholders are given leases, although they must seek permission before they can sell. Tribal land is less secure, and land within tribal lands cannot be sold, only developments undertaken on the land can be sold, and they must have consent from the land board. However, tribal land certificates can be converted into common law leases, which are registerable at the deed's registry. Once registered, land can be used as collateral for loans from financial institutions.

2.2.2 LAND VALUE, USE AND DEVELOPMENT OF ETHIOPIA AND BOTSWANA

In Ethiopia, land sales remain illegal, and since land could not be subject to sale, the land has no clear market value because the land market can be a potential base to indicate actual land value, likewise in Ethiopia, there is no standard and responsible institution for real property valuation.⁷¹ However, in practice even if it is illegal, land could be valued based on the area in which it is located i.e., urban, peri-urban, rural, investment area, market center, residential area or not, thus based on such situation the land values increased or decreased sharply with some substantial local variation.⁷² However, in Botswana, the land value is determined based on various techniques that are used regarding the assessment of the value of a property as well as how to approach valuation. The determination of value for property or land is mainly based on

⁶⁸Kadenge and Chavunduka (n 34).

⁶⁹Adams, Kalabamu and White (n 26).

⁷⁰Kadenge and Chavunduka (n 34).

⁷¹Habtamu B., Real Property Valuation in Expropriation in Ethiopia; Bases, Approaches and Procedures, 2 African J. L. Policy Geospatial Sci. 40 (2019).

⁷²Stein T Holden, 'The Gender Dimensions of Land Tenure Reforms in Ethiopia 1995-2020' (Centre for Land Tenure Studies Working Paper 2021) <<http://hdl.handle.net/10419/242786>>.

market value or area.⁷³ The market value system makes sure that there is uniform, fair, transparent, and understandable. By basing the values on the market value of the properties, improvements, and locational characteristics such as parks, transport systems and proximity to amenities are considered. The various factors contribute to the value of land and the land market. These factors may include physical location; quality of the soils; landscape; zoning of the land; potential revenue and cultural values.⁷⁴ Customary entitlement to land has been oblivious to the value of land as a capital and investment resource. The government has forgone opportunities to earn revenue from land, property development and transfers. On the other hand, costs are incurred in providing services on land transactions and facilitating land availability and development.⁷⁵

Land use refers to the purpose for which a certain plot of land could serve the user of that land. In Ethiopia regarding land use and development, even if the law under the urban planning proclamation in its preamble part stated that the proliferation of unplanned urban centers needs to be regulated and guided by sound and visionary urban plans to bring the balanced and integrated national, regional, and local development, there is no the implementation land use plan in the country as a whole i.e., the owner any parcel of land may construct on do whatever he wants on his plot of land. It is also vital to create favorable conditions for public and private stakeholders to fully participate in the process of urban plan initiation, preparation and implementation based on national standards.

Likewise, proclamation No.1324/2024 indicates that it has become necessary to sustainably conserve and develop natural resources and pass them over to the coming generation through the development and implementation of sustainable rural land use planning based on the different agroecological zones of the country. On the other hand, it is deemed necessary to put in place legal conditions which are conducive to enhancing and strengthening the land use rights of farmers to encourage and to take the necessary conservation measures in areas where mixed farming of crop and animal production is prevalent and where there is the threat of soil erosion and forest degradation. Thus, even if the law says in this area, there is no clear practice that is implemented in the country, the owner of a certain parcel of land can do whatever he wishes on his land. So, its implementation is weak.

On the other hand, land use and development in the case of Botswana has strong acts that govern land use issues across the country. It is important that when land is allocated it is developed with

⁷³Nara F Monkam, Property Tax Administration in Francophone Africa: Structures, Challenges, and Progress, 11 Public Financ. Manag. 48 (2011).

⁷⁴Ng'ong'ola (n 31).

⁷⁵ibid.

minimal delay. Land that is developed converts into capital which leads to the appreciation of its value and contributes to the growth of the economy through revenue generation. It is therefore necessary that appropriate measures be put in place to facilitate land development.⁷⁶ The following will therefore apply strict enforcement of development covenant; Repossession and re-allocation of undeveloped land with minimal delay; once allocated land, allottees will be required to submit development compliance certificate in a prescribed manner and time, and improve methods of assessment and vetting on land applications to identify suitable candidates.

2.2.3 INSTITUTIONS, STRUCTURES, AND DISPUTE SETTLEMENT MECHANISMS IN ETHIOPIA AND BOTSWANA

In Ethiopia, land tenure disputes may occur in rural, peri-urban, and urban areas⁷⁷ and they could take different forms.⁷⁸ For example in peri-urban areas of Ethiopia, at least three parties are competing for the land. These are the government, which is the provider of the land, the private individual/company who needs the land, and the peri-urban landholders who are losing their land rights due to expropriation because of urban expansion.⁷⁹ Therefore, it may occur between these three parties or within the same party or two parties.

In Ethiopia, land tenure disputes are most of the time related to boundary trespassing disputes, landholding disputes, land rental disagreements, divorce-related land disputes, bequeath disputes, parcel exchange disputes, and land use-related disputes.⁸⁰ These conflicts of interest related to the land could be resolved most of the time through formal means i.e., court litigations (judicial dispute resolution mechanisms) and administrative decisions, it follows to resolve land-related disputes following official procedures guided by government rules, regulations, and laws, on the other hand, they also utilize informal means known as alternative dispute resolution mechanisms i.e., negotiation, mediation/conciliation, and arbitration are the most frequently employed in most parts of the country.⁸¹ When land disputes between individuals or groups of various sizes occur, it has to be resolved either by formal structures or informal institutions for dispute settlement.⁸² Although small in number, land dispute cases arising from land sales and grazing

⁷⁶ibid.

⁷⁷Michael Barry and Ephraim Kwame Danso, 'Tenure Security, Land Registration and Customary Tenure in a Peri-Urban Accra Community' (2014) 39 Land Use Policy 358.

⁷⁸Eddie CM Hui and Haijun Bao, 'The Logic behind Conflicts in Land Acquisitions in Contemporary China: A Framework Based upon Game Theory' (2013) 30 Land Use Policy 373; Colin (n 4); Andreas Von Der Dunk and others, 'Defining a Typology of Peri-Urban Land-Use Conflicts - A Case Study from Switzerland' (2011) 101 Landscape and Urban Planning 149.

⁷⁹Achamyeleh Gashu Adam, Peri-Urban Land Tenure in Ethiopia; Doctoral Dissertation, 76 (2014).

⁸⁰Sayeh Kassaw Agegnehu and others, 'Land Tenure Disputes and Resolution Mechanisms: Evidence from Peri-urban and Nearby Rural Kebeles of Debre Markos Town, Ethiopia' (2021) 10 Land 14.

⁸¹ibid.

⁸²Mamo Hebo, Land Disputes Settlement in a Plural "Institutional" Setting: The Case of Arsii Oromo of Kokossa District, Southern Ethiopia, 29 Afr. Study Monogr. 125 (2005).

rights sales deserve attention. The outright land sale is constrained by state regulation, but they could settle their case via the custom of such a market most of the time.⁸³

However, in Botswana disputes related to tribal land, Land Boards serve as an initial forum to hear disputes and complaints. Further, the Tribal Land act provides for the establishment of tribunals to hear appeals to decisions made by the Land Board. The tribunal is a three-member team chaired by the president. Tribunal proceedings are open to the public, and parties may appear with or without separate representation. Parties can appeal the decision of the Land Tribunal to the High Court.⁸⁴

Additionally, to ensure that the grievances of those whose cases are handled by the mainland boards are properly ventilated, a Land Tribunal has been established; this is a land court whose rules of operation are a bit relaxed compared to those of normal courts of law.⁸⁵ The land tribunal is a court of law whose mandate is an adjudication on appeals against and enforcement of land boards' decisions on the use of tribal land. Under the Tribal land Act, the Land Tribunal can hear appeals from matters arising from the use of tribal land and its administration by officials.⁸⁶ In case one of the parties' disputes dissatisfactions with the decision rendered at the land tribunal, he/she has full right to take his court before the high court. They also have the full right to take their case to the Court of Appeals, i.e., the highest and final court in the land. The Court is the final arbiter of all legal matters in Botswana.⁸⁷ Besides, there is an alternative dispute resolution center in Botswana that provides alternative dispute resolution services such as mediation for legal, commercial, civil, political, and domestic issues and land-related matters.⁸⁸

2.3 URBAN LAND TENURES AND INFORMAL SETTLEMENT IN ETHIOPIA AND BOTSWANA

The FDRE 1995 constitution maintained the state ownership of the land and under the issuance of the constitution, the mode of urban landholding changed, urban land is governed and administrated by the urban land leasehold law proclamation 721/2011.⁸⁹ The lease law provides that urban land would be changed into a lease system (to sustain the repealed proclamation No 272/2002 provisions means of land acquisition)⁹⁰ and every holder of urban land would get land

⁸³ibid.

⁸⁴Kadenge and Chavunduka (n 34).

⁸⁵ibid.

⁸⁶ibid.

⁸⁷ibid.

⁸⁸ibid.

⁸⁹Udessa, Adugna and Workalemahu (n 8).

⁹⁰ibid.

from the state through a lease arrangement.⁹¹ In urban areas leased land can be acquired mainly through auction and negotiation, besides, grant by lot and award are also being used. People who want a plot of land for residential and business purposes may bid to win. The bidder who offers the highest bid price will get the land. Thus, urban land legislation has primarily aimed to promote efficiency and effectiveness in urban land governance.⁹²

Regardless of the lease proclamation, lease periods differ based on the land use function starting minimum of 50 years to a maximum of 99 years unless some exceptions for urban agriculture the lease period shall be 15 years.⁹³ As a subject of the rule, the lease contract will be renewed when both parties agreed. Nevertheless, when the town administration wants the urban land for other activities including a change of urban planning, the contract shall not be renewed. The town administration is empowered to take over the land together with the property thereon without any payment where the lessee has failed to remove the property within the period given.⁹⁴ Thus, these processes cause tenure insecurity and slight demand to improve the property from the individual landowner's side. On the other hand, mortgage lease-holding use rights is one form of tenure rights. The law has also prohibited the transfer of bare land or incomplete construction below 50% of its approved development design by the competent authority. Regulatory restrictions on ownership and sale of land by owners and other controlling mechanisms can bring tenure insecurity by limiting the property rights of the landowner.

In Ethiopia, informal settlements are commonly known as moonshine houses since people squat on the land during the dark hours of the night.⁹⁵ Even if the Ethiopian law does not define the informal settlement, the current Urban Planning Proclamation addressed the concerns with urban planning, and it provides that no development activity may be carried out in an urban center without prior development authorization. The informal settlement is taking place mainly in the areas of major towns these are found in the country and peri-urban areas as well as across the whole country.⁹⁶ The spreading of informal settlements across the country occurs due to the current land administration and planning system's failure to address the needs of the whole community, and due to the system's failure to address social housing needs, then people use their

⁹¹Daniel Weldegebriel Ambaye, *Informal Settlement in Ethiopia, the Case of Two Kebeles in Bahir Dar City Informal Settlement in Ethiopia, the Case of Two Kebeles in Bahir Dar City*, 18.

⁹²Udessa, Adugna and Workalemahu (n 8).

⁹³ibid.

⁹⁴ibid.

⁹⁵Habtamu Wondimu, 'The Subsequent Challenges of the Slum and Squatter Settlements: In the City of Addis Ababa' (2021) 2 SSRN Electronic Journal 24; Jemal Abagissa, 'Informal Settlements in Addis Ababa: Extent, Challenges, and Measures Taken' [2019] *Journal of Public Administration, Finance and Law* 7; Daniel Lirebo, 'Udp-70TS, B. (2017) "Rapid Urbanization, Squatter Settlements and Housing Policy Interface in Ethiopia, the Case of Nekemte Town," *Journal of Geography & Natural Disasters*, 7(3). Doi: 10.4172/2167-0587.1000211.5 Housing in Urban Context INFORMAL SETTLEMEN' 1.

⁹⁶Abagissa (n 95).

paths in settling on somebody else land. Such settlements are characterized by rapid, unstructured, and unplanned development.⁹⁷

Thus, currently in Ethiopia informal settlement is a socially, politically, and economically growing problem in Ethiopia⁹⁸ and it could also be followed by different problems. Among these problems, the problem is related to the insecurity of holdings that could be taken as an example. Since people occupy mostly government land, they live in a perpetual state of fear that one day the government would evict them from the area. Hence, they tend to not invest in houses or land which leads again to the poor condition of living and environmental deterioration. Besides, since government authorities prefer to ignore informal settlements, mostly they are led by criminal gangs and mafias. Studies consistently show that such settlements are good shelters for criminals in cities since no law officer or police force is able or does not want to penetrate them.

In the case of Botswana, there are no separate parts of the land law regime, which govern only the matter of urban land. In Botswana, the land is classified into tribal land, state land and freehold land, due to these facts there are no separate concepts of law that only deals with the issues and matters of urban land, since the urban area itself is part of such tenure parts. However, state land, most importantly urban land, is administered according to the State Land Act by central and local government councils. In urban areas, state land is allocated to citizens for residential purposes for ninety-nine years fixed period state grants which are registered in the Deeds Registry, and for business or industrial purposes grants are for fifty years.⁹⁹ The State Land Allocation Policy aims to provide for the right of availability in urban areas. The policy currently in force states that all citizens, regardless of where they live, will be eligible for two residential, commercial, and industrial plots in the urban areas of Botswana.

Concerning informal settlement, Botswana is known as one of the few African countries that have managed to successfully upgrade and prevent the development of new informal settlements in most, if not all, of its urban centers. Evidence on the ground shows that Botswana's policy measures were to some extent successful in eradicating existing and anticipated future informal settlements.¹⁰⁰ Some of Botswana's successful policy strategies include upgrading informal settlements, self-help and site and service schemes, regularization, giving security of tenure,

⁹⁷Endalew Terefe Alene, Determinant Factors for the Expansion of Informal Settlement in Gondar City, Northwest Ethiopia, 11 J. Urban Manag. 321 (2022).

⁹⁸Ambaye (n 91).

⁹⁹Adams, Kalabamu and White (n 26).

¹⁰⁰Aloysius Clemence Moshia and others, 'The Paradox of Informality and Sustainable Human Settlement in Botswana' (2022) 40 Property Management 629.

loans for development, eviction and finally demolition.¹⁰¹ Besides upgrading informal settlements, Botswana also promotes the security of tenure to affected people by giving those Certificates of Rights.¹⁰² These Certificates of Rights give the holder use rights while the government retains ownership of land. Furthermore, a Certificate of Rights can be transferred from one person to the other if the parties involved are qualified citizens of Botswana. Security of tenure might be one of the contributing factors why the Botswana Government managed to eradicate the challenge of squatter settlements within its urban environments.¹⁰³ The success of Botswana's policies in dealing with informal settlements can be attributed to the cooperation between affected communities, government agencies, the donor community and other development partners.¹⁰⁴

2.4 COMMUNITY LAND TENURE AND PASTORAL SOCIETIES IN ETHIOPIA AND BOTSWANA

Under Ethiopian law, communal land is defined as land allocated by the government to residents for common grazing, forestry, and other social services.¹⁰⁵ But, such free grazing land to rural communities does not clearly show whether it refers to rural areas of land cultivators, agro-pastoralists, or pastoralists separately as defined user groups. In addition, it is allocated by the government and then recognized.¹⁰⁶ In Ethiopia, communal lands are subject to change to private holdings or other commercial or non-commercial purposes as found appropriate because the government is the owner of the land. This paves the way for arbitrary evictions by the government. However, the FDRE Constitution only gives government agent status to hold land on behalf of the people. Thus, the status of communal land is insecure compared to private holding which is largely registered and certified. The state does not give due attention to communal land and it often considers it as *res nullius*, thereby rendering it susceptible to distribution as private landholding at the discretion of the government.¹⁰⁷

Furthermore, there are not sufficient legal rules addressing their unique features to secure their rights. Tenure insecurity is graver in communal lands because such lands have no formally

¹⁰¹Aloysius Clemence Mosha, 'Low-Income Access to Urban Land and Housing in Botswana', *Urban Forum* (Springer 2013).

¹⁰²Mosha and others (n 100).

¹⁰³Faustin T Kalabamu and Paul K Lyamuya, 'An Assessment of Public-Private-Partnerships in Land Servicing and Housing Delivery: The Case Study of Gaborone, Botswana' (2017) 05 *Current Urban Studies* 502.

¹⁰⁴John van Nostrand, *Old Naledi: The Village Becomes a Town: An Outline of the Old Naledi Squatter Upgrading Project*, Gaborone, Botswana (1982).

¹⁰⁵FDRE Rural Land Administration and Use Proclamation.

¹⁰⁶Jetu Edosa Chewaka, 'Perspectives on Common Property Regimes in Ethiopia: A Critical Reflection on Communal Land Holding Rights in Borana Oromo Pastoralists Context' (2013) 2 *Oromia Law Journal* 187.

¹⁰⁷Daniel Behailu Gebreammanuel and Getiso Detamo Mekebo, 'Res Nullius vs. Res Communis in Matters of Communal Lands of Smallholder Farmers in Ethiopia' (2018) 12 *Mizan Law Review* 99.

defined owner. The Constitution inherited state ownership of land from its predecessor.¹⁰⁸The constitution to answer the questions of different peoples and community guarantees different rights. From these, it recognizes that pastoralists have the right to free grazing land and not to be displaced from their holdings. However, the issue of communal land is particularly concerning because pastoral land tenure is not coherently articulated under the Ethiopian land law regime.¹⁰⁹There is no policy which specifically deals with pastoralism and pastoral lands in Ethiopia. It exists scattered with other policies. In Ethiopia, despite the significant role being played by pastoral areas in the national economy, very little consideration is given to pastoral development and policymakers often neglect them. Though tenure security is a precondition for reaping benefits that accrue from pastoral lands, the problem in this regard has not yet been rectified.¹¹⁰Therefore, it is better to look at the main government policy even if there is no clear plan in the policy to certify communal pastoral lands.

In Botswana, all land was originally communal and the Majority of Botswana still depend on communal land for grazing.¹¹¹Tribal Grazing Land Policy improves guidelines on the management of the rangelands and facilitates the commercialization of cattle ranching. The policy divides tribal land into three land use categories, that is communal, leasehold and reserve land.¹¹² The concern was that the three categories did not consider the protection of the wildlife resource. Wildlife management areas were then created for land use mainly to provide wildlife corridors and buffer zones between commercial (ranches) and communal land areas.¹¹³

2.5 MODES OF LAND TRANSFER AND HOW FAR IT IS AMENABLE TO THE MARKET SYSTEM IN ETHIOPIA AND BOTSWANA

The FDRE Constitution and subsequent legislations restrict land transfers, whether through sale or otherwise, but transfer of use rights is allowed, and rural land can be transferred via lease, rent, gift, or inheritance under land law limitations.¹¹⁴Landholders, beneficiaries, and settlers on state-owned land could not sell or mortgage their land. Donating/gifting rural land rights is authorized under certain situations. The donee must be a donor family member initially. Another key way to access and transfer rural land use in Ethiopia is inheritance. Besides, when the land value is great, massive land markets are going on against the formal legislation. It has been noted that if the land is irrigable, a cash-crop area, or peri-urban locations, land-based transactions are

¹⁰⁸ibid.

¹⁰⁹ibid.

¹¹⁰Abduselam Abdulahi Mohamed, 'Pastoralism and Development Policy in Ethiopia: A Review Study' (2019) 2 Budapest International Research and Critics Institute (BIRCI-Journal) : Humanities and Social Sciences 01.

¹¹¹Ng'ong'ola (n 31).

¹¹²Kadenge and Chavunduka (n 34); Bornegrim and Collin (n 67); Manatsha (n 28).

¹¹³Kadenge and Chavunduka (n 34); Bornegrim and Collin (n 67); Manatsha (n 28).

¹¹⁴Daniel Behailu Geberamanuel and Gemmeda Amelo Gurero, 'The Enigma of Informal Rural Land Deals in Ethiopia: Evidence from Peri-Urban Areas of Hawassa City' (2017) 6 Haramaya Law Review 43.

massive hence permitting informal land dealings to go on.¹¹⁵Therefore, the transfer of property rights in Ethiopia must follow the land policy of the government which curbs ownership transfer. According to the official law of the country, the transfer of land rights does not involve the sale or transfer of ownership title for obvious reasons. Hence, landholders can only transfer land use rights, yet, across the country there is an informal land negotiation and transfer that takes place routinely among the residents of the country.

Many reasons exist to oppose land sales liberalization. Common fears include distress sales by the poor, who lose their land when they are in a weak bargaining position and get a low price; historically exploitative tenancy systems may be another reason for radical reforms and the prohibition of land sales in Ethiopia, where radical land reforms created highly egalitarian land distributions to protect.¹¹⁶However, this radical method precluded land users from owning it, and land redistributions to distribute land to new households created tenure insecurity. Government-caused resistance to land sales may also be due to high dependence on agricultural land.¹¹⁷

Botswana allows land sales except tribal land. As opposed to Ethiopia, Botswana's freehold land market is market-driven because there are no limits on selling it.¹¹⁸Nationwide, this tenure type has the greatest land values. This tenure type only limits freehold agricultural land transactions. The Land Control Act requires the seller to advertise the land for three months and get approval from the Minister of Lands if the top bidder or single respondent is non-citizen.¹¹⁹Only if no citizen offers the same price as a non-citizen may the Minister authorize a sale. If fully developed within the development covenant on its allotment, state land is freely sellable. Land can secure financing. The customary grant holder can lease tribe territory, but not sell it. Tribal land cannot be sold until the customary grant is converted into a common law lease and surveyed and registered at the Deeds Registry.¹²⁰In those instances, where the holder of a customary grant intends to sell his improvements, such a sale must be sanctioned by the land board. The sale must be to another city as the land board would need to transfer the land directly to the buyer of the improvements. It is evident from the foregoing that the market for tribal land is relatively small.¹²¹

¹¹⁵ibid.

¹¹⁶Holden (n 72).

¹¹⁷ibid.

¹¹⁸Kadenge and Chavunduka (n 34).

¹¹⁹ibid.

¹²⁰ibid.

¹²¹ibid.

CONCLUSION

Based on our comparative analysis, Ethiopian land governance is plagued by a lack of comprehensive land legislation and policy documents that can serve as a main roadmap for land governance. There is a lack of consistency and coherence in the existing laws because they lack a clear and strong policy position to guide them as compared to the selected model country. Likewise, the country lacks strong institutions which help in the effective implementation of the policy at a federal level and this has been a major flaw of the land governance regime. Additionally, the reforms that took place in Ethiopia under different regimes were not as fruitful as those expected by the citizens. Thus, reforms that took place in the country at different times were not taken into consideration by the concerns of the public at large, rather they were oriented only on the political agendas of the regimes that came into power. Moreover, there is also insecure land tenure and transactions, and farm households may have less incentive to invest in land management. As land sales remain illegal, it has no clear market value because the land market cannot be used to determine its actual value. Ethiopia also lacks a standard and responsible institution to value real estate.

On the other hand, the Ethiopian land regime is less concerned about communal landholdings compared to Botswana because it lacks provisions on the nature of those rights and ways to protect them. Aside from the concerns given about pastoral land, there are no clear detailed laws dealing with the issue of communal land. Thus, practices of communal and pastoral community land management are not effectively managed and may result in poor management. Moreover, Ethiopian informal settlement management is not administered strongly and means processes to control this settlement, and informal landholdings are less regularized than in Botswana. Besides, there are few laws, methods, and mechanisms to resolve grievances, manage conflicts, and enforce agreements related to land. Thus, the land administration system's ineffective conflict resolution provides authorities with a lot of discretion.

Hence, the way forward to overcome the difficulties that are facing Ethiopia in the land governance system; having comprehensive and harmonized law and policy in detail with a strong institutional framework is an effective way to overcome these bottlenecks. Likewise, it is better overall if the reform and any amendments in Ethiopia take into consideration the realities on the ground and in the hearts of the nations. Furthermore, the land policy and the whole governance system restrict the transfer and transaction of land rights which could not create a good environment for development. Thus, to facilitate economic growth and sustain development, it would be better if the government opened a land policy that should enable land transactions normally in the country.

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