

Role of International Institutions in Ethiopia's Rural Land Policy

Muradu Abdo *

Abstract

This Article explores whether and to what extent Ethiopia's contemporary land policy is influenced by international institutions chiefly the World Bank and the USAID. To this end, the article has identified and examined two opposing views, the first of which contends government policies including land policies in Ethiopia are dictated by some influential international institutions as the regime in Ethiopia is dependent on aid funds in implementing its social policies, which include land policy. According to this first perspective, such policies are not the result of organized collective action by the insecure land holders. The second view is that such policies are internally driven because international institutions have been unable to push through policy agenda their way meaningfully. Having considered such views, the article finds it is not persuasive to put the extent of influence of international institutions in Ethiopia's land policy in black and white; yet, it seems unreasonable to argue that such institutions which contribute significantly to Ethiopia's annual budget have no influence over land policy at all even if determination of the extent of their roles is complex and vague. For instance, some tenets of Ethiopia's current land policy as a tool to poverty reduction and smallholder commercial agriculture are strikingly similar to the tenets of the WB's 2003 Land Policy which include legalizing land rentals, land use collateralization for agricultural investors and establishment of customary dispute resolution methods, regularization of informal landholdings, and landholding registration programs without however conceding the fundamental aspect of land law. The USAID's involvement in drafting Ethiopian current Federal and regional rural land laws has led to the inclusion of some of these elements. External pressures may not nevertheless have a decisive role as domestic political and bureaucratic interests in land policy at implementation phase may lessen their magnitude.

Key terms:

Land policy · Land reform · Land law · Commoditization of land · International institutions · Land use right

DOI <http://dx.doi.org/10.4314/mlr.v17i2.5>

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Received: 30 March 2023

Accepted: 21 September 2023

* Muradu Abdo (PhD), Associate Professor, Addis Ababa University, School of Law
Email: muradu.abdo@aau.edu.et
ORCID: <https://orcid.org/0000-0003-3725-3581>

Suggested citation:

Muradu Abdo (2023). "Role of International Institutions in Ethiopia's Rural Land Policy", 17(2) *Mizan Law Review*: 343-378

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1. Introduction

One can indeed argue that a policy envisages a holistic document that provides sound and viable directions for legislation. Moreover, policies are more flexible and accommodative than laws thereby enabling easier review in response to unfolding realities. Even if there is no written document that articulates Ethiopia's land policy, this article considers the core generic elements of Ethiopia's land regime (relating to access/ownership, land use, control, transfer, administration, management, etc) as a *de facto* land policy.

Various global development institutions –and through them major western nations– display growing interests in shaping the course and direction of land policies of developing countries. There are various reasons for these heightened interests. Firstly, these international institutions and countries which dominate the philosophy and modus operandi of such global institutions possess significant investments in corporate agriculture, extractive and manufacturing sectors of developing economies; these investments require suitable land policies. Secondly, western nations are importers of primary agricultural and extractive commodities for the purpose of meeting their food security and manufacturing and industrial vital needs. Poorly formulated or ill-implemented land policies in countries which export these primary commodities might have disruptive effects on advanced economies.

Thirdly, improperly designed or implemented land policies in poor nations may lead to mass evictions or displacements that could contribute to humanitarian crises or droughts or even famine, the consequences of which could lead to mobilizations of western resources in the forms of aid. Finally,

mis-crafted or mis-administered land policies in the Global South could contribute to massive cross border migrations including migration to Europe, US and Canada. Such disasters could spell a human rights crisis as well.

The philosophical paradigms promoted by international institutions in the course of intervening in the land laws and policies of poor nations have tremendous consequences in terms of social justice, development and stability in those countries.¹ Hence, it is relevant to explore the scale to which those interventions affect land policies of developing countries.

However, this article does not intend to research the degree of interventions of global institutions and influential western countries behind them, in designs and implementations of land laws and policies of developing states. The article rather focuses on examination of the extent to which Ethiopia's reform of land law and policy is influenced by international institutions by discussing the role of international institutions which forward the view that peasants and small urban landholders should be given property rights in land. To this end, the article considers the role of the World Bank (WB) and of the United States Agency for International Development (USAID) in Ethiopia's land policy. Both institutions have been selected as a result of their long standing strong presence, nature and magnitude of their activities in Ethiopia.²

Frequently used acronyms

ELTAP	Ethiopian Land Tenure Administration Program
PRAI	Principles of Responsible Agriculture Investment
USAID	United States Agency for International Development
WB	World Bank

¹ K Pistor (2019), *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press) ; P Shipton (2009), *Mortgaging the Ancestors: Ideologies of Attachment in Africa*; see also M Sandel (2012), *What Money Can't Buy: The Moral Limits of Markets* (Farrar, Straus and Giroux).

² In addition to the WB & the USAID, the FAO, UNDP, SIDA, EU, Dutch and Finish development agencies support varieties of Ethiopia projects. For this, see 'Comments from the Development Assistant Group' (2006) 4 and 10 (on file with the author); Orgut Consulting AB 'Land Registration and Certification: Experience from the Amhara National Regional State in Ethiopia' (2010): www.sida.se/globalassets/global/...regions/.../ethiopia_amhara_final.pdf (accessed 3 December 2014); E Tessemaker & others 'Netherlands Support to Land Tenure Security in Developing Countries: Overview of Lessons Learned (2007) (on file with the author); FAO 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security' (2012); F Horne 'Understanding Land Investment Deals in Africa, Country Report: Ethiopia' (2011).

The article specifically indicates that the WB and the USAID would like to see that people are given property rights in their land since these institutions appear to believe that the poor are poor primarily because they lack tradable formalized property right in key assets such as land already under their possession. The WB and the USAID think that land tenure model they propose would address major land tenure problems which in their view are prevalent in the country, namely: land tenure insecurity, lack of recognition of the land rights of those who occupy and invest in state lands, restrictions of land rental markets, possibility of periodic state land reallocation, lack of recognition and even evictions of informal landholders in peri-urban settings and expropriation with loose conception of public purpose and inadequate compensation.

The article also highlights how the WB has moved from full privatization embodied in its 1975 Land Policy Paper to the 2003 Land Policy. Even if there are those within the WB who pursue the land for the welfare of the poor approach, the dominant theme within the WB still pursues the property rights path advanced by Hernando de Soto.

In exploring the place of selected international institutions in shaping the course and direction of rural land policy of Ethiopia, this article primarily uses an interpretive methodology as it builds on contextual and textual construction of key policy documents, official statements, plans and research reports directly linked with institutions of concern. The interpretative effort is significantly augmented by scholarship in the thematic area spanning from 1960's.

The analysis shows that there is divergence between the position of the WB and the USAID on the one hand and that of the Ethiopian state on the other because the former two seek land law to permit small holders to trade with their use rights at least in the sense of allowing them to engage in land mortgage and long term land rentals while the latter rejects the idea of land collateralization by peasants in favour of allowing them to engage in land rental markets conditionally, for a limited period and in a controlled fashion. Even if tradability of land use rights by small farmers is the direction to which the two global actors would like Ethiopian land policy to take, the extent of their influence has so far been complex and vague as a variety of incompatible objectives are deployed. Therefore, it is not possible to definitively say land policy in Ethiopia is taking a course set for it by these external actors.

The next section discusses the WB's land policy in general and its position on Ethiopia's land policy since the imperial period. Section 3 considers the USAID's stance on Ethiopia's land policy. The fourth section searches for the point of intersection between the positions of the WB and the USAID. Section

5 deals with WB and USAID strategies on agricultural development, and the sixth section examines the extent to which the two institutions have influenced the course and direction of Ethiopia's land policy. Then a conclusion follows.

2. The Role of the World Bank in Ethiopia's Land Policy

Since the imperial period, the WB considers land tenure security as a crucial factor in Ethiopia's agricultural development and that peasants' land tenure insecurity has been an impediment. However, *during the imperial period*, in 1960s and early 1970s, the WB did not opt for land reform, which is about redistribution of land to the landless. It rather advocated for land law reform which is more technical. The theoretical intention in land law reform being promoted by the WB was to improve security of tenure for peasants, but in practice it promoted the development of a market in land with its possible implications for shift of land from poorer peasants to richer ones.³

The position of the WB on Ethiopia at the time appeared to be consistent with its overall global stance on land reform matters. Until 1975, the WB treated land reform in the developing world as a political matter and wanted to direct its aid towards what it called "merely technical matters."⁴ The WB concentrated first on infrastructure development and then on market based input supply such as fertilizers, seeds and extension services.

Even if, as of 1975, the WB realized the problems of uneven distribution of land and land tenure insecurity in the agricultural development of developing countries, it could not dislodge itself from its previous position because, on the one hand, it appreciated the role of land reform in economic development, and, on the other hand, its previous stance which considered land reform as a national political issue dominated its funding. In its 1975 land reform policy paper, it defined its role in land reform in developing countries as undertaking land tenure studies in countries where reform did not start and supporting them to implement their own land reforms if already initiated.⁵

The 1975 land reform policy paper (of the World Bank) almost exclusively focused on formal title. It capitalized on efficiency as confined to land's role in enhancing agricultural productivity, that is, secure land tenure meant titled

³ The World Bank 'Economic Growth and Prospects in Ethiopia' vol. i (1970) 2; The World Bank 'Land Reform: Sector Policy Paper' (1975) 23, 39 and 61; the World Bank Report 'Economic Growth and Prospects in Ethiopia' vol., v (1970) 7; F Kiros *The Subsistence Crisis in Africa: the Case of Ethiopia* (1993) 85.

⁴ J Platteau (1996). 'The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment', 27 *Development and Change* at 29-30.

⁵ The World Bank Land Reform Policy Paper, 1975.

privately owned land, which, the WB assumed, would lead to increase in agricultural productivity. On the basis of this thinking, the WB supported land sales⁶ on the assumption that land privatization would spur agricultural growth which in turn would have a trickledown effect on citizens in general. Yet, the WB realized that in Ethiopia, for example, “landlords could easily restrict peasants’ alternatives and maintain control over land and labor...”⁷ and it cited the imperial land tenure system to illustrate the vital point that land reform was not independent of the political process.⁸

During the Derg period (1975 to 1991), the WB’s studies on Ethiopia’s agricultural development showed that the peasant sector consistently outperformed the producers’ cooperatives in crop yields.⁹ The WB found out in its researches that the small holder agriculture, as compared to cooperatives and state farms, was the most efficient method of stimulating agricultural development and attaining food security in the country.¹⁰ Following this study, the WB recommended that the peasant sector should be made to enjoy land tenure security and given input supports to enhance productivity; and for the purpose of minimization of land tenure insecurity, to remove the numerous transfer restrictions placed on the land rights of peasants as it was prudent to abolish the practice of frequent land redistributions by the government.¹¹

The WB’s role during this period did not seem to go beyond forwarding recommendations to the Derg about the advisability of small farmers’ land tenure security and the need to support them on efficiency grounds. One can argue that this suggestion appeared to be more driven by the WB’s disapproval of the Derg’s pursuit of collective agriculture than an expression of its faith in the peasant agriculture *per se*.

⁶ K Deininger (2003), ‘Land Policies for Growth and Poverty Reduction’, 44-45; P Pauline (2004), ‘Inequality and Social Conflict over Land in Africa’, 4 *Journal of Agrarian Change* at 273ff.

⁷ Deininger, *supra* note 6, XXXIV.

⁸ *Id.*, at 32.

⁹ D Rahmato (1993). ‘Land, Peasants, and the Drive for Collectivization in Ethiopia’ in Basset & others (eds) *Land in African Agrarian Systems*, 289-290.

¹⁰ D Tolossa, ‘An Assessment of Agricultural Policies in Ethiopia (1957-1991) with Special Emphasis to Regional Development’, in Tafesse Olika & others (eds) *Topics in Contemporary Political Development in Ethiopia* (2003) 120; see also D Crummey *Land and Society in the Christian Kingdom of Ethiopia: From Thirteen to the Twentieth Century* (2000) 249.

¹¹ Deininger, *supra* note 6, at 6.

During the post-1991 administration, especially after 2003, to the WB, the key to removing land tenure insecurity in Ethiopia has been to conceive land as both a livelihood and marketable asset. The WB no longer openly argues that the prevailing land tenure insecurity can be removed if and only if land is fully privatized and a universal title deed issued. The WB concedes that distress land sales can occur.¹² Thus, the WB's current thinking is that land tenure security and hence agricultural productivity in Ethiopia could be enhanced even within the context of state ownership of land provided land rights are expanded, restrictions on land rentals, inheritance, and donations removed, land certificates issued and updated, land administration matters decentralized, made transparent, inclusive and participatory, expropriations are accompanied by adequate compensations and effective judicial safeguards, land dispute settlements mechanisms improved, customary land rights are recognized and a firm commitment not to re-distribute land is made and given due publicity.¹³

This position of the WB is articulated in the 2003 land policy which documents its position on land policy for the first time since the 1975 land reform policy paper. The 2003 land policy paper conceives land tenure security as a perception on the part of a landholder that "there is a higher probability of losing it"¹⁴ or he/she is "vulnerable to eviction threats."¹⁵ This land policy paper forwards criticisms of existing land policies stating that dialogues on land policies are frequently featured by "preconceived notions and ideological viewpoints" rather than "a careful analysis of the potential contribution of land policies to broader development, the scope for interventions in the area and the mechanisms that can be used to achieve broader social and economic goals."¹⁶

In the 2003 land policy paper, the WB claimed that property rights in land are measurable and secure if: the time horizon is relatively longer, the rights are defined clearly, the enforcement organs are backed by law and social legitimacy, accessible and accountable, and the state is flexible enough to let land right evolve with appropriate interventions when the need arises.¹⁷ To the WB, empirical evidence across the developing world shows that secure property rights to land offers such economic benefits as increased investment

¹² Id., at 32.

¹³ Ibid.

¹⁴ Id., at xxvi.

¹⁵ Id., at xxviii.

¹⁶ Id., at ix-x.

¹⁷ Id., at xxii-xxv.

by the land user and increase in the value of the land, the transferability of the land, access to credit and improved functioning of the credit financial markets and reduction in “the time and resources individuals have to spend in trying to secure their land rights.”¹⁸

For instance, restrictions on the functioning rental markets continue to be applied in Ethiopia and those restrictions “will have a negative impact on agricultural productivity and households’ welfare; will discourage investment, off-farm employment, and migration; will increase the insecurity of land rights.”¹⁹ The World Bank’s 2008 World Development Report focuses on development policies in poor countries to work towards “assigning property rights and recognizing current use rights over land resources”.²⁰ In sum, the WB seeks the introduction (in rural Ethiopia of at least land rental markets, which could be accomplished through removal of restrictions of transferability of use rights which it claims to promote the interest of the poor and to remove a roadblock for agricultural development.²¹

3. The USAID- an intermediate policy position?

The USAID seeks secure land rights for Ethiopian peasants and agropastoralists such as the right to rent out their use rights, and the opening up of markets for agricultural inputs. Yet, the USAID’s ultimate interest seems to be full privatization of land in Ethiopia. The USAID has technically and financially supported the ongoing land certification program, among others, to at least facilitate land rental and collateral markets, which it calls an intermediate policy position between full land privatization and people’s

¹⁸ Id. at xxv-xxvi and 38; the World Bank, ‘The FDRE: Developing Exports to Promote Growth’ (2002), *World Bank Report No. 23294-ET* vii-vi; Ethiopian Economic Association/Ethiopian Economic Policy Research Institute ‘A Research Report on Land Tenure and Agricultural Development in Ethiopia’ (October 2002); Deininger, *supra* note 6, at 86, 106 and 116.

¹⁹ Deininger, *supra* note 6, at 118; K Deininger & others (2003), ‘Market and Nonmarket Transfers of Land in Ethiopia: Implications for Efficiency, Equity and Non-farm Development’ *World Bank Policy Research Working Paper*, No. 2992; K Deininger & others (2011), ‘Impacts of Land Certification on Tenure Security, Investment, and Land Market Participation: Evidence from Ethiopia’ 87 *Land Economics*.

²⁰ The World Bank *World Development Report: Agriculture for Development* (2008) 16.

²¹ For articulation of the evolution over time of the position of the WB in its development projects generally and land tenure reform particularly, J Faundez, ‘Should Justice Reform Projects Take Non-State Justice Systems Seriously? Perspectives from Latin America’ in C Sage & M Woolcock (eds), 2 *The World Bank Legal Review: Law, Equity, and Development* (2006).

ownership of land. It is in this spirit that the USAID wants to 'stay engaged' with the Government on land policy issues.

During the imperial period particularly in 1960s and early 1970s, the USAID intervened through an input side of Ethiopian agriculture by supplying extension services that unfortunately aggravated tenure insecurity at the time²² because its projects were implemented in favor of landlords in the context of a skewed landholding structure, and the landlords, by virtue of their access to information and infrastructure such as roads took advantage of those services.²³ Experts fielded by the USAID who had an unfavorable attitude towards the peasantry²⁴ suggested the replacement of 'unviable peasant holdings' by agricultural modernization which meant mechanized mega and medium scale farms.²⁵

In the post 1991 administration, the USAID has been running the Ethiopian Land Tenure Administration Program (ELTAP). This Program aims to assist enactment of land laws, undertake land registration and certification, enhance rights awareness, improve land dispute settlement and build the capacity of land administration institutions within the existing people's ownership of land scheme upon realizing that full privatization is a non-starter for the government but hoping for the possibility of expanding and strengthening land rights short of ownership.²⁶

²² D Rahmato (2009). *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s and 2000s*, 64.

²³ A Lambton (1971), 'An Approach to Land Reform', 34 *Bulletin of the School of Oriental and African Studies* 238-239; H Scholler & P Brietzke (1976), *Ethiopia: Revolution, Law and Politics*; Rahmato (*supra* note 22), 57; D Tolossa (*supra* note 10) 12-116 for the objectives and achievements of SIDA's Chilalo Agricultural Development Unit; for a general road map for the US land reform policy in developing countries, see R Prosterman (1972), 'Land Reform as Foreign Aid', 6 *Foreign Policy* at 128.

²⁴ Rahmato, *supra* note 22, at 33-34.

²⁵ Ibid; See also W Thiesenhusen (1985), 'National Security Implications of Land Reform in Third World Countries' 38 *Oklahoma Law Review*; D Henderson (1981), 'Land Reform and the New International Economic Order' 1 *Pub. L. Forum*.

²⁶ ELTAP was launched in 2005 in two phases: the first phase ran between 2005 and 2008, and the second in 2008 and continued until the end of 2013; see also G Alvarado *et al* "Ethiopia Strengthening Land Tenure and Administration Program Follow-On Report: An Impact Evaluation of Long-Term Effects of Second-Level Land Certification" (August 2022), https://www.land-links.org/wp-content/uploads/2022/10/ELTAP-ELAP-2021-Evaluation-Final_9.23.22.pdf, accessed 8 February 2023 .

... Discussion with government officials and a review of policy statements has made it clear that the issue of the privatization of land is not an option at this time for the government. While the State still maintains primary rights in property, it could move towards a system of long-term leases that vest strong secondary rights in landholders, allowing them to sublease or make other land transactions (e.g., mortgages). These long-term leases would help to address some of the weaknesses in the existing land tenure system.²⁷

Generally, the USAID desires to see the restrictions imposed on transferability of land rights of peasants lifted with ultimate movement towards a complete private ownership of land with the assumption that when land is subject to market forces, land gets itself in the hands of persons with greater ability to use it productively and this in turn triggers effective agricultural development. Staal remarks, “If you ask me personally, from my own perspective, I would say that full land ownership is the goal. But, I also see there is as an important intermediary step in providing security to the farmers, and therefore, it can bring real benefits to the country.”²⁸

The starting point for ELTAP is that the Constitution “grants general security of land rights to peasants without granting specific plot security.”²⁹ It is provided that “insecurity of land tenure in Ethiopia restricts access to land..., reduces productive investment in land, and severely limits land transactions, ... [and] these limitations undermine the agricultural sector, preventing the development of larger, more commercial farming operations and medium small-holder enterprises, and it locks small-holders into subsistence production.”³⁰

The core aim of projects on land tenure in Ethiopia should support land tenure reforms to “confer robust and enforceable land tenure security to landholders”³¹ through land registration and certification which will: “Increase farm investment, improve farm productivity and hence increase food security, increase farm income and hence reduce rural poverty, provide

²⁷ USIAD (2004), *Broadening Access and Strengthening Input Market Systems: Ethiopia Land Policy and Administration Assessment Final Report with Appendices*, 10 and 24; see Boudreaux, *infra* note 35.

²⁸ T Gebregiorgis, ‘Where Mission Man Goes Missionary’, an interview with Thomas Staal, former Director of the USAID Ethiopia, *Addis Fortune News Paper* on 1 July 2012 (accessed 20 June 2013).

²⁹ USIAD (2005), ‘Strengthening Ethiopian Land Tenure and Administration Program: Rural and Agricultural Incomes with a Sustainable Environment’, 7.

³⁰ *Ibid.*

³¹ *Id.*, at 11.

incentives for better land management and hence improve rural environmental conservation, encourage labour mobility and off-farm employment.”³²

Ayenew Haileselassie, a former Editor-in-Chief of Addis Fortune Newspaper, remarked that the ultimate aim of the land registration and certification project of the USAID was to enable peasants to market their land use rights, for example, via collateralization.³³ Abebe Mulatu, a property right specialist, who was involved in an aspect of ELTAP observed that the strategy of development partners such as the USAID is to gradually expand peasants' bundle of land rights to include land collateralization and long term land rentals; this course is being followed when donors have realized that the state is unwilling to privatize land in the sense of full private ownership.”³⁴

Impact assessment of ELTAP by the USAID concludes that “small farmers now feel more secure, thus... less border disputes, less natural resource degradation and more agricultural productivity” and “yields have increased between 11 percent and 40 percent per acre with no other inputs...”³⁵ Myers said, “We know in our own programs that there are significant productivity jumps when men and women have secured rights to property.”³⁶ The USAID claims that its rural land certification program for Ethiopia has produced early benefits that include positive contribution to tenure security.

The expectation is that having this certificate reduces the risk of eviction from the land and increases their chance of being paid compensation upon expropriation, overall improvement of the efficiency of the land rental market and increased investment in land improvement.³⁷ Thus,

the rapid, participatory nature, and low cost of Ethiopia's land certification, together with the positive results from this process and the absence of bias in favor of the wealthy or lack of access to information by the poor demonstrate that, contrary to what one might be tempted to

³² Id., at 31.

³³ A Haileselassie (2004). ‘Ethiopia's Struggle over Land Reform’ 51 *World Press Review* <https://www.worldpress.org/Africa/1839.cfm> (Last accessed 10 November 2023)

³⁴ Interview with Mr. Abebe Mulatu, a property right specialist working for USAID, on 20 August 2012.

³⁵ K Boudreaux ‘A Powerful Piece of Paper’ (2012) <http://ethiopia.usaid.gov/node/326> (accessed 20 July 2014)

³⁶ Myers, *infra* note 127

³⁷ Cochrane, *infra* note 87; The World Bank, *supra* note 20.

conclude from experience in other countries, large-scale and rapid delivery of land certificates in a participatory way is possible.³⁸

Moreover, “[u]sers’ positive assessment of the process, readiness to pay to replace lost certificates, high demand –and willingness to pay– for a spatial reference, and their positive assessment of likely impacts suggest that the way in which Ethiopia implemented land certification responded to local needs.”³⁹ However, the massive land certification program in Ethiopia supported by the USAID is not without criticisms. The countryside has witnessed mushrooming of post-certification land disputes which perhaps arise out of the variable and imprecise land measurement systems used, the program’s individualistic underpinning and due to the haste with which the program was carried out.⁴⁰

Nor has the certification program enabled peasants to collateralize their holdings as the law which prohibits land collateralization still stands largely.⁴¹ The land certification project cannot itself restrain the state from taking land in respect of which a certificate is issued. By officially confining peasants to their private landholdings, the certification program runs counter to peasants’ customary rights over communal lands, which remain unregistered and uncertified.⁴²

³⁸ E Tolina (2007). ‘Agricultural Development Led Industrialization Strategy of Ethiopia’ <http://www.law.drake.edu/centers/docs/intlAgLaw/tolina.pdf> 20-24 (accessed 13 November 2010)

³⁹ Ibid; USAID ‘Ethiopia: Strengthening Land Administration Program Annual Report (August 1, 2010 – September 30, 2011)’ 3

⁴⁰ Focus Group Discussion 02 with land administration experts, September 14, 2012 and court statistics gathered during fieldwork visit in September 2012; see MAYana, ‘Rural Land Registration in Ethiopia: Myths and Realities (2018) 52 *Law and Society Review* 4

⁴¹ The qualification is largely used here because there are three major developments on the path to collateralization of agricultural land use rights in Ethiopia. The first is a qualified land use right mortgage right given to small farmers under the Amhara Regional State Rural Land Administration and Use Proclamation 252 of 2017. The second is the rural land use right collateralization recent move reflected in a conditional manner in Article 17 of the Oromia Region Rural Land Proclamation 248 of 2023. The third is a Draft Federal Rural Land Administration and Use Proclamation (2022) meant to revise Proclamation 455 of 2005 (on file with the author), if adopted as it stands now, will permit some kind of nationwide land use collateralization to small rural landholders.

⁴² Focus group discussion with regional land administration experts on 21 September 2012.

The USAID further wants to see the opening up of the agricultural inputs market by helping the country privatize seed and fertilizer markets that are now largely under state control. The USAID is yet unhappy about the scale and speed of 'opening up' of Ethiopia's agricultural sector including transferability of land rights of peasants. Asked whether he was satisfied with the speed of the opening up of Ethiopia, Staal (had in 2012) put the matter in a broader policy perspective:

I think it could be faster definitely! If you look at the last 20 years, when this government came to power, there was no private sector. At last count, I think there is something like 45,000 or 50,000 private companies operating in Ethiopia. It is opening, but I think it could go faster. However, I also understand that it cannot be so fast that it is out of control and causes chaos. I understand the government's concern about moving forward. It is an issue of equality and fairness. You do have a lot of small-scale farmers. ... If it opens too fast, then, many of them may suffer. It is hard to say. It is a difficult question that the government is wrestling with. But, we think it could go faster without becoming chaos.⁴³

4. Intersection of the Role of the WB and USAID

Despite the WB's apparent recognition of diversity in land tenure forms, a closer scrutiny of its position on land tenure still shows a stint of private ownership as manifested in its hierarchical conception of the sticks in the bundle of rights in land and suggests superiority of private ownership of land when backed by formal title.⁴⁴ In relation to restrictions on land sale markets, the WB says "there is little to recommend such restrictions as an effective tool for policy."⁴⁵

From the standpoint of the WB, land tenure reform is to be achieved through state law and the main role of the government in respect of land tenure is "to provide secure land rights..."⁴⁶ The state is expected to play the role of making judicious interventions in the course of evolution of land tenure towards privatization by rectifying imperfections in such evolution or building

⁴³ Gebregiorgis, *supra* note 28.

⁴⁴ G. Giorgis (*supra* note 28); T Bassett & D Crummey (eds), *Land in African Agrarian Systems* (1993); Deininger (*supra* note 6) xxviii and pp. xxviii-xxix

⁴⁵ Bassett & Crummey (*supra* note 44) at 28-29 and 36.

⁴⁶ *Id.*, at 233.

on or adapting existing institutions rather than opting to “modernize” them.⁴⁷ Patrick McAuslan says,

There is a great temptation for agencies like the World Bank to try and prescribe a standard model in its programmes of legal reforms: design one, sell it often. Unfortunately the World Bank’s new land policy document [i.e., the 2003 land policy paper] and the first steps in the direction of acting on it suggests that it is going to go down that route again despite the evidence that it does not work.⁴⁸

The USAID wants to see customary land rights of peasants and agro-pastoralists recognized by state law including customary dispute settlement.⁴⁹ So is the WB, as indicated above. For example, a working paper for the WB asserts that “The root of the insecurity of rural landholders lies in the fact that much of the land they hold is considered State-owned land, and National Government does not recognize the right under customary tenure.”⁵⁰ A similar research paper by the Australian Aid for International Development (AusAID) says the heart of tenure insecurity in many developing countries is lack of recognition on land held by communities under customary tenures by respective Governments.⁵¹ Thus, the removal of such land tenure insecurity hinges centrally on the recognition of customary land tenures by governments.⁵²

I think the WB’s and the USAID’s stance on customary land tenure reform echoes the vitality of the improvement perspective popularized in de Soto’s conception of property. De Soto’s central idea rests on the need to ‘raise capital’ on customary land through the creation of formal property which means individualization of land. His view offers incentive to those who

⁴⁷ Id., at 232.

⁴⁸ P McAuslan (2005). ‘Tensions of Modernity: Law in Developing Land Markets’ in E. Cooke (ed) 3 *Modern Studies in Property Law* 315.

⁴⁹ USAID ‘The Future of Customary Tenure’ (2012)
http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_2012_Liberia_Course_Module_1_Future_of_Customary_Tenure.pdf (accessed 3 December 2014).

⁵⁰ R Brink & others (2006). ‘Consensus, Confusion and Controversy: Selected Land Reform Issues in Sub-Saharan Africa’ *the World WB Working Paper*, No 71, 14.

⁵¹ AusAID (2008). ‘Making Land Work: Reconciling Customary Land and Development in the Pacific’, Vol. 1 and II.

⁵² L Chirayath & others, ‘On Customary Law Policy Reform: Engaging with the Plurality of Justice System’ (2005).
http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Customary_Law_and_Policy_Reform.pdf (Accessed 3 December 2014).

unilaterally privatize the commons when he urges policymakers to convert the dead assets of those living under extralegal (including landholdings in the customary domain) into formal tenure systems supported chiefly by titling programs.

De Soto makes this quite clear when he documents the history of land squatting on "largely vacant outlying territories" in the US.⁵³ He does not see these squatters or improvers of land in the public domain as people with financial and political clout, nor as land speculators. He hails land squatters as improvers of 'vacant land' or the 'wilderness'. He praises these 'enlightened' people for constructing their own informal property arrangement in open defiance of the formal property system.⁵⁴

He urges the sensible politician to be in 'touch with reality' to recognize these local arrangements regarding improved land. He advises poor countries to mimic the genius of the US in bringing about economic prosperity attributable to its accommodation of the squatters' interest.⁵⁵ The recognition of customary titles on the part of influential international institutions appears to be subordinate to the overall unchanging objective. McAuslan concludes,

The new globalization has followed the old one in its involvement with land law and its attempts to develop land laws that displace local laws and put in place laws based on 'best practice' or international norms that can be used to justify such displacement and continue the practice and ideology of strong central government in land management.⁵⁶

McAuslan further states,

...there is a push from the international community to bring about a homogenization of national land laws based on the Anglo-American legal model to facilitate an international land market...[in case of departure] the full weight of the World Bank and the international community has been brought to bear to 'correct' the aberrant departure from pristine market principles.⁵⁷

⁵³ H de Soto (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere*, 118.

⁵⁴ Id., at 129.

⁵⁵ Id., at 156-159.

⁵⁶ P McAuslan (2007). 'Land Law and the Making of the British Empire' in E Cooke (ed) *Modern Studies in Property Law* Vol. 4, 240.

⁵⁷ P McAuslan, '50 Years of Land Law Change in Eastern Africa: Transformative or Traditional? A Preliminary Assessment' (2012) 128 (on file with the author).

5. The World Bank and USAID on Agricultural Development Strategies

With regard to large-scale farmland acquisitions, the WB follows the regulatory approach embodied in the *Principles of Responsible Agriculture Investment* (PRAI). The PRAI is fleshed out in the WB's 2011 research report on the global state of large-scale land transfers. The regulatory approach means ensuring "good governance and establishing robust institutions, so that land deals are concluded responsibly and investors are held to account. ... [It] ... assumes that large-scale land deals can be reformed to produce win-win outcomes"⁵⁸ if agricultural land deals comply with the following seven principles:

Principle 1: ...respect for existing land rights;

Principle 2: Investments do not jeopardize food security....

Principle 3: Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders...

Principle 4: All those materially affected are consulted and agreements from consultations are recorded and enforced.

Principle 5: Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.

Principle 6: Investments generate desirable social and distributional impacts and do not increase vulnerability.

Principle 7: environmental impacts of a project are quantified and measures taken to encourage sustainable resource use...⁵⁹

These principles are meant to address problems regarding "...extremely negative consequences associated with the recent surge of land grabbing: the displacement of local populations; a reduction in food security; environmental damage; loss of livelihoods; social polarization and political instability..."⁶⁰ The WB, in particular, recognizes that "[f]ew countries in Africa have both

⁵⁸ DFID, 'Land Grabbing in Africa and the New Politics of Food' (2011) 41 *Policy Brief* 7.

⁵⁹ FAO & others, 'Principles of Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources' (2010) <http://archive.unctad.org/Templates/Page.asp?intItemID=6123&lang=1> (accessed 26 June 2012).

⁶⁰ P Stephens (2011). 'The Global Land Grab: An Analysis of Extant Governance Institutions', 20 *International Affairs Review*, 6-7.

good land laws and good land administration implementation capacity.”⁶¹ Land policies do not clearly define land rights; nor do they provide for transferability of such land rights.⁶² In cases where there are good land policies and laws, there is a lack of a firm political commitment to implement them.⁶³

The WB states that “ultimately, the goal of the PRAI is to be translated into an agreement on codes of good or best practices” and “actions for investors, governments, donors and international agencies, at different levels.”⁶⁴ The research report states that for poverty reducing growth in agricultural productivity to take place, there is a need to: “integrate large farms with smallholder agriculture, enhance the capacity of host countries, recognize the customary land rights of the local population through clear definition of the rights, demarcate the land and put in place effective enforcement mechanism and educate the local population about their land rights.”⁶⁵

The regulatory approach is also applicable. According to the USAID and the WB, the country's large-scale agricultural land transfers should take place in the context of secure land rights, which includes granting the right to transfer land right to peasants and agro-pastoralists, collateralization and recognition of customary land right issuance of land certificates.

In a 2009 report, the WB mentions, as positive steps, Ethiopia's attempt in the 1960s to establish agricultural universities meant to help introduce medium scale and mega commercial farms, its recent agricultural commodity exchanges market and its low cost and participatory land certification program mentioned above.⁶⁶ As indicated in the report, the WB would like to see the country recognize customary land rights and allow collateralization and transferability of land rights.

The 2011 research report, in particular, has given attention to Ethiopia's agricultural development, which following the WB's categorization of Ethiopia as “little land available, and high yield gap”, advises the country to free its people from poverty by increasing the productivity of existing land being cultivated by smallholder farmers, advising the country to avoid the

⁶¹ The World Bank (2009). *Awakening Africa's Sleeping Giant*, 183 ff.

⁶² *Id.*, at 16.

⁶³ *Id.*, at 183.

⁶⁴ *Ibid.*

⁶⁵ K Deininger & Derek Byerlee (2011). *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* (World Bank), DOI: 10.1596/978-0-8213-8591-3

⁶⁶ The World Bank, *supra* note 61.

danger of large farms pushing farmers off the land given the country's little non-agricultural sector.⁶⁷ The WB suggests the country bridge its considerable yield gap per hectare in the smallholder agriculture especially in relation to crops such as maize in existing land expansion for this crop.⁶⁸

Given the fact that Ethiopia falls within the WB's classification of countries with little available land and high yield gap, massive small non-agricultural sector and underdeveloped industrial and service sectors, the available options for the country are to boost smallholder agriculture productivity and to encourage well-governed agricultural investment mainly through contract farming while at the same time taking care not to push people off their land.⁶⁹ According to Kalus Deiniger, the WB's Chief Economist,

[large-scale farming in Ethiopia] is an opportunity but it definitely won't be the main development opportunity for its smallholder population... .[I]t can draw in some private investment but it needs to be done in a strategic way... . Ethiopia...[has] ended up with a very fragmented approach to land lease that fails to provide any infrastructure benefits and is in contradiction to smallholder rights.⁷⁰

The WB hence appears to envisage balanced development of small holder commercial agriculture and contract farming based large-scale agriculture in Ethiopia even if it appears to be critical of the way the government is conducting large-scale land transfers. On its part, the USAID had been working towards the enhancement of economic development, which it sought, for instance, through its multi-billion dollar five year plan named USAID/Ethiopia Country Development Cooperation Strategy 2011-2015 (CDCS). The CDCS was claimed to be a device to transform the work of the USAID in Ethiopia from a provider of a humanitarian aid into a contributor to Ethiopia's economic development with a central goal of contributing to increased economic growth⁷¹ following "the up-tick in interest by the donor community in economic growth in Ethiopia".⁷²

⁶⁷ Deininger & Byerlee, *supra* note 65, at 89.

⁶⁸ *Id.*, at 84.

⁶⁹ *Id.*, at 89.

⁷⁰ E Butler, 'Land Grab Fears for Ethiopian Rural Communities' *BBC News*, 16 December 2010 (accessed 3 December 2014).

⁷¹ USAID, 'Ethiopia Country Development Cooperation Strategy (2011-2015)' (2012): www.usaid.gov/sites/default/files/documents/1860/Ethiopia_CDCS.pdf (accessed 10 March 2013) 5.

⁷² *Id.*, at 20.

The CDCS intended to promote a concentrated effort to achieve sustained agricultural productivity through market-based agricultural development.⁷³ The CDCS stated that “with the increasing ‘land giveaways’ to private, foreign agricultural investors, policy efforts will be undertaken...to support land use planning and natural resources management that avoids displacement of existing communities and helps ensure balanced development.”⁷⁴ Staal, who oversaw the formulation of CDCS, said: “we are not completely against commercial agriculture... I do think commercial agriculture is an important part of moving forward here in Ethiopia....”⁷⁵ CDCS also stated,

The GoE (Government of Ethiopia) clearly needed to shift its agricultural policy in order to make effective use of its vast amounts of fertile land, and the agricultural policy mix being implemented is viewed by most experts as a step in the right direction. However, that evolving policy is a long way from proving its worth as a vehicle for achieving the GoE's stated goals of modernizing the sector, generating foreign exchange reserves, and increasing the domestic food supply.⁷⁶

To Myers, the main purpose of the USAID agricultural development strategy is formulated “so that both investors can invest with some kind of certainty that their investment will be secure and, at the same time, those people who hold the resources or the assets...will also have some certainty that they will be able to benefit from the investments that are made.”⁷⁷ Myers argues that “...on one hand encouraging the private sector, and on the other hand, supporting smallholder farmers...is really at the heart of our (feed the future) strategy.”⁷⁸

The regulatory approach however is not persuasive. *Firstly*, the regulatory approach to large-scale agricultural land transfers is couched in broad and vague terms, which in practice would allow powerful business elements and government elites to work out the details in their favour and it would have the effect of marginalizing those actors opposed to the project of land commercialization in the interest of the powerful.⁷⁹ “It is evident that powerful

⁷³ *Id.*, at 21.

⁷⁴ *Id.*, at 19.

⁷⁵ Gebregiorgis, *supra* note 28.

⁷⁶ USAID, *supra* note 71.

⁷⁷ Myers, *infra* note 127.

⁷⁸ *Ibid.*

⁷⁹ Stephens, *supra* note 60.

agri-businesses or hedge funds will likely opt to support the principles espoused by the World Bank.”⁸⁰

Secondly, the Principles of Responsible Agriculture Investment (PRAI) would also create enclaves of smallholder agriculture, without integrating the two worlds:

It is stated that the only way smallholder agriculture might support the large-scale one is the supply of seasonal labour where employment is insecure and the wage it earns is meagre. In this modern versus traditional smallholder approach, the two would compete for land and water resources. The regulatory view emanates for the thinking that the local people have nothing to bring to the table except the land they use in common might have been shared by the investors.⁸¹

If the ultimate goal of global institutions such as the WB is,

as they claim, increasing smallholder productivity and improving local livelihoods ... they must engage in an honest assessment of the situation. This would involve taking global power dynamics into account and addressing the systemic factors that are placing the development prospects of local communities at risk. Such an approach would require supporting alternatives to neoliberal governance models.⁸²

Thirdly, the PRAI are based on the notion of secure property rights, which focuses on transferability and collateralization of land rights. To counter this commodity notion of land, it is stated that “[t]here must be detailed, robust and effective international rules and standards based on a conception of the value of land, not as a commodity but as a “lifeline for the poorest rural households.”⁸³ This transformative conception of land rights should inform “the direction of emerging governance institutions around land grabs.”⁸⁴

Fourthly, in the Ethiopian context, the regulatory approach does not take existing power relations into account because the approach assumes that it is possible to put in place the conditions required to effectively implement the Principles of Responsible Agriculture Investment (PRAI) mentioned above. However, the present land laws are too weak to ensure the touted balance between smallholder agriculture and corporate farming and such balance

⁸⁰ Ibid.

⁸¹ Id., at 15.

⁸² Id., at 18.

⁸³ Ibid.

⁸⁴ Ibid.

would tip in favour of large scale-mechanized farming.⁸⁵ It is to be noted that the Ethiopian State is no longer a neutral actor in relation to land; and because of historical inertia inscribed in state land laws and policies, it is difficult to see a balanced agricultural development happening. Under these contexts, the suggestion by the WB and the USAID of balanced agricultural development would in practice gravitate towards large-scale commercial agriculture to the detriment of the smallholder agricultural population.

This does not, however, justify procrastination against reforming the current land regime which has gaps in the realms of tenure security for smallholder farmers and community holdings, disincentives for investment and environmental sustainability, elite capture, and other problems. There is indeed the need for reform, and it is equally important to give due attention to the seven *Principles of Responsible Agricultural Investment* stated above, which in short require:

- “respect for existing land rights” and due caution against investments that jeopardize food security, and that are not “transparent, monitored, and ensure accountability by all stakeholders; ...
- consultations with materially affected parties so that their consent is obtained and enforced and ensuring that investment “projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value; and
- ensuring that “[i]nvestments generate desirable social and distributional impacts and do not increase vulnerability in addition to which “environmental impacts of a project are quantified and measures taken to encourage sustainable resource use”.

Preliminary evidence shows that Ethiopia's recent experiment with large-scale farming took place contrary to the WB's seven principles of responsible commercial agriculture. The non-compliance with the Principles of Responsible Agriculture Investment (PRAI) is manifested in terms of lack of demarcation or improper land expropriation or lack of recognition of the customary rights by the state, lack of consultation with the concerned community and lack of mechanisms to ensure the accrual of the benefits from large-scale farming.⁸⁶

⁸⁵ Muradu Abdo (2014). “State policy and law in relation to land alienation in Ethiopia”, PhD thesis, University of Warwick, http://wrap.warwick.ac.uk/74132/1/WRAP_THESIS_Spur_2014.pdf, accessed 8 February 2023, 218-246.

⁸⁶ Id., at 236-246.

The WB's findings in this connection are reinforced by the government's recent admission on the deficiencies related to large-scale farming. This self-assessment has led the government to 'cool down' its land grants for commercial agriculture in order to assess whether development is taking place on the lands already transferred to investors.⁸⁷ This contradicts with the government's claim about the existence of legal and institutional means to effectively regulate corporate farming.⁸⁸

Moreover, there exists a contradiction in regard to the international institutions. In its latest report, the WB has shown some preference to speedy takeover of land by the government for private investment purpose.⁸⁹ This pro-business tone of the WB is clearly contrary to what the proper enforcement of its seven principles of responsible agriculture would entail.⁹⁰

6. Extent of the World Bank's and USAID's Influence over Ethiopia's Land Policy

There are two main views about the extent to which Ethiopia's land policy is influenced by international institutions chiefly the WB and the USAID.⁹¹ The first view is that Government policies including land policies in Ethiopia are dictated by international institutions. Philippa Bevan writes that the current regime in Ethiopia is dependent on aid funds in implementing its social policies, which include land policy. Bevan asserts that social policy in current Ethiopia "is not the result of political settlement between government and

⁸⁷ W Zenebe, 'The Ministry of Agriculture puts Moratorium on Transfers of Land to Re-assess itself', *the Ethiopian Reporter* (March 14, 2012) (accessed 30 March 2012); B Botch 'Why Big Farms Flopped in Ethiopia' *The Economist* 8 April 2020; L Cochrane *et al* (2020), "The Rush for Land and Agricultural Investment in Ethiopia: What We Know and What We Are Missing", file:///C:/Users/user/Pictures/Downloads/land-09-00167.pdf, accessed 8 February 2023

⁸⁸ Muradu, *supra* note 85.

⁸⁹ Deininger & Byerlee, *supra* note 65, at 104.

⁹⁰ Id., at 83; the World Bank, *supra* note 61.

⁹¹ Yonas Amare, an Interview with Dr. Mellese Damtie *the Ethiopian Report Amharic New Paper* (January 29, 2023) <<https://www.ethiopianreporter.com/115557/>> (accessed March 31 2023), where Dr. Mellese advocated for an agnostic approach about the influence of international institutions in land policies of developing countries including Ethiopia.

citizen, demand for it being led by an international development social movement rather than organized collective action by the insecure.”⁹²

The second view is that such policies are internally driven because international institutions have been unable to push through policy agendas their way meaningfully. Steven Davies states,

It is easy to observe various ways in which donors have come to occupy an enfeeble position. The Government has proved itself quick to respond to criticism with fiery rhetoric and even expel dissenting foreigners from the country with little provocation. Donors cannot credibly retaliate to such aggression, e.g., by threatening to leave the country, because their presence is only tolerated by the regime –as opposed to having been sought out– and both parties are well aware of this fact. Much of what they do in Ethiopia and Africa more broadly is propelled by their own humanitarian and organizational imperatives, and so their bargaining power with government is minimal. Hence it is apparent that the mindset many foreign organizations have adopted is simply to toe the line in order to be allowed to continue their work.⁹³

Davies cites, as an example, ELTAP, the land certification project discussed above, which he thinks is “somewhat of a Frankenstein-like endeavour, in which different agendas such as conservation, tenure security, diplomacy, image building, authority enhancement and appeasement have been haphazardly cobbled together on a small budget.”⁹⁴ Likewise Tom Lavers who considers land policy as part and parcel of social policy, states:

the social policy strategy is rooted in Ethiopian politics and is part of the GoE's [Government of Ethiopia] attempt to take a leading role in managing social and economic processes, including migration and

⁹² P Bevan (2006), ‘Poverty and Social Policy in Developing Contexts: Ethiopia's Insecurity Regime’: http://citation.allacademic.com/meta/p151216_index.html (Accessed 3 December 2014) 27; Butler (*supra* note 70); D Shepard, ‘The Role of The International Finance Corporation in Promoting Agricultural Investment And Large-Scale Land Acquisitions’ (2011) *Proceedings of the International Conference on Global Land Grabbing, Land Deal Politics Initiative*, 16-17.

⁹³ S Davis (2008), ‘The Political Economy of Land Tenure in Ethiopia’ PhD Thesis, University of St. Andrews, 231 research-repository.st-andrews.ac.uk/.../580/3/StevenJDaviesPhDThesis.pdf (accessed 3 December 2014); Cf. C Boone (2007), ‘Property and Constitutional Order: Land Tenure Reform and the Future of the African State’, 106/425 *African Affairs*.

⁹⁴ Davis, *supra* note 93, at 242.

structural transformation ... in several cases, the GoE and donors support the same policies but for different reasons.⁹⁵

Lavers explains the reason for the state's unwillingness to share the policy arena with other forces such as international actors as a historically intertwined nature of the objective of land policy and political control imperative:

Under Haile Selassie, modernisation was hindered by the need to retain the support of the landed elite that stood in the way of land reform. Under the Derg, redistributive motivations in favour of the peasantry were undermined by internal and external military threats, and the need to cater to potential threats of discontented urban populations. This led to ever greater levels of exploitation of the peasantry and to their alienation.⁹⁶

Staal has recently criticized the present government's gravitation towards control in the name of promoting equality and fairness, when he says,

I think the government is still concerned about control...we think it [change] could go faster. Certainly, it is a government that likes to maintain control and move the process forward at a pace they can control, both economically and politically.... That has been some of my frustrations here, both on the economic side and on the political side, frankly.⁹⁷

Staal has acknowledged the failure of the USAID's endeavour to expand the transferability of land rights of small farmers. Hence, the USAID, finding itself unable to influence policy change on transferability of land rights as much as it would like to, intends, in the coming years, to work towards strengthening the Government policy that allows peasants and pastoralists to lease out their lands themselves. In the situation where there is a government which is reluctant to concede policy changes at the desired speed and scale, the USAID has chosen to 'stay engaged'. Staal says,

The best way to do that is to stay engaged with the government. I think Ethiopia is a country that is very proud of its heritage, its history, and its culture. It does not take kindly to foreigners coming in and telling them in public what they should or should not do. I sympathize with that.⁹⁸

⁹⁵ T Lavers (2009). 'Competing Visions of Social Policy in Ethiopia' MA Dissertation, University of Bath, at 80 & 82.

⁹⁶ Id., at 80-81.

⁹⁷ Gebregiorgis, *supra* note 28.

⁹⁸ Ibid.

Staal notes that the USAID seeks to “influence policy change” even if “the policy environment in Ethiopia is notoriously difficult.”⁹⁹ He considers the USAID’s attempt to influence policy change in regard to land certification to peasants as a partial success even if the USAID has not obtained policy outcomes (on this issue) it would like to see; that is, in spite of their inability to see the legal restrictions attached to marketability of rural land use rights are lifted to a desired extent.¹⁰⁰

A land law expert said that the USAID is following the bottom-up approach, i.e., gradually expanding land rights of smallholders, when “it has realized that a change in policy towards full private ownership of land is a non-starter for the government.”¹⁰¹ This ‘bottom-up’ approach means endeavouring to influence land legislation to gradually and imperceptibly expand the marketability of land use rights so that such rights expansion resemble ‘privately owned land’ for all intents and purposes.¹⁰² Writing on land policies of developing countries, McAuslan has concluded that “there is an extreme reluctance on the part of governments to ‘let go’. It is not so much that there is an antipathy to markets but an antipathy to a perceived loss of control over the polity and its main resource-land.”¹⁰³

The USAID, on its part, is encouraging, but it appears not in a position to determine, Ethiopia’s strategy for corporate farming including its associated land rights of smallholders, which is rather being driven by internal dynamics. This observation is in line with Richard Dowden’s general remark about the late Prime Minister Zenawi’s “absolute determination to control his country and its destiny, free of outside interference.”¹⁰⁴ A US diplomat observed that “[i]t’s Mubarak syndrome... . We only talked to Mubarak about Egypt’s role in the region, never about what was happening inside Egypt. It’s the same with Ethiopia.”¹⁰⁵

One finds a further confirmation from Tibor Nagy, former US ambassador to Ethiopia, who told the Voice of America that “there were philosophical

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Interview, *supra* note 34.

¹⁰² Ibid.

¹⁰³ McAuslan, *supra* note 48, at 313.

¹⁰⁴ R Dowden, ‘How Meles Zenawi rules Ethiopia’ (May 21 2012) <http://africanarguments.org/2012/05/21/how-meles-rules-ethiopia-by-richard-dowden/> accessed 20 May 2013).

¹⁰⁵ Ibid.

issues that were difficult to bridge. ...”¹⁰⁶ Ethiopia, under the leadership of the late Zenawi, “unconvinced by the prescriptions of the I.M.F. and the world Bank, held back on accepting international loans until [its] conditions were met...”¹⁰⁷ In this context, the late Zenawi’s address to the UN General Assembly meeting that, “we have taken full charge of our destiny, devised our own strategy and maximized the mobilization of our domestic resources... we made the best use of ... international assistance to supplement our own efforts... without towing the line of the donor community...” cannot be brushed aside on the ground that no leader can ever admit that their policies are dictated by external forces.¹⁰⁸

The question then would be why the country had been getting significant funding, prior to a change in government leadership in 2018, which was to the tune of 4 billion USD per year, without fully accepting their policy prescriptions?¹⁰⁹ It appears that the reason lied in one or more of the following: aid organizations had other goals such as security which the country fulfils; aid money was often spent to good effect; and the astute leadership of Zenawi who had been confronting the donor community to adhere to their own much propagated idea that the era of prescriptive development policies is long gone. On a related discussion, Julio Faundez says,

It is often the case that governments make use of externally funded projects to further their own party political agendas showing little regard for the objectives of the project. In these situations multilateral agencies are caught in a difficult dilemma: either withdrawing on the ground that the government is not seriously committed to the project; or continuing on the expectation that despite the government’s behavior the project will, in the long run, benefit the country as a whole.¹¹⁰

¹⁰⁶ G Joselow, ‘Meles Zenawi Leaves Mixed Legacy after 20 Years in Power’ <http://www.voanews.com/content/meles-leaves-mixed-legacy-after-20-years-in-power/1491998.html> 21 August 2012 (accessed 20 July 2013).

¹⁰⁷ A Mohammed & A Waal ‘Meles Zenawi and Ethiopia’s Grand Experiment’ the New York Times (22 August 2012) http://www.nytimes.com/2012/08/23/opinion/meles-zenawi-and-ethiopias-grand-experiment.html?_r=1.

¹⁰⁸ It refers to his speech at the UN General Assembly Meeting in September 2010.

¹⁰⁹ USAID ‘Ethiopia Country Development Cooperation Strategy (2011-2015)’ (2012); www.usaid.gov/sites/default/files/documents/1860/Ethiopia_CDCS.pdf (accessed 10 March 2013) 5.

¹¹⁰ J Faundez (2001). ‘Legal Reform in Developing Countries’, *Law, Social Justice & Global Development Journal* 10 <http://elj.warwick.ac.uk/global/issue/2000-1/faundez.html> (accessed 9 March 2013).

Ian Gough confirms that there is external influence in social policymaking in Ethiopia –including land matters– but its extent is disputable suggesting that “[t]he government of Ethiopia sees for itself a major role in harmonizing these numerous aid flows, and can pursue and implement policies in ways contrary to the wishes of donors, but the extent to which formal social policy is shaped inside and outside the country is disputed.”¹¹¹

Thus, the promotion of mixed and conflicting objectives by the international community and the invocation of the same by the state apparatus as the need arises weaken the former's push for land tenure reform. Similarly, the state-invoked reasons not to embrace reform from the international arena is witnessed in various sectors wherein while the state formally accepted the latest international standards and claimed to set up appropriate regulatory institutions, it avoided [or delayed] full implementation by arguing that capacity building had to precede full liberalization of these services with actual mild form of liberalization.¹¹²

Ethiopia's resistance against wholesale adoption of the international reform agenda has historical roots. For example, the Imperial Government of Ethiopia signed a technical assistance agreement called Point Four in 1951 with the US Government dedicated to transplant the American “experiment” with development to Ethiopia and,

Although the United States was clearly the stronger partner in the relationship, its ability to effect change in Ethiopia was always limited by the Emperor's authority. Bringing Point Four into the contemporary historical discourse on development, then, requires bringing in the perspective of at least one ‘other’ side which played a crucial role in determining the types of changes that American development aid was able to make.¹¹³

In Point Four, however, the US's confidence and faith in their development abilities seemed to have made them “overlook the possibility of a nation importing America's economic and scientific advances while rejecting its political ones.”¹¹⁴

¹¹¹ I Gough (2010). ‘Wellbeing and Welfare Regimes in Four Countries’, 11 and 17 <http://www.bath.ac.uk/soc-pol/welldev/conference2007/final-papers/5-irg/gough.pdf> (accessed 23 December 2014).

¹¹² Y Belew (2013. ‘Regulatory Implications of Telecommunication Services Liberalization in Ethiopia’) 27 *Journal of Ethiopian Law*

¹¹³ A Mcvety (2008). ‘Pursuing Progress: Point Four in Ethiopia, Diplomatic History’, 32 *Diplomatic History* at 374.

¹¹⁴ Id., at 373.

The above discussion assumes a unified position on land policy within the WB. But some contend that there is a variation of views in the WB, for example, on how to deal with land policy within the new poverty agenda between the Land Policy Division and the Macroeconomic, and Environmental and Sustainability Division.¹¹⁵ There in fact exist differences of opinion among professionals who regard land as a welfare asset for the poor and those who treat land as a site for raising capital. Yet, the former are more of an aberration than the dominant force.

The WB's recent papers fit the underlying position maintained since 1975 Land Policy with some shift, for example, from the notion of full individual ownership over land towards a bundle of rights approach, the latter permitting multiple individuals to have different parcel of rights over the same piece of land. These tensions within the WB can be observed in the-World Development Report 2006, which seems to support the conclusion that "[U]nequal distribution of assets, opportunities, and political power give rise to a circular flow of mutually reinforcing patterns of inequality".¹¹⁶ As Benda-Beckman suggests, the Report,

seems to be torn, however, between this political-economic analysis and a lingering belief in the eventually benevolent functions of land markets and tradable land rights. It continues to express the beliefs that poverty is caused by bad law (both state and extra-legal), extra-legal property is an obstacle to development, and good property law will bring about development.¹¹⁷

Benda-Beckmann was led to make this remark as the 2006 World Development Report states that the "imperfect unsaleability of land ... hurts anyone who owns it. ... The rural poor probably have more of their wealth in land than most people, so making land unsaleable might be particularly harsh on them."¹¹⁸ Benda-Beckmann further notes:

¹¹⁵ C Silungwe (2010), 'The Land Question in Malawi, Law, Responsibilization and the State' (PhD Thesis, Warwick University) 169-172 wrap.warwick.ac.uk/53165/ (accessed 4 December 2013); McAuslan (*supra* note 58) at 128; see also J. Ngugi (2006), 'The World Bank and the Ideology of Reform and Development in International Economic Development', 14 *Cardozo Journal of International and Comparative Law* 313 and 328

¹¹⁶ The World Bank (2006), *The World Development Report 2006: Equity and Development*, 21-22.

¹¹⁷ F Benda-Beckmann (2006). 'The Multiple Edges of Law: Dealing with Legal Pluralism in Development Practice' in C Sage & M Woolcock (eds) 2 *The World Bank Legal Review: Law, Equity, and Development*, 71.

¹¹⁸ The World Bank, *supra* note 116, at 92.

This sounds like an echo of de Soto's neo-liberal mystification of ownership titles. There is no doubt that formal law has been, and can be, an important means of shaping and expanding the development of elites and emerging middle classes by harnessing the capital potential of property, but it is hard to see how this law ameliorates the economic conditions of the poor. The evidence suggests the contrary: that the unsaleability, or better yet, the "unbuyability," of land is probably much harsher on the rural rich than on the rural poor. It is wishful thinking to contend that formal property and a free market in which it can circulate will work to the benefit of the poor under conditions of great economic and political inequality.¹¹⁹

This currency of the dominant position of the state over land is in line with the observation of Murphy that "... not everything can change at once (even in revolutions)".¹²⁰ In sum, even if it is not persuasive to put the extent of influence of international institutions in Ethiopia's land policy in black and white, it seems unreasonable to argue that such institutions which contribute significantly to Ethiopia's annual budget have no influence over land policy at all even if its extent is complex and vague. Some tenets of ADLI (agricultural development-led industrialization) such as land policy as a tool to reduce poverty and small holder commercial agriculture are strikingly similar to the tenets of the WB's 2003 Land Policy. These include acceptance of legalizing land rentals, land use collateralization for agricultural investors and establishment of customary dispute resolution methods and land certification programs without however conceding fundamental aspect of land law.

The USAID's involvement in drafting Ethiopian 2005 Federal and regional rural land laws under ELTAP has led to the inclusion of some of these changes therein.¹²¹ Tolerating or even facilitating the phenomenon of quasi-informal land markets that are taking place on the ground with some administrative and judicial backing could also be another example.¹²² This finding is in line with the underlying position of other scholars with regard to the external outcome

¹¹⁹ Benda-Beckmann, *supra* note 117, at 72.

¹²⁰ T Murphy, 'Include Me Out' (2002) 29 *Journal of Law and Society* 347.

¹²¹ USAID 'Comments on draft Federal and Regional Rural Land Use and Administration Laws' (2005) (on file with the author)

¹²² Muradu Abdo (2020). "Kontract: A Hybrid Form of Law among the Sidama" in *Negotiating Law in the Peripheries of Southern Ethiopia* (eds. Susanne Epple and Getachew Assefa), Frobenius Institute, Frankfurt University: <https://library.oapen.org/bitstream/id/9d5eb60f-f321-461f-9fa2-a94977a8dd7d/9783839450215.pdf>, accessed 8 February 2023

of land law reforms in Eastern Africa because they acknowledge that external pressures may not have a decisive role as domestic political and bureaucratic interests may lessen its magnitude.¹²³

7. Concluding Remarks

One cannot simply assume that land policies prevalent in the continent have and remain to be of internal genesis. It is clear some international institutions have land policy prescriptions for Africa and other postcolonial societies with unmistakable post-Cold War presentation of land reform as purely technical or ideologically neutral policy. Technicalization of land reform means a focus on issues of farm size and productivity as well as the relationship between land titling and economic outcomes. Simply stated, the overall result of land policy reform carried out in Africa following the end of the Cold War with the help of international institutions has been commoditisation of land especially customary land in favour of national and foreign investors at the cost of the rural and urban masses.¹²⁴

The stated objectives of land reform in Africa since 1990s have been more or less the same; namely, strengthening land rights of users. However, land reform's actual outcomes have been different –it has ended up with marketization of land to the benefit of the political and economic elites.¹²⁵ Ambreena Manji has argued in this regard that the WB and bilateral donors are working towards the privatization of land in sub-Saharan Africa through what she calls land law reform campaigns.¹²⁶ Manji's observation goes with the general land policy direction of the USAID as captured by Gregory Myers, a senior USAID property rights specialist,

We all firmly believe that a fundamental building block of any democracy or market-based economy is the right to property. ... If you don't have the right to property, you cannot be a member of the economy. You can't participate in a broader economy or a market system. And you don't have a say in the political process. I believe that,

¹²³ Manji, *infra* note 126; McAuslan, *supra* note 48.

¹²⁴ C Ochieng (ed.), *Rethinking land reform in Africa: new ideas, opportunities and challenges* (2020), <https://dlci-hoa.org/assets/upload/land-documents/20200804042940748.pdf>, accessed 8 February 2023

¹²⁵ S Takeuchi (ed.), *African Land Reform under Economic Liberalization*, <https://library.oapen.org/bitstream/id/516913a8-bda4-4768-ab99-cc792ecb2db/978-981-16-4725-3.pdf>, accessed 8 February 2023

¹²⁶ A Manji (2006). *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets*, 51-77; Benda-Beckmann, *supra* note 117.

as countries move forward toward recognizing or toward addressing this issue, this will reduce the kinds and the types of investments [i.e., aid] which we need to make in development, because people will have a greater political standing and greater economic opportunities...¹²⁷

This Article has endeavoured to show that what Myers has stated as a general policy in the above quote is what the USAID has been trying to see implemented in Ethiopia regarding land. In particular, current position of the WB and USAID is that Ethiopia's development requires effective agricultural development, which means a 'balanced' form of smallholder and large-scale farming can be the right direction, and a key contributor to such agricultural development trajectory is an intermediate land policy that entails granting property rights to small landholders including rentals and collateralization of land usufruct rights, a moratorium on land redistribution and preferably letting land privatization evolve. For these two development agencies, the government should also subject agricultural inputs to market forces to push smallholder agriculturalists to commercialize themselves.

The WB's position on land grabs is nevertheless contradictory. While its 2003 Land Policy advocates for a social-welfare-based approach to land policy, its 2011 report supports land grab.¹²⁸ The WB's support of transfers of large-scale land in sub-Saharan Africa context is documented in its 2009 report entitled *Awakening Sleeping Giant*. This report states that there is a vast "... underused land reserve, constituting one of the largest underused agricultural land reserves..." in the entire world.¹²⁹ Moreover, the overall tone of the 2011 research report promotes large-scale commercial farming in Ethiopia even though it apparently says there is no room for large-scale farming in the country. The 2008 World Development Report also suggests that small farmers who are unfit to compete shall renounce agriculture in favour of more 'productive users' and become wage labourer.¹³⁰

But more telling in this connection is a WB report dedicated to Ethiopia that categorizes the country into four zones and points out the existence of a vast amount of land suitable for large-scale commercial agriculture.¹³¹ The

¹²⁷ G Myers, 'A Right to Land' <http://transition.usaid.gov/press>, July/August, 2012 (accessed 13cAugust 2013).

¹²⁸ Deininger & Byerlee, *supra* note 65.

¹²⁹ The World Bank, *supra* note 61.

¹³⁰ The World Bank, *supra* note 20.

¹³¹ The World Bank, 'Background Report: Four Ethiopias, A Regional Characterizations: Assessing Ethiopia's Growth Potential and Development Obstacles' (2004) (on file with the author); See also C Geisler, 'New Terra Nullius Narratives and the

USAID followed suit in its five year strategic plan –that is meant to make interventions in the agriculture sector. The plan classifies Ethiopia into three zones and indicates areas where large-scale farming is viable.¹³²

The WB and the USAID have strived to influence the course and direction of extant land policy in Ethiopia through their general and country policy research reports and through their funding to various government plans and projects such as land law drafting and land certification programs. The relationship between the Government and these institutions is more subtle than the one assumed by the two views examined in this article; that is, the donors' role in land policy of Ethiopia appears neither deterministic nor devoid of any influence.

Ethiopia has so far subscribed to some of the suggestions of these international actors by adopting what may be characterized as regulated land transfers –allowing peasants to rent out a portion of their land for a limited period of time and permitting them to engage in joint agricultural development programs with investors using their land use rights as a contribution. The Government of Ethiopia has also permitted donors to engage in land certification programs in a manner which does not erode aspects of its land policies, i.e., prohibition of land alienation, retention of the power to redistribute existing peasant landholdings as it pleases as well as land expropriation in the context of laxly stated public purpose.

However, the Ethiopian state is pursuing state-led marketization of land in contrast to market-led land tenure system sought by the WB and the USAID. The essential ingredients of this state-led land marketization are transfer of or facilitation of transfer of land to 'better land users' using different devices chiefly quasi-recognition of informal land alienations, expropriation laws and non-recognition of communal lands as wells as their treatment as sites for raising capital.¹³³ In this scheme, non-state actors including peasants can

Gentrification of Africa's "Empty Lands" (2012), 28 *American Sociological Association*.

¹³² USAID, *supra* note 71.

¹³³ Ethiopia has recently revised its expropriation law to remedy deficiencies in the 2005 Expropriation Law; the new law is: Expropriation of Landholdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation No 1161 of 2019, which has been analyzed by D W/Gebriel, 'Expropriation of Urban Property: A Reflection on the New Expropriation Laws' in Muradu Abdo (ed.) *Urban Land Question of Ethiopia: Focus on Access to Justice and Dispute Resolution, Ethiopian Civil and Commercial Law Series* (2020), Vol. 10; the new expropriation legislation has given priority right to develop land for landholders (Art. 7) and the possibility for landholders who lose land for investment

transfer their land use rights under strict conditions and only with the ultimate blessing of the Government.

Needless-to-say, international development partners in developing countries (like Ethiopia) pay due attention to policy priorities and their partnerships include research, generation of evidence and encouraging policy reform in various avenues including land policy. As discussed in the preceding sections, the role of international development partners such as the WB and USAID in influencing Ethiopia's land regime is subject to different views. Yet, for the last fifty years since 1975, the pace of reform in the land regime is minimal owing to the central role of the state that determines various facets of land use, land transfer, and other elements of land policy. While neo-liberal and laissez-faire liberalization of land is clearly susceptible to elite capture through distress sale in the absence of cautions (such as moratorium periods, due protection in the course of collateralization, etc.), the other extreme of state paternalism is equally susceptible to predatory capture by the political and economic elite. While the former idolizes 'free market', the latter 'conceals' disempowerment at the grassroots through the veil of 'public interest'.

There is thus the need to give due attention to *grassroots empowerment* (of smallholder farmers and community landholdings) in land use, tenure security, land management, collateralization, land value contributions as shares in investments, and land transfers (with due attention against distress sale). In the course of commercial farming investments, genuine attention (as opposed to simulations) should be given to the seven *Principles of Responsible Agricultural Investment* highlighted in Section 5. With regard to international partners, their engagements should pay due attention to the grassroots in addition to macro-level reports and statements so that interventions at the grassroots and measurable outcomes (and impact) can be scaled up at community and country levels. ■

projects to be shareholders in the investment venture. A key take away from this legislative development is its shift towards marketable land rights under the guiding hands of the state.

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