



Transparency Related Land Governance Issues and a Plan for Improving Transparency in Land Governance

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Acronyms

ADLI	Agricultural Development Led Industrialisation
AfDB	African Development Bank
AU	African Union
CFS	Committee for World Food Security (at the FAO)
CSO	Civil Society Organisation
Derg	Coordinating Committee of the Armed Forces, Police, and Territorial Army
DFID	Department for International Development (UK Government)
DUAT	State-allocated land use and benefit right in Mozambique
EAILA	Ethiopian Agricultural Investment Land Agency
EEU	Economic Empowerment Unit (of LIFT)
EPRDF	Ethiopian People's Revolutionary Democratic Front
ESIA	Economic and Social Impact Assessment
EWLA	Ethiopian Women's Law Association
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign direct investment
FDRE	Federal Democratic Republic of Ethiopia
FPIC	free prior and informed consent
GIZ	German international cooperation agency
GoE	Government of Ethiopia
GPS	Global positioning system
GTP	Growth and Transformation Plan
HDI	Human Development Index
LA	Land Administration
LAC	Land Administration Committee
LAND	Land Administration for Nurturing Development (USAID project)
LIFT	Land Investment for Transformation (DFID project)
LSA	Labour and Social Affairs
LSLA	Large Scale Land Acquisition
LSLI	Large Scale Land Investment
LTR	Land Tenure Regularisation
M&E	Monitoring and Evaluation
M4P	Making Markets Work for the Poor
MANR	Ministry of Agriculture and Natural Resources

MDG	Millennium Development Goal
MoA	Ministry of Agriculture
MOFED	Ministry of Finance and Economic Development
NGO	Non-governmental organisation
PRAI	Principles for Responsible Agricultural Investment
PRIAFS	Principles for Responsible Investment in Agriculture and Food Systems
REILA	Responsible and Innovative Land Administration
RLA	Rural Land Administration
RLAUD	Land Administration and Use Directorate of the MoA
SLLC	Second Level Land Certification
SDG	Sustainable Development Goals
Sida	Swedish International Development Cooperation Agency
SLMP	Sustainable Land Management Programme (World Bank)
TA	Technical Assistance
ToR	Terms of Reference
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
USD	US dollar
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security
WCA	Women and Children Affairs

Introduction

Background

This report is the result of a process that began in June 2015 and concluded in May 2016. The first draft report on Transparency and Related Land Governance Issues in Ethiopia and Plan for Improving Transparency in Land Governance (henceforth 'the Transparency Report') was prepared after reading around the issues listed in the original Terms of Reference, and a three-week visit to Ethiopia from 15 June to 3 July 2015. This draft was reviewed by LIFT before submission to the Government of Ethiopia (GoE) in mid-December 2015.

The GoE submitted comments and agreed to hold a workshop to discuss the report and its findings. The workshop duly took place in Addis Ababa on 4 February 2016. It was led by the GoE, with DFID and other cooperation partners supporting land activities, as well as national experts and stakeholders. The Workshop confirmed GoE and DFID approval of the report and outline Plan. It was agreed however that a short 'Verification Mission' be carried out to allow more fieldwork into key findings. Meanwhile, GoE comments on the draft, and suggestions from the Workshop, were integrated into a 'pre-final' version submitted to LIFT on 1 April 2016. This final version of the Report on integrates the findings of the Verification Mission into the document.

Comments on the TOR and Methodology

The methodology has included around a literature review, in-country meetings with the LIFT team and with a wide range of people in government, cooperation partner and civil society Institutions; and focused fieldwork visits to Amhara State, two rural *woredas* in Oromia State; and one *woreda* in the Southern Nations region.

For the purposes of presenting findings, the ToR objectives were regrouped as follows:

- Review the Government of Ethiopia's (GoE) land policy, laws and procedures against international best practice (FAO VGGT etc.), including community-based and pastoral land rights and tenure security
- Review land administration Issues impacting transparency, including:
 - Public access to land registration and other land information
 - Compensation methodologies, procedural guarantees etc.
 - Mechanisms for consultation and grievances
- Review the existing situation with respect to land Investments, Including:
 - Procedures for reviewing and approving land Investments
 - Difficulties and safeguards for protecting local rights
 - Transparency Issues
 - Mechanisms for consultation and grievances
- Review Issues related to harmonising rural and urban land policies, particularly In urban expansion areas, including compensation. Assess related projects supported by other donors which Impact on land transparency

This final report focuses on strategic concerns and challenges and integrates the additional findings from the May 2016 mission. It also includes the final proposal for a Plan for Improved Transparency in Land Governance.

The original TOR required a detailed Plan for Improving Land Transparency to be prepared after the first mission in June 2015. An initial draft of an Outline Plan was included with the first draft report. Given the sensitive nature of many of the issues discussed, it was felt that it was too early to develop a fully detailed and costed Plan as required in the TOR without prior discussion and agreement by the GoE and DFID. The Plan was therefore reviewed by DFID and the GoE, and then discussed in detail at the February 2016 Workshop in Addis Ababa. Along with the findings of the report, the Outline Plan was broadly accepted by both the GoE and DFID. However, it was agreed that a second 'Verification mission' should take place to confirm findings with more field work.

The Workshop also agreed that a work plan and methodology for developing a fully detailed and costed Plan should be developed; this would also be informed by meetings and fieldwork during the Verification mission. The Plan for Improved Transparency in Land Governance presented in Annex One of this report is the outcome

of this extended process and reflects both the discussions in February 2016 and further discussions with stakeholders in May 2016.

Structure of the Report

Following this introductory section, the next section provides an overview of the DFID Business Case for the LIFT project, while the following section considers current trends in the international debate on land policy, especially as it refers to large-scale land investments (LSLIs). The fourth section then looks at the wider context of land policy in Ethiopia – the development being pursued, and the implications of the Growth and Transformation Plan (GTP), now ending, and its follow-on, GTP2.

The next four sections then look at the specific issues raised in the ToR:

- GoE land policy, laws and procedures against international best practice (FAO VGGT etc.), including community-based and pastoral land rights and tenure security;
- Land administration issues impacting transparency and the existing situation with respect to land investments;
- Issues related to harmonising rural and urban land policies, particularly in areas of urban expansion, including compensation; and
- Projects supported by other donors which impact on land transparency.

The Conclusion summarises the findings of the report, drawing out ‘the key Issues to be addressed [by the Plan] in Improving land transparency consistent with the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)’

Comments on the DFID Business Case

The DFID Business Case for the Land Investment for Transformation (LIFT) project provides some important background for this assessment of transparency issues. The major assumption in the Business Case is that having secure land tenure rights will stimulate farmers to invest in their land and thus improve their own incomes and contribute to national economic growth. Hence the main component of LIFT is to support land-rights titling. By the end of its 6.5 year cycle the project will have mapped and certified the existing rights of smallholders over 14 million parcels of land.

The business case also recognises that the task of a Rural Land Administration goes far beyond mapping existing rights. Issuing certificates for present occupants of land is an important first step but cannot guarantee tenure rights and support development over the longer term. Land is inherited and is broken up into smaller parcels or amalgamated as households are formed, grow, and finally hand over assets to succeeding generations. Land tenure also transfers between third parties, through a range of mechanisms including the sale of installed infrastructure, gifting, rent and lease agreements. Without effective change management, the usefulness of title and certification for promoting investment and growth would be quickly lost. Thus, the second component of LIFT is to assist the GoE in developing a new Rural Land Administration (RLA) system¹.

The business case for LIFT also recognises that titling and land administration are not enough to achieve desired development outcomes. The third component of the project therefore provides support to farmers to *use their new Certificates productively*. This component links the Certification process to the Economic Empowerment Component. Thus, farmers who have received certificates through the project are assisted in maximising the opportunities to gain access to new markets for their products and increasing productivity through access to credit and technical support.

This approach reflects the awareness that formalising land rights through a titling and certification programme is a necessary but not a sufficient condition for small farmers to make practical use of their newly enhanced land rights, or in other words, ‘develop’ – respond to new markets, upgrade their technology or become more commercial. Thus, land administration activities like certification should be part of a wider rural development strategy which both creates new opportunities for farmers and provides support to respond to these opportunities. And indeed, in Ethiopia, land policy (discussed further in the section below) does reflect and work with the agricultural and rural development programmes that are in place.

¹ It appears that the designation will now be ‘rural land transaction’ administration. This should be confirmed in follow-up work

Success indicators should include not just the immediate outputs of a Certification programme, but also outcome indicators of its impact on the economic performance of its beneficiaries – agricultural activity and production, involvement in markets, taking up other opportunities such as credit and extension services. Extending beyond this are indicators of social and economic performance to which a programme like LIFT contributes to partially. These include indicators of equity and social indicators like the Millennium Development Goals (MDGs) and now the 2030 Sustainable Development Goals (SDGs).

The social and economic programme of the GoE, of which agricultural development is a significant part, is having some impact. GDP in Ethiopia grew at 10.7 percent per year from 2003/4 to 2011/12 and while high inflation (21 percent at the end of 2011/12) will reduce real GDP growth to around seven percent in the short-to-medium term, this is still an impressive performance². Agriculture – and by implication land policy – has played a large part in this. Agriculture still accounts for 45 percent of total output and for over 80 percent of goods exported. Though declining in overall share of the economy – the GoE has also strongly prioritised manufacturing investment and development over the same period – the agricultural sector has grown at an average rate of seven percent per year over the last 15 years, with sources of growth being ‘an increased area under cultivation and from increased productivity’. Gains have also been made against the MDGs, with several having been achieved entirely or close to being achieved. Moreover, ‘agricultural growth is correlated with poverty reduction for smallholder farmers’³.

Seeing LIFT within this high-level context may seem extravagant when faced with the immediate need to demarcate rights and process millions of certificates. However, these are the reasons why DFID and other donors are in this programme in the first place. All share a common view that land governance is a key element in the fight to end poverty, ensure good governance, achieve other human development goals, and address environmental concerns. This is clear in the DFID Business Case:

‘enhancing security of tenure for communal land holdings, pastoralists and customary land use and improving the transparency of land allocation [and] bringing Ethiopia’s wider land governance into line with international good practice and human rights obligations... particularly in relation to communal, pastoral and commercial land use, *should help protect the livelihoods and rights of farmers, especially pastoralists, help attract sustainable commercial investments and improve the extent to which such investments benefit the community and country*’ (emphasis added).

In this context transparency issues should also be assessed within the wider context of how the programme fits with other agricultural and business development policies and activities. The land rights of women and other vulnerable groups, and their ability to participate in new economic and social opportunities, is also a key element of DFID’s global strategy. While ‘transparency’ in land governance is certainly about how programmes are managed and land information services function, it is also about how vulnerable groups are included and gain from investments and capacity building in land administration and management.

² World Bank 2015; UN 2013

³ World Bank 2015:3

Trends in Land Policy and Development

This Section provides a brief overview of trends in land policy, with a focus on the issues of large-scale land acquisitions and the increasingly mainstream consideration of inclusive and participatory models for promoting investment which is 'community-friendly'. The international instruments now available – the FAO VGGT, the PRAI and the AU Guidelines – are briefly reviewed. The purpose is to set the stage for the proposals in the Plan for Improved Transparency, which includes developing a pragmatic 'win-win' approach to land investments in Ethiopia which nevertheless remains within GoE strategy as laid out in GTP1 and GTP2.

Good Governance of Tenure and Responsible Investment

Given the significance of land as a livelihood resource for millions of people, it is increasingly rare for governments and private firms to pursue a narrow vision of land being used as a national resource. It is now becoming widely accepted that any investment which uses significant areas of land should be developed in close consultation with those who live on it.

In the last five years, several new international instruments have been developed around the idea of 'good governance of land'. This process is a response to concerns about 'land grabbing' in the wake of the 2008 hike in world food prices and surging demand for land for biofuels and other agro-industrial uses. Thus in 2010 the G8 began work on a set of Principles for Responsible Agricultural Investment (PRAI). These were endorsed at the 2010 G20 Summit in Seoul and were reaffirmed by the G20 in their 2011 and 2012 Summits. The recognition of and respect for existing tenure rights to land and associated natural resources figure prominently amongst the principles, alongside a concern that investment should enhance and not jeopardise food security.

The G20 initiative was followed by the African Union/AfDB/ECA Framework and Guidelines on Land Policy in Africa (FGLPA). Underlining 'An Emerging Consensus across the Continent', the Guidelines lay out a number of principles for policy development that should guide its member state governments as they strive to make the best use of national land resources:

- *Land policy development* should be seen as a *prerequisite for economic growth* and sustainable human development;
- Land is a *highly sensitive political issue* and as such the process of land policy development, implementation and evaluation needs to be as *inclusive and participatory as possible*;
- National ownership in the development of land policy is critical for *engendering broad grass roots endorsement which is more likely to lead to successful implementation*;
- There are a range of *indigenous principles and emerging innovative local practices that can inform sound national land policy* development and implementation;
- Deliberate steps must be taken to ensure the *full and informed participation of women – Africa's primary land users – in policy development and implementation*; and
- Successful implementation of land policies will contribute to improved governance, environmental management and the consolidation of peace⁴.

The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) developed all these ideas into a globally-relevant framework for improving land and natural resources governance. The VGGT were approved by the Committee for World Food Security (CFS) in May 2012, after wide consultation with FAO member governments, national and international NGOs, land surveyors and administrators, and private sector firms and others who invest in and use land. The defining thread throughout the VGGT is the need for consultation and participation between the inevitable multiple interests who live on, invest in, and govern land and natural resources. Thus:

Consultation and participation: engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes (VGGT, p5, Principle 6) and further: states should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset. Policies, laws and procedures should take into account the capacity to

^{4 5} AU/ADB/ECA 2010:23

implement. They should incorporate gender-sensitive approaches, be clearly expressed in applicable languages, and widely publicized (VGGT, p8; para 5.5).

Finally, in this comprehensive development of international principles and guidelines, the earlier work of the G20 was developed by UNCTAD, FAO and the World Bank into the Principles for Responsible Investment in Agriculture and Food Systems (PRIAFS). A list of ten principles was agreed, building on the earlier G20 document:

- Principle 1: Contribute to food security and nutrition
- Principle 2: Contribute to sustainable and inclusive economic development and the eradication of poverty
- Principle 3: Foster gender equality and women's empowerment
- Principle 4: Engage and empower youth
- Principle 5: Respect tenure of land, fisheries, and forests, and access to water
- Principle 6: Conserve and sustainably manage natural resources, increase resilience, and reduce disaster risks
- Principle 7: Respect cultural heritage and traditional knowledge, and support diversity and innovation
- Principle 8: Promote safe and healthy agriculture and food systems
- Principle 9: Incorporate inclusive and transparent governance structures, processes, and grievance mechanisms
- Principle 10: Assess and address impacts and promote accountability

The VGGT are indeed 'voluntary' and no state is obliged to implement them. Ethiopia is a member of the FAO, however, and implementation of the VGGT is now a global objective for FAO and donor countries funding land programmes. This is why a key objective of this report is to assess transparency in land matters in Ethiopia against the backdrop of the VGGT and propose a plan to improve transparency which reflects the VGGT principles.

Recognising and respecting existing rights, ensuring participation and consultation between governments, investors and on-the-ground stakeholders, and local farmers and the communities they live in, are now mainstream issues in international discourse on land governance, management and administration. While the VGGT and PRIAFS may present the GoE with some challenges in relation to its previous and present approach to land issues, they also offer the Government an excellent opportunity to take stock of where it is now after a decade of titling, and several years of experience with attracting foreign large-scale land investments.

The AU document stands out by explicitly recognising that land is a 'highly sensitive political' issue, with an implicit 'don't move too fast' message in its land governance guidelines. Obviously, states have to act and develop policy within parameters dictated by their specific political economies. Even the AU document, however, uses the political sensitivity of land as a justification for promoting a process that is as 'inclusive and participatory as possible'. Addressing this sensitivity and fostering greater transparency are essential if national land policy development is to 'engender broad grass roots endorsement'.

At a more technical level, the AU document also stands out for its observation that the development of 'sound national land policy' can be informed by 'indigenous principles and emerging innovative local practices'. This is a signpost for governments who perhaps over- emphasise the need to 'modernise' land governance and administration and should consider instead what is already working in their domestic local contexts, with a view to incorporating it into evolving public land administration and governance systems.

Current Thinking on Large-scale Land Investments (LSLIs)

The allocation of large areas of land to investors – both national and foreign – by developing- country governments has become a polemical issue in recent years. Vocal critics of 'large scale land allocations' (LSLAs) are found in civil society organisations and academic research institutions in many countries, including those where LSLAs are happening. A major concern is the marginalisation of local land rights and the impact of LSLAs on local livelihoods and food security.

There has been a related argument about the pros and cons of small-scale versus large-scale production. In countries like Ethiopia where land belongs to the State, governments also feel that they have a legitimate right

to manage and allocate land resources in the national interest. For a 'development state'⁵ like Ethiopia, this translates into a belief in a key role for large-scale commercial agriculture as part of a wider vision to develop national industry and provide employment in an increasingly urban society. Arguments in favour of large land investments centre on efficiency and capacity issues. A recent FAO publication notes that agricultural investment is an important and effective strategy for poverty reduction in rural areas where most of the world's poor live, and that increased public investment in agriculture is therefore essential. However, 'many developing countries have limited financial capacity to fill the investment gap', and foreign direct investment (FDI) makes an important contribution to bridging this investment gap in developing country 'agriculture'. Moreover FDI 'can potentially generate various types of benefits for the agricultural sector of the host country such as employment creation, technology transfer and better access to capital and markets'⁶.

Another recent analysis of large-scale agriculture at the global level also notes that commercial-scale agriculture will be essential to feed the 'non-producers' as well as the millions who still live on the land. This paper argues for a balanced mix of smallholder and commercial production but adds that both need to change if the optimum level of output and equitable social outcomes are to be achieved. Although there are benefits for both governments and investors, these will only also accrue to smallholders and those who now occupy the land if a range of proactive alternative production and inclusive business models are used⁷. While large land investments are here to stay, how these are planned and implemented is important if the VGGT and PRI/AFS principles are to be respected.

Agriculture is not the only driver of local land being taken over for investment. Large-scale infrastructure projects, often funded by donors or multilateral organisations, occupy land (for example, when dams create large lakes), or open up once-inaccessible areas to new investment (large road building projects). Both can trigger a rush for land where local people already have rights through local customary systems but little formal evidence as proof of their occupation.

The true extent of the land rush is also an open question. While very large figures are often quoted in the literature on 'land grabbing', it is not clear if the areas involved always add up to a significant proportion of overall land use. And even where large areas are conceded, only a part of the total is actually used. Deininger and Byerlee, for example, found that only 21 percent of conceded land globally is fully cultivated⁸.

The existence of 'free land', or land over which there are no established rights, is also open to debate. The vast majority of existing land rights are customarily acquired and managed and extend over territories that are exploited using a range of extensive land use practices. Most of these rights are not registered and are therefore invisible to state officials and investors alike. A recent article notes that 'The disrespect of colonial powers, national elites, donors and investors alike concerning the complex governance and tenure mechanisms that have evolved over time to govern the vast commons helped to coin the notion of idle, 'reserve' land, which ...helps to justify the appropriation of resources without recognising their current use'⁹.

So, while governments in countries where 'land is the property of the State' may argue that they control vast, 'free' areas 'sometimes close together, sometimes very far apart... using *all of the landscape* they live in in some way'¹¹. If use of any kind equates to having a right, then 'legitimate land rights' exist almost everywhere, and even small investment projects can radically affect local livelihoods.

It is therefore important for policy makers and funding agencies to understand and support the kind of mixed strategy alluded to above. Such an approach promotes large-scale investment where appropriate, while ensuring that it does not undermine the rights and the livelihoods of the people who depend on the land and its natural resources. 'Appropriate' is more than just an agro-ecological parameter, however; it also means that more attention should be paid to the question of *how projects are designed and implemented*, and *how they generate tangible benefits for the people whose land is needed to implement them*.

The question of 'how' is also related to the development model pursued by a government, and how it sees its role in this process. The GoE openly embraces the development state paradigm whereby the government drives national development through massive public investment. The Government believes, a) that 'the State and the people 'own the land'; and therefore b) that it has an obligation to ensure that national land resources

⁵ This term describes countries where the government adopts an explicit role as principal driver of development, through massive public investment and State-led planning

⁶ Liu 2014:3.

⁷ Riddell 2013.

⁸ Deininger and Byerlee 2011.

⁹ Ismar 2013:289

are fully used for the benefit of all. Citing ‘national interest’, it then fast-tracks investment onto ‘unused’ land. This can be politically risky especially if foreigners are involved, as it involves expropriating from local people and giving it to outsiders. Many might disagree with such an approach, but it does reflect a legitimate analysis by a government convinced that it has the right approach to national problems. In this case the challenge is to interrogate the analysis and suggest something better that is equally convincing.

‘Transparency’ in land management and governance should therefore be assessed with an eye to the wider context of the national development model. In Ethiopia this model includes a legitimate concern to have valuable natural resources used fully and for the benefit of all Ethiopians, not just those who live on or near the land in question. This report assumes that large-scale production will continue to be part of the strategic toolkit of the GoE (a strategy about which the GoE has been remarkably open). The GoE is also clearly committed to a strong smallholder sector. The focus of the report is therefore on the ‘how’ question, to see how improvements can be made in land governance guided by the VGGT and other principles of equitable and sustainable investment and growth.

Land and Development in Ethiopia

Historical Context

Land is a central element of the GTP, but in fact land governance in Ethiopia has always had a strong element of central influence. And within this longer-term historical perspective, allocating large areas of land to outsiders has always been a part of national development thinking.

The figure below presents a selective timeline of the some of the key events in the contemporary history of Ethiopia which are significant for understanding certain aspects of the land issue and land governance today. Before the 1974 revolution which ended the Imperial regime, feudal forms of land governance predominated in the north with communal tenure arrangements establishing the pattern of smallholder agriculture still seen today. In the south, large land grants to favoured supporters and the Church established a far more extensive pattern of land occupation with pockets of tenant farmers and large areas crossed by nomadic cattle farmers¹⁰.

1920s	Different forms of feudal tenure system across the country
1936	Mussolini invades and takes control of Ethiopia
1941	Emperor Haile Selassie returns from exile. Feudal tenure remains but establishes rules leading to emergence of private property
1974	The socialist ‘DERG’ (Committee) overthrows Haile Selassie. Nationalisation of land, land redistribution, state farms and cooperatives formed
1987	Mengistu dissolves DERG, creates People’s Democratic Republic of Ethiopia with a new constitution. Farmers receive land where they live
1991	Males Zenawi and the EPRDF overthrow Mengistu. All land is nationalised. Ethnic Federalism introduced with 9 Regions
1995	New Constitution reaffirms state ownership of land. Landholders have the right to transfer land and assets, and to compensation in case of expropriation; some recognition of pastoral rights
1996	Constitutional land reforms. Land rental and leasing allowed. Federal Rural Land Administration and Use proclamation
1997	Proclamation 89/1997 Federal Rural Land Administration enabled Regional Governments to make regional laws
2000	First Level Certification of Land Rights begins in highlands
2002	Proclamation 280/2002. Government make unused lands available on long-term leases to foreign investors
2004	Government resettlement plan to encourage farm families from crowded highland regions to move to lowlands
2005	Proclamation 455/2005 ‘Expropriation Law’ and expropriation for public service, compensation and complaints and appeals procedure
2005	Proclamation 456/2005 ‘Land Administration and Use Law’. Increases tenure security (certification), land use rights and a rural land administration for natural resources management and promoting private investors in pastoralist and community-occupied areas
2015	Operational launch of LIFT (March)

Even under the Imperial regime of Emperor Haile Selassie, land allocations were already taking place, as far back as the 1960s, albeit at a far lesser scale than in the past ten years. The Imperial government did try to

¹⁰ Wubne 1991.

improve smallholder title to land in the north, but this was resisted in areas where local people mistrusted its motives¹¹.

Land was nationalised after the overthrow of Haile Selassie by the Derg¹². Commercial farms were turned into state farms and cooperatives established. Millions of Ethiopians (including women) were also allocated small plots in their own right.

The impact of this process has been profound and is the basis of the pattern of landholdings in the densely occupied highland areas of the country. It is particularly significant for women who were present at the time of the land distributions. Today they stand at a considerable advantage in terms of land access compared to younger women who have not benefitted from this early land reform programme and now must compete for land in a more crowded landscape. However, they must also work more diligently to protect the land they do have and to have it certified in their names.

The overthrow of the Derg by the EPDRF marked the beginning of moves towards a market economy. Private agriculture was encouraged, and new large land allocations began to be made. Land remained State property and the GoE retained control over how it was allocated and managed. But compared with the previous regime, farmer rights over land were to be later strengthened under a series of new land proclamations.

The new Constitution of 1995 also enshrined fundamental human rights, including the equality of men and women in all social, economic and political activities, and brought in a radical restructuring of the country into a Federal State with 9 Regions with a significant degree of autonomy over their own economic and administrative programmes.

At present there is no single land policy document in Ethiopia. A process has been initiated recently to develop a new 'Land Use Policy', but in the meantime 'the land policy' must be gleaned from a variety of sources. The 1995 Constitution provides the basic pillars around which practical policy measures are developed. Other elements of policy can be discerned within related sector policies and strategies. For example, the Rural Development Policy and Strategies document of 2003 in its section on 'Land Ownership' lays out 'the essence of the land policy', including amongst other things that 'the farmer does not only have user-rights on the land. He/she can rent it out to third persons, may use own or family labour to cultivate it or may hire labour from outside. In this respect, the rights on land are significant and comparable to private ownership'¹³. The same document goes on to say that the government will 'formulate a comprehensive land use policy and the accompanying implementation rules and regulations'¹⁴.

In response to the constitutional requirement to enact appropriate laws covering the use and conservation of land and natural resources (see the discussion of Land Policy below), the GoE developed the 1997 Rural Land Administration and Use Proclamation. This gave the Regions significant autonomy in how they regulate the details of land access and use, while staying within the general parameters laid down in the Federal Constitution and Federal level legislation. All 9 regions passed new laws in the following years, introducing notable differences with regard to issues such as duration of rent and the percentage of a holding that can be rented out by its occupants.

In the early 2000s the Government was still concerned to avoid a rural-urban exodus but was even more concerned to ensure that food production was maintained. Seeing tenure issues as a root cause of food insecurity, it began the Certification process to improve the tenure security of small rural households. Tigray was the first to undergo certification through the *kebele* structures. Later with initial support from Sida, a home-grown programme of 'first-level land certification' took shape, with smallholder households able to declare their occupation of a given piece of land supported by the testimony of neighbours and receive a Certificate (the 'Green Book'). Other development partners such as USAID also contributed to the process as it took root and evolved.

The success of this programme, which needed a clearer legal footing and recognition that regulations for improved land management were necessary, led to the development of the 2005 Rural Land Administration and Use Proclamation Number 456/2005. This was accompanied by the 2005 Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation Number 455/2005.

¹¹ Bahru Zewde 2001 and Gebru Tareke 1996.

¹² Coordinating Committee of the Armed Forces, Police, and Territorial Army

¹³ MOFED 2003:24.

¹⁴ Ibid:28.

There have been several additions to the legal frameworks since 2005. The regions have updated their own land legislation in response to the new 2005 Proclamation. And over the last three to four years, again with USAID support, detailed regulations have been drafted for the land certification process, integrating elements of the First Level 'qualitative' approach and the Second Level Certification which fixed a geo-referenced map to the Green Book, which is also recorded digitally. However, with other anomalies in the legal framework, the GoE then commissioned a full review of the 456/2005 Proclamation in early 2015 which will integrate the new regulations. This ongoing process is discussed later in this report with other aspects of the current legislation.

Thus, at the present time 'land policy' in Ethiopia is still essentially fixed by the central constitutional pillar of State ownership of land, while at the same time responding to the imperatives of a market economy where land rights and the ability to transfer them underpin investment and wealth creation. The Constitution does give clear and equal rights to all who want to use land. However, the combination of State control over land and a strong GoE development agenda does render existing rights vulnerable to expropriation and occupation if the Government considers this to be in the public interest. All States of course have recourse to expropriation and compulsory purchase when public interest predominates over private land and other property rights. But it is essential that the land rights which are allocated under the Constitution are felt to be secure by those who hold them, and that the state uses its power in a responsible manner within the dictates of the law.

Meanwhile, in common with other African states where ownership or radical title remains with the State, the pressure is rising to find a way to use land (or at least the use and holding rights allocated by law) to raise investment capital and allow farmers to respond to new markets and demand for agricultural products. Farmers also need long term tenure security so that they can invest in the knowledge that they will not only get a good return but also be able to recover or pass on their investment to their families in the future. The government must also ensure that this investment responds to the challenge of supplying food and raw materials to the cities and new industries at the heart of its key development strategy, the Growth and Transformation Plan.

Land Issues Today

Despite – or perhaps because of – great economic progress in the last decade, there are still major land policy challenges facing Ethiopia. These are set within two basic contexts: fundamental and hard-to-change processes like population growth and climate change which impact on land fragmentation, soil fertility, and food security; and processes that can be addressed through changes in policy and improvements in land governance.

With rising populations, creating the conditions for investment and economic growth in rural areas is a key challenge facing the government. The GoE has also been concerned to bring large areas of underused land into production. Thus, a notable feature of land policy since 2004/5 has been large-scale land acquisitions (LSLAs) for agricultural investment (foreign and national), with a focus on generating foreign exchange rather than on food security. This process peaked in 2008-09 with the global food crisis and subsequent hikes in basic commodity prices and has exposed the GoE to considerable criticism at home and abroad. Land policy in Ethiopia is also bound up with the national social protection programme and government concerns to reduce the pressures that lead to rural-urban migration.

The underlying principles of the Government's land policy – rural and urban – can be deduced from the Constitution. A series of federal and regional-state laws have been developed to implement the constitutional provisions. These also have a policy dimension insofar as they have evolved in response to how the GoE sees land in the broader context of its economic and social development programmes.

Legislation covers the powers, responsibilities and relationships of the various authorities, including state powers of land allocation and revocation. Under the 1995 Constitution, land is a concurrent competence of the Federal Government and the Regional States. Ownership of rural and urban land and all natural resources is 'exclusively vested in the State and in the peoples of Ethiopia'. Land must not be sold or exchanged. Land access for investors is assured 'on the basis of payment arrangements', although these are not to be interpreted as land sales. The Constitution affirms that women have equal rights with men to acquire, administer, control, use and transfer property. However, this equality is not always evident in practice.

The rights of those holding and using land were significantly strengthened by the Federal Rural Land Administration and Land Use Proclamation 456/2005. The right of inter-generational tenure transfer is confirmed as well as the right to exchange land (i.e. to make small farm plots convenient for development) and to sub-lease (i.e. to rent out and rent in), but within limits determined by each Regional State. While land still cannot be sold or exchanged or used as collateral, buildings and improvements is private property and can be sold. The underlying land rights must then be transferred by the relevant State agency to the purchaser. The

Regions differ over how this is treated, with Oromia, for example, making it clear that the purchaser of a building erected on land only secures that building and has no inherent right or expectation to secure rights over the land as well. Nevertheless, buying and selling infrastructure or improvements – including standing crops – can be seen as a *de facto* land sale and this is a grey area of policy requiring significant attention. Any consequent ‘land market’ is clearly unconstitutional and requires significant attention to clarify and regulate what is happening on the ground¹⁵.

The situation regarding land rentals is also somewhat uninformed. With no detailed guidance at the constitutional level, the land proclamations in each of the four highland Regional States define different limits on the period of rental allowed and the proportion of a holding that can be rented out by its ‘holder’. Devolved policy-making of this kind is an admirable feature of the Ethiopian federal structure, with each Region being able to enact its own land legislation provided that it conforms to over-arching principles established in the Federal-level Proclamations. Yet inconsistencies across regions can make things confusing for investors and undermine the overall legitimacy of the national land management system if they are not clearly addressed.

Provisions are made in the legislation for the registration and certification of rural land holdings, thus providing a clearer legal basis for the massive land certification programme that got under way from the early 2000s and is now in its ‘Second Level Certification’ phase. Land can however be expropriated by the State for ‘public purpose’ and Proclamation 455/2005 details how land can be expropriated and what compensation is due to those who lose their rights over it. However, it should be noted that under Proclamation 456/2005, rights can be withdrawn without compensation if the holder is deemed to be using his or her land unsustainably.

The Federal land laws are tailored to the needs of the intensively cultivated and densely settled highlands rather than lower altitude farming systems in the Regional States of Somali, Afar, Gambella and Benishangul Gumuz. The agro-ecology and landholding arrangements in these States pertain to the community rather than the individual nuclear family which is the basic land holding unit in the highland zone. Somali and Afar Regional States are predominately semi-arid and pastoral that are characterised by extensive areas that appear to be unused but in fact form part of complex long-range semi-nomadic production systems centred on cattle production. So far, there is little if any legislation (or policy emanating from sound empirical evidence on which to base legislation) covering collective or community-based forms of land possession and natural resources use (including water); the treatment of pastoralists is said by many specialists to be weak and in need of specific attention in new legislation.

The GoE is, however, currently addressing the issue of land rights in pastoralist and semi-pastoralist areas with support from USAID and other partners.

Alongside the concern to encourage a more sedentary way of life for local people, the GoE policy on LSLAs also focuses on these sparsely populated areas and is a significant element of ‘the land policy’ for the pastoral and semi-pastoral areas of the country. Meanwhile, in the absence of more specific legislation covering the very different bundles of rights which exist in these more peripheral states, they continue to fall under the general provisions of Federal laws, even though these were designed primarily for arable agriculture in the highlands.

One area of note is in gender issues and women’s rights over land. Especially since the advent of the EPRDF government in the early 1990s, there has been considerable statutory reform at both the federal and regional levels to promote the rights of women in all areas. Significant progress toward meeting the 2015 MGD on gender is noted in most recent assessments of Ethiopian development particularly over the last decade¹⁶. This includes the way that land policy and legislation deals with land access and use for women. A recent paper concludes also that the land registration programme in operation in most of the country since the early 2000s has had ‘some important, positive impacts on women’s land rights’¹⁷.

Based on evidence from three case study areas, however, the same study goes on to observe that ‘gender inequality goes much deeper than just access to land...the agricultural system of production and the division of labour is gendered...privileging male agricultural labour... [and thus] households lacking adult male labour,

¹⁵ Exactly this situation exists in other countries where socialist constitutional norms come into conflict with the reality of fast growing market economies. Mozambique is an excellent example where this issue is presently the subject of debate about possible alterations to the present land law, not to allow land sales *per se*, but to clarify precisely what is being sold and how the underlying land right is then treated.

¹⁶ See UN 2013; World Bank 2105. Progress in gender issues is also frequently mentioned in the collection of papers edited by Rhamato et al 2014.

¹⁷ Lavers 2014:18

including female-headed households, the elderly and disabled, earn a fraction of the income of a household with male labour'¹⁸.

These remarks suggest that in the case of women and the more vulnerable, the real challenge goes far deeper than simply changing land policy and legislation (which as stated are already significantly 'pro-women'); measures are needed to ensure that women are adequately informed and supported when they confront and interact with land administration and other services, and these services in turn must be more aware of and able to address the deeper- rooted sociological issues that continue to undermine how women, the elderly and the disabled are able to access and use the land they have rights over.

At the federal level, the Ministry of Agriculture's Rural Land Administration and Use Directorate (MoA/RLAUD) oversees agricultural and rural development policy and planning, and seeks to coordinate external funding for the sector, including natural resource management. Federal oversight of spatial planning and land administration in urban areas is the responsibility of the Land Development and Management Bureau of the Ministry of Works and Urban Development (MWUD). Implementation is the task of individual cities and towns at regional level and below. Bodies responsible for land administration and land management in Addis Ababa and Dire Dawa are more autonomous than in other urban areas.

The LIFT Inception Report identifies a series of constraints affecting land and agricultural production, highlighted in yellow in Table 1 below.

All these questions contribute to an atmosphere of low transparency. Confronted by inefficient services, people will look for other ways to achieve what they want; lacking information about land rights and how to use them leaves the more vulnerable open to manipulation by those who are more powerful in society and closer to the information. Thus, transparency has links to systemic and capacity issues, compounded by existing social and economic disparities.

An appropriate plan to improve transparency is therefore one that a) addresses the weaknesses identified, and b) addresses the underlying sociological and politico-economic factors that allow certain groups to exploit the current weaknesses in their favour.

Land Policy and the 'Development State'

For many people, and especially rural communities, land is a source of dignity and identity as well as the basis of local livelihoods. This is often masked by arguments about economic growth and national development, but many governments are driven by a genuine concern for development and growth that can end poverty. In this context, unused or underused land resources are seen as both a cause of economic stagnation and an opportunity for growth given the right policies and incentives.

Table 1 Main constraints affecting land and agricultural production

Constraint	Underlying Causes
Weak land tenure security	<p><i>Restrictive land regulation and procedures</i></p> <ul style="list-style-type: none"> • Previous land redistribution undermines confidence in tenure security • Unclear and inconsistent regional regulations and procedures for formal land transfer (for rentals and transfer of land use rights) • Informal land use transactions tend not to allocate land to those who can make the most productive use of it <p><i>Weak capacity of land administration</i></p> <ul style="list-style-type: none"> • Weak land administration system for registering and certifying land • Records not maintained after first-stage certification due to weak local level capacity and systems • Weak capacity results in women and vulnerable groups disadvantaged in obtaining and maintaining land security • Limited capacity and systems for local land use planning
Limited access to finance	<ul style="list-style-type: none"> • Low access to credit markets/finance for smallholders (especially women) • Limited smallholders use land certificate for loans¹⁹
Limited input markets	Limited access to inputs including fertilizer, oxen/tractors and agricultural seeds (especially for women)

¹⁸ Ibid:14

¹⁹ Land certificates are being used as a guarantee of productivity in Amhara, but this is not widespread practice

Constraint	Underlying Causes
Limited output markets	<ul style="list-style-type: none"> • Limited markets for agricultural produce, therefore little income to reinvest in land or to move beyond subsistence production • Lack of market information for farmers
Poor infrastructure	<ul style="list-style-type: none"> • Lack of access to markets • Inadequate irrigation • Lack of access to roads and electricity
Lack of skills and knowledge	<ul style="list-style-type: none"> • Lack of information on effective farming, environmental and land use practices • Limited information on land policies and regulations • Introduction of inappropriate technologies
Declining land quality	<ul style="list-style-type: none"> • Loss of soil fertility due to shorter fallow periods and crop rotation cycles • Land degradation and erosion due to impact of changing rainfall patterns including more intense rainfall events, extended dry spells and wider/secondary impacts of increased pressure on forests, farm, rangeland after climate shocks • Limited land use regulations and agricultural practices
Small plot size and fragmentation	<ul style="list-style-type: none"> • Population growth • Local inheritance practices contribute to division of land

Source: LIFT Inception Report

The GoE has adopted a state-led development model, emulating the approach adopted by China, South Korea and Singapore²⁰. A strong dominant party is normally the starting point, which is then able to drive through policies with economic growth as the over-riding policy goal. Unlike more developed, pluralistic economies, a 'development state' will intervene directly and in strategically selected areas of society, driving investment and directing distributional decisions. There is little time for consensus building: the imperative is on growth. If this is successful and the fruits of growth are distributed adequately, social tensions may be avoided; this in turn may minimise the societal demand for more dialogue.

The GoE appears to adhere to this vision of transformative State leadership, as the country works hard to achieve not only the MDGs and the 2030 SDG targets, but also the GoE's own goal of making Ethiopia a middle-income country by 2025. The main policy instrument has been the Growth and Transformation Plan (GTP), and the first GTP (2010/11 to 2014/15) set ambitious economic and social targets. The GoE has met this challenge with 'massive investments in infrastructure development, and pro-poor growth sectors such as education and health'²¹. Indeed, the present achievements of the government and its partners cannot be ignored. To quote a recent World Bank document, 'Ethiopia has made substantial progress on social and human development over the past decade... Since 2005, 2.5 million people have been lifted out of poverty, and the share of the population below the poverty line [about USD 1.25/day] has fallen from 38.7 percent in 2004/05 to 29.6 percent in 2010/11.... Ethiopia is among the countries that have made the fastest progress on the MDGs and HDI ranking [and] is on track to achieve the MDGs for gender parity in education, child mortality, HIV/AIDS, and malaria'²².

A development state drives all policy of course, not just macro-level socio-economic programming. This includes land policy, where strong political will driving a well-defined course of action is an effective way to achieve visible and quantifiable results. The land certification programme is a good example of this, with the GoE developing a home-grown programme which has then made full use of donor support to produce impressive 'First Level' results. Strong political will is also required to push through the State allocation of land resources to national and international private investors, with national interest arguments being cited when concerns are raised about impacts on local people and the environment.

This approach requires a strong and competent state machine to implement it, and it is at this point that things begin to look less certain. The GoE has started from a very low socio-economic base, with massive poverty and weak institutions. To some extent the strong political structure of the EPRDF compensates for this institutional weakness. However, national analysts observe that the state apparatus which administers the GTP is weakened by politics and 'has not been able either to retain or attract capable people'²³. Consequently, 'building the capacity of the civil service and injecting merit to it will surely have a significant effect in improving the capacity of the state; otherwise the mission of the developmental state will be at risk'²⁴. Capacity building can also be a key element in any programme to improve transparency.

²⁰ Fiseha 2014:70

²¹ Ayenew 2014

²² World Bank 2015:1-2.

²³ Fiseha 2014:73

²⁴ Ibid:76

While the strong State-driven approach may also overlook and even exacerbate underlying structural and sociological issues, it does also include structures that offer a way to promote greater participation. A good example is the '1 to 5' structure of grass roots level task forces which allows the EPRDF 'to reach every family in the country... [Providing] a huge potential for mobilising resources and the people for its [GoE's] developmental objectives'²⁵. Thus, a combination of reinforced and reformed institutional capacity and working with local people on the ground through the '1 to 5' structure offers huge potential for community-level work that can bring people more directly into the development – and land governance – process.

The challenge then is to develop and implement effective land administration programmes – like the Certification programme – and ensure that this is done with an appropriate and constructive system of consultation and dialogue, as foreseen in the FAO VGGT. Although there are concerns about its heavy top-down approach²⁶, the GoE appears genuinely concerned to lift its citizens out of poverty and has made impressive investments in social sectors (notably education) as well as in economic and industrial infrastructure. Some things may be 'opaque', but the GoE is getting quite a lot right. A discussion of 'transparency' in this context is less about controlling or correcting the political behaviour that characterises any governing structure and is far more about what can be done to change *the system*. In the Ethiopian case this involves addressing the weaknesses set out in Table 1 above (the 'nuts and bolts' of land administration) and introducing practical new ideas into the debate on land in a way that can influence and adjust a legitimate but somewhat unbending national development strategy.

²⁵ Ibid:72

²⁶ See for example the Amnesty International 2012 Statement to the UN Human Rights Council.

Rural Land Policy and Legislation

This section looks at land policy in both rural and urban areas and reviews the current legislative framework. It then considers how this framework of policy and legislation is evolving in the context of current GoE economic policy and the Growth and Transformation Programme. The section ends with a short assessment of the policy and legal framework against the background of the FAO VGGT and related international instruments.

Rural Land Policy and National Development

The 1995 Constitution provides the skeleton for the Land Policy of Ethiopia²⁷³⁰. This Constitution came into force in August 1995 after the EPRDF came to power. In relation to land it includes recognition of both the fundamental rights of the people on the one hand, and the creation of space for government intervention on the other. Article 40 deals with the 'The Right to Property' (Box 1 below). Key points in it include the following:

- All land is 'vested in the State *and Peoples of Ethiopia*'; land is a '*common property of the Nations, Nationalities and Peoples of Ethiopia*' and 'shall not be subject to sale or to other means of exchange'
- Ethiopian peasants have the right to obtain land without payment *and the [right to] protection against eviction from their possession*
- Ethiopian *pastoralists* have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands

Thus, while land 'belongs to the State', it is also the property of the people. And given that most definitions of a 'State' include those who live in it as well, it is clear that all Ethiopians hold strong rights and a voice over how land is allocated and used. In addition, all Ethiopians can own any immovable property and/or permanent improvements they build on or make to the land they occupy and use, including 'the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer the title, or claim compensation for it'.

²⁷ The 1995 Constitution is still in force and provides the pillars around which all aspects of governance and regulatory instruments are set out. It has 106 articles in 11 chapters and provides for a Federal Government of nine ethnically-based regions – Afar, Amhara, Benishangul-Gumuz, Gambella, Harari, Oromia, Somali, and Southern Nations Nationalities and Peoples (SNNP). It includes human rights provisions based on international instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (both adopted by Ethiopia). All Ethiopian languages enjoy equal status and are recognised in the Constitution, while Amharic is specified as the working language of the *Federal* government. Within the Federal system, government functions are devolved to the Regions. Nevertheless, Ethiopia maintains its long tradition of highly personal and strongly centralised government, albeit subject in principle to constitutional limits on Federal power. The concentration of authority at Federal level over the allocation of large areas of land to investors is a good case in point

Box 1 Constitution of Ethiopia, Article 40 – The Right to Property

Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law because of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.

"Private property", for the purpose of this Article, shall mean any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.

The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.

Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law.

Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law.

Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the

ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law.

Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law.

Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.

*Constitution of the Federal Democratic Republic of Ethiopia, 21 August 1995,
available at: <http://www.refworld.org/docid/3ae6b5a84.html>*

The same article also gives the Government considerable powers to intervene to allocate land to private investors with contracts 'established by law'; and to 'expropriate private property for public purposes'. These activities are subject to payment of compensation (clauses 6 and 8).

This power to intervene is given a wider remit in the Rural Development Policy and Strategies, which states 'when necessary, the government may redistribute land or use it for a public purpose'²⁸. Other elements of this important policy document underline the managerial and directional role of the Government as it uses land in the best way to deliver on its long-term objective to 'build a market economy in which (i) a broad spectrum of the Ethiopian people are beneficiaries, (ii) dependence on food aid is eliminated; and, (iii) rapid economic growth is assured.'²⁹

Article 51 also determines that the Federal Government shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects. The devolution of land policy powers to regional governments is also based in the constitutional Article 52(2(d)), which determines that states have the power to administer land and other natural resources in accordance with Federal laws.

Other constitutional provisions linked to development and economic objectives have clear implications for land policy, and are in fact well aligned with principles of the FAO VGGT:

- Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community (Article 43/2).
- The basic aim of development activities shall be to enhance the capacity of citizens for development and to meet their basic needs (Article 43/4).
- Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development (Article 89/5).

²⁸ MOFED 2003:24

²⁹ Ibid:9.

- Government shall at all times promote the participation of the People in the formulation of national development policies and programmes; it shall also have the duty to support the initiatives of the People in their development endeavours (Article 89 No 6).

These of course are over-arching principles. Within this framework, what can be called more detailed ‘implementation policy’ is needed to shape what shall be ‘determined by law’ (see Box 1). Such ‘implementation policy’ has to respect the principles of the overall Constitutional framework; and in Ethiopia, as in many other African countries, the one principle shaping all other aspects of ‘implementation policy’ is that land cannot be bought and sold.

This constitutional limitation on what the holders and occupiers of land can do has profound implications for developing ‘land policy’ which is appropriate for a rapidly growing market economy. In most market systems the ability to buy and sell land and the property (investments) on it ensures that land is allocated more or less efficiently as a means of production. The resulting land market also drives the creation of capital for future investment. If land cannot be bought and sold, or used as collateral for mortgages, then attention must turn to the nature of the *rights* given by the State to its citizens (and foreigners) under Article 40 Numbers 4, 5, and 6, and whether these can in some sense be transacted and used as the basis for capital accumulation and investment. Other issues follow on from this, such as how the rights given by the State are secured, whether they are indefinite or subject to some fixed term, and critically, and how they are transmitted between third parties (including through inheritance).

These points underline the need for some form of market where those investing in their land can expect some form of return to their investment, and which allows those needing investment capital to use their land right as some form of guarantee. In this context, the development of appropriate implementing legislation reflects the broader policy discussion that takes place in the rural development policy documentation. The issue of tenure security is clearly recognised as critical for creating the incentive to invest and raise the productivity of land. This is set within the much longer-term view that eventually ‘overall economic development [will] allow rapid growth in the non-agricultural sectors and generate employment opportunities for the labour presently held in the agricultural sector’, with an underlying assumption that this will create the conditions for a land policy more geared towards private rights and less state intervention³⁰.

Thus the ‘implementing land policy’ and implementing legislation of Ethiopia reflect the development model followed by the Government and how it sees land contributing to its social and economic programme. The most recent development strategy builds on the vision set out in earlier documents and moves things (albeit slowly) towards this longer-term outcome. Over the last five years the strategy has been directed by the Growth and Transformation Plan 2010/11 – 2014/15 (GTP1), in which the long-term vision for Ethiopia is very clear:

“to become a country where democratic rule, good-governance and social justice reign, upon the involvement and free will of its peoples; and once extricating itself from poverty, to reach the level of a middle-income economy as of 2020-2023.”

In the economic sector this translates into:

“[Building] an economy which has a modern and productive agricultural sector with enhanced technology and an industrial sector that plays a leading role in the economy, sustaining economic development and securing social justice and increasing per capita income of the citizens so as to reach the level of those in middle-income countries”³¹.

In GTP1 the GoE underlines the growing demand for agricultural products because of ‘growth in population, growth in per capita GDP, increasing international demand and growing demand for agricultural products as raw materials inputs to the growing industrial sector’³². Thus, rural and agrarian development is expected to produce food for urban as well as rural populations, raw materials for new national industries, and exports. The strategy integrating these objectives within a common framework is Agricultural Development Led Industrialisation (ADLI). Over the last five years the ADLI strategy has sought to ‘ensure smallholder agriculture becomes the main source of agricultural growth’, along with ‘increased investment in agricultural sector to increase productivity and production’³³.

³⁰ MOFED 2003:27.

³¹ FDRE 2003.

³² FDRE 2010:45.

³³ FDRE 2010:45.

In the GTP1 the specific objectives for agriculture are listed as:

- Enhance productivity and production of smallholder farmers and pastoralists
- Strengthen marketing systems
- Improve participation and engagement of the private sector
- Expand the amount of land under irrigation
- Reduce the number of chronically food insecure households

The links between the two sub-sectors of smallholder farming and commercial agriculture are clear: 'to lay the foundation for industrial development, to use agricultural inputs for the industries, to produce sufficient food crops and high value products for international market, agriculture will continue to play a leading role in the GTP period'.

An ambitious target of 8.1 percent per annum was set for agricultural growth over the five-year period, through 'tripling the number of farmers receiving relevant extension services, reducing the number of safety net beneficiaries from 7.8 to 1.8 million households, and more than doubling the production of key crops from 18.1 million metric tonnes to 39.5 million metric tonnes'³⁴. In the event, Ethiopia has indeed achieved impressive growth in the agricultural sector at some seven percent per annum, with a large part of that coming from production and productivity gains in the smallholder and small commercial farm sectors³⁵.

To do this 'farmers and pastoralists need to efficiently use available modern agricultural technologies that increase productivity and production. In addition, the private sector will be encouraged to increase its share of investment in agriculture...a key strategic direction is to ensure smallholder agriculture becomes the main source of agricultural growth.' Both groups also need access to investment capital and production credits, and they need to know that they have secure tenure over the land they are investing resources into. In this regard the GoE is clearly getting some things right. Land policy to date has greatly enhanced the tenure rights of smallholders and small commercial farmers. The ability to rent land to those with more resources also brings it into production in a way that allows the poorer or less resourced partner to benefit. The current 'land policy' sits firmly at the base of this production pyramid and at the centre of the ADLI strategy; secure tenure is an essential condition for the strategy to work.

The GoE is drafting a new GTP 2 for 2016-2020. The ADLI strategy is still there but driven by a stronger focus on national industrial development as the principal way of generating the growth and employment that will enable Ethiopia to reach middle-income status by 2025-30. A growing national industrial base requires nationally-produced raw materials, however. While the GoE recognises that the agrarian economy cannot provide enough employment opportunities, it is nevertheless a key element in the bigger picture.

There is a more focused vision of land and how it is accessed and used, and by whom. On the one hand food must be produced for rural and urban markets; this is primarily the role of smallholders and small-scale commercial agriculture. On the other, raw materials are needed at a scale and standard for new agro-industrial and light industrial development as the driver of growth and employment creation in the coming 5-10 years³⁶.

The specific laws, programmes and activities that add up to the present 'implementing land policy' sit within this wider strategic vision and are also the result of a series of technical assumptions about the relationship between land and its contribution to ADLI.

'Implementing Land Policy'

'Implementing land policy' concerns the details of putting into effect the constitutional principles that are discussed above. In the absence of a clear land use policy at the present time, these details are found in a series of assumptions about the role of land tenure security and other land governance instruments in terms of their impact on the development strategy of the State.

Assumptions About Smallholders and Tenure Rights

The GoE still recognises the huge importance of the small-scale family farm for both fixing large numbers of people in the rural areas, and for producing food for local and urban markets.

³⁴ www.ata.gov.et/priorities/national-growth-transformation-plan

³⁵ See for example Ali and Deininger 2015.

³⁶ Interviews with senior GoE officials in policy and investment sectors.

Recognition of the importance of having secure tenure, to encourage production and avoid the problems of the past, lies behind the present Certification programme with its origins in First Level Certification (the 'Green Book') in the late 1990s. This perception has matured and strengthened over the years, and GoE smallholder policy is now clearly tending towards a stronger right over land. While the holding right is still essentially a form of state leasehold, its use is based in clear assumptions about tenure security being a private right which its holders can negotiate over with third parties; and the result will be both household and national food security. Thus:

- Secure individual use rights will promote investment and raise production.
- Security of tenure will encourage rural households to stay on the land.
- Secure tenure and the freedom to rent land will bring more of it into production.
- *The policy choice to implement these ideas is the present Land Tenure Regularisation (LTR) and Certification route.*

The programme to enhance tenure security for smallholders through land rights certification is a direct consequence of these assumptions. LIFT is making a significant contribution to this programme, with the added EEU component then encouraging farmers to use their newly documented holding right to access credit and enter the rental and contract market. There are signs that increased tenure security is resulting in greater investment by farmers and increased output³⁷⁴⁰; the seven percent per annum growth in agricultural output also underlines the success of this programme. How it is being implemented from the point of view of transparency is discussed in the sixth section.

The Role of Large Scale Land Allocations

FDI-based investment in agriculture goes back to Imperial times, with the existing large farms then becoming state farms under the Derg. The advent of the EPRDF took this investment strategy further, but it was only with the global food crisis of 2008 that the GoE saw an opportunity to match its land reserves to international demand for food, and thus generate foreign exchange. The assumptions underlying this strategy were:

- Large areas of land in certain parts of the country are sparsely populated and considered by government to be free of pre-existing rights.
- This land is a national resource which the State must ensure is used more productively for the benefit of all Ethiopians.
- Only large-scale agricultural production can guarantee the supply volumes and standardised quality that new agro-processing industries like textiles will need.
- To get more land into production requires large-scale investment which neither the local peasantry nor the State is capable of financing or sustaining at this point in time.
- *The policy choice here is to attract domestic and foreign private investment to get these underused resources into production.*

Conversations at the highest level indicate a continuing belief in the importance of large scale production by private sector investors. Senior policy makers still believe that producing enough volume for industrial use, at a consistent quality, requires large-scale plantation-type agricultural units. Unlike the mid-2000s however, this large scale agricultural investment (LSLI) is now to be directed towards crops that are necessary for national industries and added- value exports, instead of being seen simply as a source of foreign exchange. Nevertheless, it is precisely the focus on large land allocations in areas 'free of other rights' that has generated criticism. Thus, the focus of transparency concerns is still very much at this end of the agrarian spectrum.

The main vehicle for implementing the LSLI strategy has been the development of Land Banks. With land pre-identified for investment, the GoE is then able to easily allocate land to investors who present appropriate technical and financial plans to use it. As such, there is no need for any form of 'free and prior informed consent' (FPIC) from those who may live close to or even on the land in question. The land is effectively in the possession of the State and the State is able to use it in accordance with its wider economic development strategy.

Land Banks exist at both the Federal and Regional level. The task of assembling and managing the Federal Land Bank has until recently been undertaken by a directorate of the Ministry of Agriculture. This directorate

³⁷ The Consultant was shown graphs and other supporting evidence to this effect during interviews.

has now been transformed into a semi-autonomous institution, the Ethiopian Agricultural Investment Land Agency (EAILA), reporting directly to the Office of the Prime Minister. It also has a far more independent remit than before, to pursue and develop the strategy of large-scale and commercial agricultural investment and will liaise directly with other development sectors. The role of the regions is to identify land for both the Federal and regional level Land Banks. Land with an area of more than 5,000 hectares is transferred to the Federal level, with the consent of the regional government; areas below this remain under the control of the regional government land bank.

Interviews at the EAILA suggest that at least in agro-ecological terms, the selection of land for the Land Banks has been relatively well carried out. What has not been fully taken into account however is the question of local land rights and social and environmental impacts. While LSLI activity has targeted areas that are indeed sparsely populated, people do live there and enjoy rights over land which is guaranteed by Article 40, Number 5 of the Constitution. The rights of pastoralists for example are essentially long-range grazing and other use rights worked out over centuries with more sedentary local communities. Nevertheless, until recently the official GoE view has been that these areas are not covered by the 'holding rights' (see section below) that exist in the highlands and argues that much of this land is 'free' for the government to allocate to investors as it sees fit. The implications of these views for transparency in land governance, and changes that now appear to be underway, are discussed in more detail later.

Land and Social Protection

There are also other national strategies and programmes with land policy implications. The most notable of these is the social protection programme to provide for those who are vulnerable to food security and other shocks. The Public Safety Net Programme (PSNP) follows a twin-track approach of food distribution linked to public works designed to boost local economic activity, and other measures to help the most vulnerable respond to new opportunities and 'graduate' out of poverty.

The GoE believes that some highland areas are over-populated and pressure on land is leading to the fragmentation of holding sizes and declining soil fertility. This led to the implementation of a *voluntary* resettlement programme³⁸ in the 2000s to transfer people to less crowded parts of the country. This programme aimed to move people from unproductive land or over-crowded highland areas to more fertile areas but was halted in response to both international and internal criticisms of its effectiveness and cost³⁹. Resettlement still occurs, but on a much smaller scale.

An Evolving Land Policy

This section presents an overview of what can be interpreted as a general shift in land policy, or at least in the over-arching agricultural and rural development strategy which in turn generates the appropriate new legislative instruments. The findings below come from interviews at high level within the GoE, and with a range of experts and donor officers working on land and related issues. The significance of having good and well analysed data is also underlined, as the analysis already quoted above⁴⁰ has proved to be highly influential in helping GoE policy makers to take stock of where they are now and consider how best to move forwards.

Smallholders

The present focus on achieving over 14 million Second Level Certificates for smallholder farmers indicates that the implementation policy for this sector of the agrarian economy is not changing in any significant way. The GoE remains committed to the principle that enhancing the tenure security of small farmers will encourage them to invest in their land, take better care of it, and produce more. However, policy in terms of what farmers can do with their holding rights is evolving towards a stronger sense of property over land, which includes being able to rent it out and cede it to third parties through contracts.

At one level this increased flexibility allows farmers, and in particular those facing constraints such as a lack of family labour, to hand their land to better endowed interests without losing their land rights. This is particularly important for women-headed households as well. They are then able to draw an income from their

³⁸ 'Villagisation' has long been a feature of previous GoE programmes under earlier regimes. In common with many socialist governments, it was seen as a way of rationalising land use and service delivery and involved the forced relocation of nearly 600,000 people. It was stopped in 1986 in response to serious international community criticism

³⁹ See for example, comments by Desalegn Rhamato at <http://www.irinnews.org/report/48797/ethiopia-rural-resettlement-programme-criticised>

⁴⁰ Ali and Deninger

land to support changes in their livelihoods strategies (which might include giving up farming and moving into a town). This evolution in land policy on the ground may have implications for transparency in land governance.

Commercial and 'Large-Scale' Land Allocations

While the GoE is still committed to LSLI as a significant element of its agrarian strategy, there are clear signs that it is rethinking how it goes about implementing it. Firstly, it is clear from the GoE farm survey data analysis that the scale and volume of LSLI has been much exaggerated. Before 1991 a total of 302 farms had been established with an average area of 684 hectares. During 2002-06 the number of new farms per year reached 315. It peaked at 793 during the 2007/08 commodity price surge and has since fallen to 546 in 2009/10 and 371 in 2013/14⁴¹.

However, the survey data covering the period 2010/2011 to 2013/14 reveal interesting points about FDI-based and commercial agriculture, and the smallholder sector:

- From 1991 up to 2013/14, a total of 1.33 million hectares had been transferred to 6,612 operational commercial farms (an average of some 200 hectares per farm).
- By 2013/14, a total of 9.6 million hectares was being cultivated by smallholder farms (those with less than 10 hectares).
- In terms of their *initial land allocation*, 87 percent of commercial farms received 20-500 hectares; only 6.4 percent received more than 500 hectares.
- 97 percent of all commercial farms are purely Ethiopian-owned; 134 and 36 farms respectively are owned purely or jointly by foreigners.

The data also reveal that the small end of the commercial farming spectrum (20-100 hectares) has shown the best performance in terms of productivity, and that very large areas have contributed only a small part of overall output. Having such data available has been important. For example, in official documents linked to the development of the GTP 2, the GoE accepts that 'it is essential to examine the low productivity performance of commercial farms and accordingly take remedial action'⁴². Interviews at the Agricultural Investment Land Agency also reveal how they now understand that 'locals are more successful than foreigners', because they understand the conditions better. And they confirm that in the last 4-5 years, the number of local investors has risen dramatically.

These shifts in understanding underline the comments made by a national land specialist, who concludes that 'the choice made by decision makers to promote land deals and entice foreign capital to promote agricultural development has been counter-productive. The assumption...that agricultural transformation would be achieved through the instrumentality of foreign capital is proving illusory'⁴³. It is encouraging to see convergence in this key policy area.

Secondly, while the GoE is mindful of international and domestic criticism of its LSLI strategy, it is perhaps more concerned about the internal political implications of alienating the rural population, many of whom have benefitted significantly from GoE programmes over the years. Once again, interviews in the EAILA are revealing, with an acceptance that 'communities have a great stake in land as it supports their livelihoods systems', and that the challenge now is to 'balance the interests of local people and investors'. The EAILA underlines the need for much better due diligence work with foreign investors especially, and the need to ensure that there is a 'win-win' trade-off between investment and its impact on local production systems.

A New Land Use Policy

The Directorate for Land Administration and Use in the Ministry of Agriculture and Natural Resources⁴⁴ confirms that a new National Land Use Policy is being developed by the GoE⁴⁵. While it was not possible to see this document, it is possible to discern the direction it is likely to take. This assessment is also confirmed by information regarding the draft of a new land law proclamation which is also at an advanced stage (discussed in the next section).

⁴¹ Ibid:8.

⁴² FDRE 2014:33

⁴³ Rahmato 2014:240

⁴⁴ The Ministry took on this new designation through Proclamation No 917/2015.

⁴⁵ This was officially confirmed at the February 2015 workshop to discuss this report. During the May 2015 Verification Mission, it was confirmed the new Policy is at draft stage.

Looking at smallholders first again, they now have fully recognised existing rights and very soon the great majority will have at least a First Level Certificate and probably a Second Level Certificate as well. It has already been noted how the holding right is evolving towards a stronger property right which the holder can use in more flexible ways, including ceding the right to third parties through some form of contractual agreement. Farmers can use all or some of their land to enhance incomes through rentals or to resolve labour shortages. They can also choose to leave the land altogether and look for a new life in the towns; being able to rent or enter into a contract with another land user allows them some farm-based income to help them get started when they arrive. These are very positive developments.

Turning now to LSLI and the small-to-medium commercial investors, GoE policy appears to be evolving towards a more inclusive view of the agriculture sector in which both smallholders and larger producers each have a specific role. This change is not simply a response to domestic and international criticism; perhaps more importantly, it is the result of a critical assessment of past strategy, and its success when set against GoE economic and social development objectives.

To repeat the farm survey analysis again, 'for most crops, commercial farms yields are roughly double those by smallholders...*the highest yields are normally obtained by those in the 10-20 ha category, which often also managed to expand area cultivated quite rapidly*'. Moreover, in the larger concessions, 'about 55% of the land transferred remains unutilized with the main constraints to expansion related to technology and labour', and 'commercial farms fail to generate much employment'.

These findings have translated into an awareness at the EAILA that large areas of land present too high a capital hurdle for most national investors (who they now want to prioritise); and probably for most international ones as well. Initial land allocations will therefore be much smaller in the future (in the area of 500 hectares, with a top limit in fewer cases of 5,000 hectares). It is also clear that the boundary between the productive 20-100ha commercial farmers and the younger more enterprising 'smallholders' is far from distinct. To borrow a term from the social protection literature, there are good prospects for smallholders to 'graduate' out of poverty and respond to new opportunities. This potential is also due to the way in which recent legislation is encouraging farmers to consider a range of strategies to expand and develop their activities.

If the new National Land Use Policy captures these changes, there are exciting prospects for a vibrant small-to-medium commercial agriculture sector (in the 20 plus hectare range) which is essentially Ethiopian. Perhaps more than most countries, Ethiopia is well placed to make this happen, partly because of the opportunities created by the ADLI framework, but also because of the land reforms of previous decades and the potential for investment-based rises in production linked to the enhanced tenure security of smallholder farmers.

This will also mean a shift away from a dualist model of smallholders and large plantations, towards a mixed agrarian economy of smallholders, small-to-medium commercial farms, and some very large units. The interactions between the two sectors can be extremely important and positive, a point strongly made by Ali and Deininger in the analysis of the farm survey data

Once this interaction is better understood, programmes can be developed to enhance it and make it into a powerful tool for equitable development.

To sum up, while the LSLI approach *will* continue and is likely to expand, the wider strategic vision is of a large-scale sector that fits into the wider landscape of other land users. In economic terms the shift is away from FDI for exports and foreign exchange towards producing inputs for local industry; in social and environmental terms it is less top-down with an opening towards greater inclusivity and better governance. It is also part of wider social and economic policy where the concern to fix the rural population on their farms has given way to a realisation that middle-income status and employment for a huge young population will only come through creating urban-based jobs, with the rural economy providing food (smallholders/small commercial farms) and raw-materials (larger commercial farms/large scale enterprises).

For the EAILA, things are changing already:

- The Environment Protection Directorate is being reinforced, and also mandated to look after community and social impact issues; the Directorate will have two 'case teams': Environmental Impact Assessment and Natural Resources; and Social and Cultural Heritage Conservation and Development.
- An assessment mission has recently been to Gambella, to discuss land governance issues and identify local level capacity building needs around a strategy of 3-way negotiations (GoE/investors/communities) - moving from 'agricultural development versus communities' towards 'harmonising community interests with those of the investors'

- A new project with GIZ will introduce the VGGT into the work of the Agency

Meanwhile, the new land use policy remains to be approved. Promoting participation and inclusivity can still give the 'pro-LSLI' lobby what they want, while also creating a more integrated agrarian economy where LSLIs interact with the 'small scale commercial sector' and smallholders. Introducing schemes whereby *all* Ethiopian producers can respond to the 'new ADLI' strategy is strongly recommended. *All these farmers* will need to invest and using their newly certified land to raise finance is an obvious way to do so. At this point we see the convergence of the Certification/EE/small farmer strategy, and the ADLI strategy which still includes LSLIs, but only as part of a far more inclusive and home-grown approach.

Once in place however, the land use policy must be implementable, in the sense that the GoE and regional governments have the appropriate capacity. Interviews for this report indicated a clear awareness of large capacity gaps at all levels. Opening up to the VGGT is excellent, but will not have much impact if the negotiating and facilitating, and due diligence skills are not in place to make this change happened in practice

There is of course no guarantee that a change in policy will mean greater transparency in land governance. Instead, the focus of concern might shift, from how deals are being made with foreigners, to how *national* investors and commercial farmers are securing land for new projects. Evidently, a lot of land will be subject to negotiations between investors and smallholders with secure holding right Certificates in their hands. It will be as important, if not more so, to ensure that there is clarity and transparency when new land deals are arranged between national investors and smallholders; and to ensure that new large investor contracts are also open and conducted in line with the VGGT and PRAI frameworks.

Rural Land Legislation

After taking power from the Derg, the EPRDF maintained the principle of ownership of land being 'vested in the State and in the peoples of Ethiopia', and focused on guaranteeing land access and use for all Ethiopians through distributive measures.⁴⁶ The 1995 Constitution formalised and also ensured the public ownership of land and the strong role of the state over land allocation and use, while at the same time opening up the economy and privatising agriculture.

The evolution of the legislative framework for land since the late 1990s suggests a pragmatic approach by a government concerned to accelerate growth and move away from the more conservative policies of its predecessors.⁴⁷ It also underlines the difficulty of finding ways to value land and use it as resource for raising capital and financing investment while maintaining the constitutional principle that land cannot be bought and sold or alienated in any way.

Article 51(5) of the 1995 Constitution empowers the Federal Government to enact laws regarding the utilization of land. The first major piece of land legislation was then the Federal Rural Land Administration Proclamation of July 1997. This proclamation brought in significant changes compared with the earlier Derg regime, including:

- Transferring authority for land administration including the right to distribute land, to regional governments, which are also given power over 'the assignment of holding rights and the execution of distribution of holdings' (Article 2, Number 6).
- Allowing regional governments to undertake periodic readjustments of individual land holdings (to rationalise fragmented land use patterns and move land to more productive users) (Article 6).
- Authorising Regional governments to demarcate land for communal use (including grazing, residence, local forests, and social services, etc.).
- Providing for the right to receive compensation for labour and capital investments on land that is redistributed (Article 6, 7-12).
- Confirming and clarifying important *user rights*:
 - The right to inherit land
 - The right to lease and rent land.

⁴⁶ Crewett and Korf 2008

⁴⁷ Devereux and Sabates-Wheeler 2007

This legislation represented a significant shift towards making land a more productive resource within the context of a market economy. Nevertheless, the principle of state control over this key resource – and thus over one of the main levers of economic strategy in general – was firmly maintained.

Following the 1997 Proclamation, Regions were able to develop their own land legislation. Not all did so however (e.g. Afar, Somali, Gambella, Benishangul Gumuz)⁴⁸. Those that did, such as Amhara, had to respect the over-arching principles of the Federal Proclamation, but significant differences emerged over how key features like land rentals were handled. Thus, for example Amhara moved to allow 100 percent of a land holding to be rented out by its ‘holder’, while in other parts of the country it was only possible to rent out 50 percent.

Land certification began in Tigray in the early 2000s with domestic GoE funding. The success of this early programme prompted Sida to become involved and support its expansion into Amhara. USAID then entered the picture and helped expand the programme into selected *kebeles* in all but Amhara. With the First Level Certification process covering practically the entire highland area of the country, the GoE is now implementing the ‘second level certification’ phase with government resources and support from the United Kingdom (LIFT), Finland (REILA), and the World Bank (SLMP).

The genesis and development of the certification programme underlines the concern of the GoE to protect and enhance land rights. The focus of the programme and of subsequent legislation has, however, been very much on the highland areas of Ethiopia which are characterised by fixed farm plots held by households which received land under earlier distribution programmes⁴⁹. The 1997 Proclamation was therefore not really a ‘national’ land law which covered all forms of tenure and land use in the country. Rights in communally held and pastoral lands were treated inadequately, reflecting the prevailing view within the GoE that these areas were sparsely populated and not being used, and therefore were not in fact covered by rights that were eligible for certification.

This focus on the needs of highland farming areas continued with new Federal legislation in 2005, Proclamation 456/2005, *Federal Republic of Ethiopia Rural Land Administration and Use Proclamation* (Federal Negarit Gazeta, 11th year No 44, July 2005). This Proclamation reaffirms that the ‘right to ownership of land is exclusively vested in the State and in the people’. With this in mind, the objectives of the Proclamation are indicated in the Preamble:

- Develop and implement a sustainable rural land use planning [system] based on the different agro-ecological zones of the country.
- Establish an information database that enables to identify the size, direction and use rights of the different types of land holdings in the country such as individual and federal and regional states holdings.
- Resolve problems that arise in connection with encouraging individual farmers, pastoralists and agricultural investors and establish a conducive system of rural land administration.
- Put in place the legal conditions which are conducive to enhance and strengthen the land use right of farmers to encourage them to take the necessary conservation measures in areas where mixed farming of crop and animal production is prevalent and where there is threat of soil erosion and forest degradation.
- Establish a conducive system of rural land administration that promotes the conservation and management of natural resources and encourages private investors in pastoralist areas where there are tribe-based communal land-holding systems.

Thus, this Proclamation provides a stronger legal basis for the certification process (although lacking in detail and still requiring regulations for that purpose) and aims to improve essential land and natural resources management functions.

As ‘owner’ the State confers a use right to those who occupy and use land. In Ethiopia this is termed the ‘holding right’, defined in Proclamation 456/2005 as:

The right of any peasant farmer or semi-pastoralist and pastoralist...to use rural land for the purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same (Part One, Article 2/4).

⁴⁸ These regions enacted their own laws after the later Proclamation 456/2005.

⁴⁹ Korf et al (op. cit.) p204.

The law is egalitarian in nature and guarantees the right to use land to all Ethiopians, men and women over the age of 18, and children through the agency of a legal guardian. The 2005 Proclamation details how this right is acquired. Firstly:

Any peasant farmer/pastoralist engaged in agriculture for a living [subsistence] shall be given rural land free of charge (Article 5(1)(b)).

The acquisition of the holding right is further detailed in Article 5 as follows:

- Any citizen over 18 years and wanting to engage in agriculture for a living shall have the right to use rural land.
- Any person who is a member of a peasant, semi-pastoralist or pastoralist family having the right to use land can get rural land from his or her family 'by donation, inheritance, or from the competent authority' (Article 5(2)).
- Children who lose their parents can use their family land through a legal guardian until they reach 18 years of age.
- The proclamation also clearly states that women who want to engage in agriculture 'shall have the right to get and use rural land' (Article 5(1c)).
- Private investors who want to engage in agricultural activities shall have the right to use land 'in accordance with investment policies and laws at Federal and Regional levels' (Article 5(4)).
- NGOs and social and economic institutions can also have the right to use land in line with their development objectives.

The duration of the use right is indefinite for peasant farmers, semi-pastoralists and pastoralists. For 'any other holders' the duration of the right to use rural land 'shall be determined by the rural land administration laws of the Regions'.

A key provision in the Proclamation is Article 8(1), which covers the right to rent out and lease land over which there is already a holding right. Thus, the right holder is able to:

Lease to other farmers or investors land from their holding of a size sufficient for the intended development in a manner that shall not displace them, for a period of time to be determined by the rural land administration laws of the Regions.

This is important, for it enables smallholders to adapt their livelihoods strategies to their needs and household labour endowments, as well as enabling them to grow into larger farmers. This is especially important for women-headed households and other labour-poor vulnerable groups who, lacking male labour traditionally used for ploughing, can still productively use their land.

Other provisions move the land right that is given by the State closer to a right that has real utility in the context of a market economy where access to credit is a critical condition for investing in and expanding agricultural production. Thus 'an investor who has leased rural land may present his use right as collateral' (Article 8(4)). It is not clear, however, if this applies just to leases direct from the State or to leases arranged with smallholder rights holders as well.

What really stands out in this legislation, however, is the following provision regarding the ability of a smallholder to enter into a contract over land use with an investor:

A landholder may, using his land use right, undertake development activity jointly with an investor in accordance with the contract he concludes. Such contract shall be approved and registered by the competent authority (Article 8(3)).

Together with the right of smallholders to lease out some of their land, this provision enables small investors to discuss renting local land directly with the holder, with minimum state involvement. This opens the possibility of developing a more inclusive rural and agricultural development strategy in which smallholders and private investors can both gain from opening up land access to investment even in smallholder areas.

As for coverage, firstly in relation to gender the Proclamation states clearly that 'the provisions...referring to masculine gender shall also apply to feminine gender' (Article 3); secondly, in geographical terms, it states that it 'shall apply to any rural land in Ethiopia' (Article 4). Its various provisions also refer to semi-pastoralists and pastoralists as well as peasants (smallholders). However, as noted above its form and content reflect a preoccupation with smallholder agricultural areas of the Ethiopian highlands. Its treatment of communal land

holdings and pastoralist rights is cursory and inappropriate. This is clear in the way that pastoralist land access and use is conflated with that of 'peasants', or smallholders.

For example, the Proclamation includes a definition for a 'minimum size holding', which is enough land to sustain the food security of a 'peasant and semi-pastoralist and pastoralist family', or which 'suffices for crop farming' perennial crop farming, grazing, house construction and garden'.

This idea of minimum size has some relevance in the case of peasant or smallholder (highland) agriculture but does not work in the case of communally-based and pastoralist land occupation and use systems. The 'minimum size' definition in these areas would be likely to result in very different sizes of holding, especially where long-range pastoralism has evolved as a sustainable approach to using a fragile, low-rainfall landscape. Pastoralist 'holdings' based on the idea of a minimum area needed to support the food security of a family would measure in the hundreds or even thousands of hectares. The amount of land needed for sustainable 'perennial crops and grazing' can also vary widely in relation both to the changing needs and size of a household and to the system of production being used. For semi-pastoral or communal-area households which probably practice some form of long-cycle crop rotation, land for 'crops and grazing' can imply substantial areas as a 'minimum holding'.

Very large holdings are not allowed, however. Restrictions on holding size go back to the Derg era when an upper limit of 10 hectares was established. Post-Derg legislation does not appear to impose a hard limit, but the figure of ten hectares does still permeate official thinking especially in regional legislation⁵⁰. What is important is that the continuing idea of a (small) upper limit underlines the way the State sees its role, ensuring land access for all Ethiopians through the controlling hand of its land policy. The reality however is that in the densely settled highland areas, land is scarce, and holdings are already very small, averaging between 0.5 and 2 hectares. A limit of this sort has little practical significance, but it does illustrate how the legal framework was developed primarily with smallholder, highland agriculture in mind - a maximum of five or ten hectares makes no sense at all for a pastoralist or semi-pastoralist family.

A holding over 10 hectares is considered to be a commercial farm and subject to different regulations regarding the duration of the right and the need to have an approved commercial project. Smallholders can legally increase their total area by renting in land. They can also request extra land from the public land administration and register as commercial farmers if this is their intention. While this is not addressed explicitly in the Proclamation, presumably the additional land will not be a 'holding' but will instead be leased to the farmer on terms specified by the State through either Federal or Regional land administration entities. However, for this to happen farmers have to be considered as 'role model farmers'. If they are not, then the land they hold over 10 hectares can be taken away for re-allocation to landless or land-poor households.

The more detailed provisions of Proclamation 456/2005 regarding holding rights underlines how inadequate the Proclamation is for communal land and pastoralist production systems. The prevailing view in government is indeed that no holding rights exist in areas where population is very sparse and there is little sign of physical occupation. Limiting holding rights in such areas to just 10 hectares implies that there are then very large areas without land rights other than those vested in the State. Such land is therefore free to be integrated into the Land Bank if it is of sufficient agro-ecological quality and appropriate for farming.

Private Agriculture

In the case of rights enjoyed by investors, whether domestic or foreign, small or large scale, the legal framework is clear at the level of principle but falls down in the detail. The right allocated to investors – domestic and international commercial farmers – is not a holding right but a form of *use right*. Investors who are given this right by the State cannot transfer their right via lease, inheritance, donation, or other means (which those with holding rights can). Again, regional governments can determine certain conditions of the use right, such as its duration.

The area to which this more regulated use right applies can vary depending on the region. Accessing and using such land is also subject to conditions established in the Regional land laws, specifying the term and payments etc. In all cases the use right is a form of State leasehold, with the private investor securing land through a formal application to the Land Bureau of his or her region; in the case of small areas of land, however,

⁵⁰ No single law establishes a 10-hectare highest holding size. The relevant Derg proclamation was repealed and is ineffective. The Benishangul Gumuz regional state land law has a 10-hectare limit for "Qola" areas and a 5-hectare limit for "Dega and Weynadega" places. The Amhara regional state land law proclaims 7 hectares as the maximum holding. A 5-hectare limit is also enshrined under Afar land law

the arrangements can be made directly at the *woreda* and *kebele* level. Ethiopian law allows land allocations by the State and transfers between current landholders, below a certain size, to be handled locally (without significant intervention by government agencies). As the area of the request rises, it falls to the *woreda*, region or national governments to manage and approve the allocation process.

The extent and precise location of concession-based rights is straightforward enough. Needs are discussed between the investor and the relevant level of state land administration (local, Regional, Federal – in the case of large areas – with the EAILA). Once agreement is reached over the project, licences are issued. The land is identified, and formally registered. The real issue however is whether or not this takes place over land where other rights already exist – rights rooted in custom and historical use. And if it does, how are rights taken into account: a) when the land is first transferred to the Land Bank; and b) when the land access agreement is negotiated with ‘the State’ (for example, do the original rights holders gain in any way?).

The Proclamation does contain provisions for identifying land for private, commercial agriculture, albeit with some legal anomalies. In the first instance, it states that ‘*government*, being the owner of the land’ can change communal rural land holdings to private holdings ‘as may be necessary’, for example to allocate it to an investor. However, ‘the government’ is not the sole owner of the land⁵¹; some involvement of ‘the People’ as a constituent element of ‘the State’ should also be required in such instances.

The other grey area is the use of the concept of ‘public purpose’. In Oromia for example, ‘the legal definition of ‘public purpose’ requirement during expropriation is broad enough to include every public or private investment and development activities and local government officials are also given wide discretion to decide on the issue of public purpose’ (Haramaya 2013:36). Similar practices are also reported in Amhara Region, where land is expropriated ‘for public purpose’ and then allocated to a private investor favoured by the State⁵².

Proclamation 456 is very brief on this question. Any revision to the legal framework should look at how both the expropriation of holding rights and the reassignment of communal land is carried out, provide clear legal guidelines for this process. For now, Article 5/4 (a) of Proclamation 456 is about as far as it goes in terms of providing detail on how this kind of change might take place:

Private investors that engage in agricultural development activities shall have the right to use rural land in accordance with the investment policies and laws at Federal and regional levels.

The investment laws should not be where these sorts of processes are defined. Presently however, the legal framework for land says nothing about *how* land is converted from one regime to the other, and the tone of the legislation very much reflects the reality of a strong state apparatus working to implement a ‘development state’ agenda. Crucially there is no mention in this key piece of land legislation regarding how to deal with the holding rights of those who live on land which it ‘may be necessary’ to change from one form of use to another.

Ideally, a consultation process should take place between those holding rights over land, and those who want to use it for a project of some sort. At present, however, the GoE sees its role as exercising its right and responsibility as ‘owner’ of the land (notwithstanding the error noted above) to take decisions that are conducive to national development. The relevant compensation legislation is applied (following Proclamation 455/2005, discussed further), but the legislation says very little about how these processes should take place on the ground⁵³.

A more inclusive and participatory approach could still meet ‘national interest’ concerns, but at least the consultation would produce an agreement over a) which land is used; b) what the investor puts in and gets out; c) what the State puts in and gets out; and d) what the community

– as holder of legitimate local land rights – puts in and gets out. In principle a local community could refuse to hand over land. Yet in most African countries where land is the property of the State, this right of veto by local people is rarely accepted by governments (citing national interest or ‘public purpose’ arguments). Meanwhile, the process of converting communal land to private use – with government support – is done on an ‘as may be necessary’ basis.

With no mandatory requirement for consultation, such an approach leaves a lot of room for abuse during implementation. Yet Article 40, Number 6 of the Constitution, says that the allocation of land to private investors

⁵¹ Of course, the Government is not the ‘owner’ (the State is), and merely administers or ‘governs’ land.

⁵² Bahir Dar (2015)

⁵³ Ministry of Urban Development and Housing. The implications of this are discussed below.

shall be 'Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples', and the constitutional presumption that any decisions to allocate land to private investors will be for 'the common benefit of the People' (Article 89 Number 5). To align with the VGGT and its own Constitution, the GoE should include a mandatory consultation mechanism at the level of Federal law, obliging all Regions to then incorporate it in their respective land legislation.

Making consultation a legal requirement is of course no guarantee that it will be effectively used. Mozambique illustrates how difficult it can be to use consultation instruments to ensure a fair and equitable outcome. The purpose of the 'community consultation' in Mozambique is clear: to check if land required for a project is 'free' from occupation; and if it is occupied, to establish 'the terms through which the rights holder cedes it to the party requiring the land'⁵⁴. Thus, when land is needed for investment, there will be a negotiated agreement which ensures that the local rights holders are adequately compensated - a 'win-win' result for all concerned. However, political and economic elites have the power to over-ride local rights or manipulate the process; and the fact that 'land belongs to the State' is also used to push through land allocations that are deemed to be in the national interest. Consultations can then be used as a kind of cosmetic mask hiding what is in effect an enclosure of local rights by more powerful economic and political interests⁵⁵.

Nevertheless, the community consultation and negotiated land access approach can work⁵⁶. Political will and a 'level playing field' is essential for this however. Both sides must have enough knowledge about their rights, and the capacity to negotiate effectively. Communities and smallholders also need to know practical things like the real value of their land in the current investment and market context, and to fully understand the livelihoods implications of what seems like a good offer from someone who wants their land. This process requires significant levels of civic education and legal empowerment on the smallholder or local community side. It also requires having some kind of legal support on the side of the smallholder(s) if possible. Only when they have good information and are adequately supported can it be said that agreements are truly consensual and 'owned' by both sides.

This approach also requires training for 'frontline' government officers charged with managing land access and use by smallholders and investors. Many local government staff, though deemed to be 'land experts' and in responsible positions, may not be familiar with the way the legal provisions work, or lack the skills needed to conduct or mediate a negotiation between local rights holders and outsiders⁵⁷. A recent report indicates that this issue needs significant attention in Ethiopia: 'people at the grass-roots level, including land administration committees, *Shengos*⁵⁸, elders and men and women land holders do need continuous and sustained awareness creation education and training' (Bahir Dar 2015:82; also, Negasa 2016).

Communal and Pastoralist Land Rights

Both the Constitution and Proclamation 456/2005 include pastoral and 'semi-pastoral' rights in their provisions. However, as noted above, the GoE has tended to overlook the existence of acquired rights in pastoralist and communal areas. Given that these areas are also precisely where most Land Bank land is located, this lack of attention to local rights has important implications.

The GoE does seem to be moving towards some recognition of these rights however and will shortly begin to register and certify the holding rights of pastoralists in Afar and Oromia regional states. This raises two questions: firstly, how are these rights assessed and identified on the ground; and secondly, are these 'holding rights', following the provisions of Proclamation 456/2005? These questions need to be confronted now, as new land legislation is drafted (see section below). One approach is to link the concept of the holding right to an assessment of land use by communal and pastoralist groups. Historical factors are also important, as these areas were not as affected by the land distribution policies of earlier regimes and forms of customary or communal tenure still predominate.

'Use' by communal or pastoralist groups is far more extensive than in smallholder, highland areas of the country. A systems analysis of the way a landscape and its resources are used to support a particular livelihoods strategy provides a much broader view of 'use', and therefore of the 'acquired right'. Even in the

⁵⁴ 1998 Land Law Regulations, Article 27, reprinted in Serra 2012.

⁵⁵ Tanner 2010.

⁵⁶ For Mozambique, see Tanner 2012. Riddell (2013) reviews inclusive and alternative business models. The FAO methodology for stakeholder-based, negotiated use of land and natural resources is Participatory Negotiated Territorial Development. See <http://www.fao.org/3/a-i4592e.pdf>

⁵⁷ An FAO programme addressed legal empowerment and capacity-building in rights and how to exercise them and trained local governments in rights-based inclusive development (Tanner and Bicchieiri 2014).

⁵⁸ A form of local customary court in Amhara Region which also hears land dispute cases

case of sedentary populations the resulting areas can be very large if they include areas used for long-cycle crop rotation, use of commons such as grazing and forested areas, access to water, and land held in reserve for future generations. Pastoral and long-range nomadic production systems can use vast landscapes to sustain themselves. Under these circumstances, land that does not show any sign of current land use – i.e. land which might be seen as ‘free’ to select for a Land Bank – may in fact have some form of acquired right over it.

USAID has recently published an excellent booklet on pastoral production systems and the rights associated with them⁵⁹. This draws on material from various countries and demonstrates clearly how the bundles of rights associated with this specific way of life are established and managed on a year-in, year-out basis by both the pastoralist and the more sedentary communities whose land they pass through in the long-range grazing cycles. It is in fact a relatively small step to then develop regulations that recognise these acquired rights as holding or use rights, held on a collective basis. Once this is accepted, a certificate or Green Book equivalent with a fully referenced and geo-coordinated map can be issued, covering the entire area⁶⁰.

The process is verified by the signatures of community representatives (selecting them would require clear regulations too), and of those who manage it on behalf of the State. A local committee might be formed to oversee and assist the process – the Land Administration Committee, or LAC. The LAC in turn is elected by local people and must include women. Critically, the process does *not* create a huge exclusive territory where investment is no longer possible; it merely establishes who holds the rights there, so that negotiations can then take place with the right group of local people and their representatives. In other words, the border drawn around the collective right is ‘open’⁶¹.

As discussed above, Ethiopia already has features in its legal framework that can make this work. Firstly, its experience with First Level Certification already provides a methodology based around participatory fieldwork in which the occupation of a given parcel of land by a smallholder is confirmed by his or her neighbours and others. Secondly, the law already allows for the holders of holding rights to negotiate with third parties to rent or lease out their land⁶². Thus, a pastoralist community with its extensive holding right delimited through a systems analysis could rent and lease out land if they do not have the capacity to use all or even a part of it. Or they may have private property rights over infrastructure and improvements on parts of their land and sell these (with the associated land going with them) as part of a negotiated agreement with an investor.

This approach gives the holder of the holding right – either as individual or a collective - a range of options for adjusting livelihoods, responding to new opportunities. It also offers the GoE a way to balance the interests of communities and investors, to pick up on the new policy thinking going on inside the EAILA. The result could be a more inclusive strategy in Ethiopia within the context of the FAO VGGT, producing a ‘win-win’ outcome for the Government, investors, and local people.

Revising the Land Legislation

As discussed above, the current ‘framework’ Federal law for land in Ethiopia is Proclamation 456/2005. Since it was approved, Regional governments have also updated their own land legislation in line with powers devolved to them by the 1995 Constitution. These Regional laws deal with issues like the proportion of a holding that can be rented out to a third party, the duration of leases between investors and the State, the terms of payment for commercial land made in the case of smaller investors, and how the inheritance of land is handled.

The devolved authority to develop detailed land legislation at regional level has resulted in considerable variations in the way land is managed and administered. For example, concerning how much land can be rented by a landholder, the Amhara regional allows rights holders to rent out 100 percent of their land, despite a Federal-level condition that rentals should not ‘displace them’ (some land must be still available to the holder

⁵⁹ USAID 2015.

⁶⁰ The 1997 Mozambican Land Law provides for a collective right held by ‘Local Communities’ to be determined in this way. See Tanner De Wit and Norfolk 2009

⁶¹ The ‘open border’ model is critical for this approach to work, allowing investor/local community interaction and agreements that can benefit both sides. See Tanner et al (ibid).

⁶² This is not always the case. The question of being able to rent out land in Mozambique has been subject to protracted debate since the 1997 Land Law was approved. The expression ‘rental’ has been politically prohibited and in its place the term ‘cessation of use’ was set into the legislation to provide some room for a use right holder to temporarily transfer his or her right without losing it.

to secure his or her residence and subsistence farming needs). In regions like Oromia, the limit for rented land is 50 percent⁶³.

To address the growing disparities between the regional laws and to bring Federal legislation into line with the evolving market economy, the GoE is revising Proclamation 456/2005. The review has been led by GoE and national land administration and legal experts and has enjoyed support from the USAID LAND project. A number of review papers have been commissioned from the regions as well, some of which have been made available for this report⁶⁴. A draft of the new proclamation has been completed after a series of regional meetings and was submitted to the GoE in February 2016.

At this point (May) there is no indication as to whether the draft has been accepted or not. However, conversations with those closely involved with the drafting of the new Proclamation (including the Bureau for Land Administration at the Ministry of Agriculture), suggest that the legal framework for land is *evolving* rather than being revised. The direction of change continues to be towards a holding right that is more like a private property right in terms of what the holder is able to do with it. The indications are that the new revised Proclamation is likely to include:

- Harmonisation of existing Regional and Federal regulations for renting land;
- Detailed sections on implementing land rights Certification and its integration into the state land use and administration structure (looking ahead to managing change);
- Greater attention to the rights of women and vulnerable groups;
- Extension of Federal level law to incorporate semi-pastoral and pastoralist land use systems, recognising customary institutions and opening the way for each Region to develop its own laws for these systems

There is also a proposal in the decree that will allow the holding right to be used as the basis for some kind of loan. This would apply to land covered by a full Second Level Certificate. If the farmer defaults, the proposed solution is not for the bank to repossess the land and sell it (which it cannot do in any case), but to allow the bank to assume control over the land and rent it out to recover any outstanding debt. This proposal apparently has support from the regional level meetings, but it remains to be seen if this radical step will be accepted by the GoE.

In the absence of a move to allow the holding right to be used for loans, there is still the option of using private property constructed on land to facilitate what is a *de facto* land transfer through a kind of market. Private property can be constructed on land, and improvements to the land (levelling, draining, clearing etc.) are also considered as investment and thus a form of property which has value and can be transacted. This property offers some room for raising capital; or alternatively the item to be purchased (for example a tractor) is itself the guarantee and can be recovered by the bank in the case of default.

Over the next two years the USAID LAND project will support regional assessments ahead of the Regions developing their own new land legislation, once the new Federal-level Proclamation is approved and finalised. A draft for Amhara has already been done⁶⁵; others are ongoing for Oromia, SNNP and Tigray. The LAND team confirms meanwhile that although the new revision will advance things considerably, there is still a 'lowland gap' in the legislation. The new provisions in the draft legislation should help to redress this problem.

It would be excellent if the new legislation were to include provisions for mandatory consultations between investors and local people. Mozambique has already been mentioned but lessons can also be learned from other African countries trying to manage the inherently tense relationship between smallholders and private sector investors who are often also favoured by the State.

Assessment of Land Legislation Alongside the FAO VGGT

The Constitution includes provisions for the people of Ethiopia to be consulted over land policy matters. Interviews and articles indicate that the development of Proclamation 456/2005 did allow some room for stakeholders to engage with the GoE while drafting the new legislation; the devolution of detailed land legislation to regional level also allows for a significant degree of more localised participation. The current process too has involved national experts as well as GoE staff, and regional meetings where specific issues

⁶³ Amhara 2006; Oromia 2007

⁶⁴ For example, Haramaya 2013

⁶⁵ Bahir Dar 2015

were discussed. For the moment therefore, it can be said that the policy and legislative processes are broadly within the parameters of the FAO VGGT.

In terms of specific programmes, the implementation of the SLLC programme can be considered satisfactory in the VGGT context. Land Administration Committees (LACs) have elected local representatives (including at least two women) and promote the active engagement of local people with the SLLC process. The methodology of having dedicated field teams working closely with local people, followed by the public display process, aims to ensure that all those with a right to a Certificate are fully informed and able to get one. Yet while women are on the LACs, their role is often nominal, and they are not in a position to influence decisions due to the traditional position they have in society. Nevertheless, it is better to have them on these committees, where they can be supported and trained to take on a stronger role. Indeed, much can be done to improve the factors that prevent women and others from accessing the programme and securing their rights (discussed below).

The other questions raised above require further examination, in particular the way in which private sector land allocations in smallholder areas are discussed and negotiated with local rights holders. The Amhara and Oromia studies also flag the question of communal land being illegally occupied, particularly by younger men who find it impossible to find a plot of land in a landscape that is already heavily used and allocated to their elders.

Anecdotal evidence obtained during interviews and field visits suggests that the process for an investor to get land from a smallholder is direct and relatively free from administrative interference. In principle all rental and contract agreements also have to be registered and attached to the underlying holding Certificate. It is also clear from the Amhara and Oromia regional studies however, that a significant level of manipulation does go on, and that present land administration systems are not yet capable of adequately managing this kind of change in land access and use.

In the case of large scale land allocations, the GoE has now started working with GIZ on integrating the FAO VGGT into the land governance framework for investment land. This is a very positive sign. While the senior management of the EAILA is clear about the advantages of this approach, it is also aware that it now faces two related challenges: to get the VGGT message across to the highest level of policy makers, and also to ensure that it is understood by other stakeholders (including both national and international investors).

The lack of civil society engagement is however a serious problem in the VGGT context and has significant repercussions on the ground. Proclamation 621/2009 'To Provide for the Registration and Regulation of Charities and Societies' has created categories of civil society organisations, with only 'Ethiopian Charities or Societies' being able to engage in work on land rights issues. This law poses a major challenge for NGOs that want to work in the land sector, for it also stipulates that any organisation wanting to work on land issues can only raise up to 10 percent of its funding from foreign sources.

For example, EWLA (the Ethiopian Women's Law Association) provides legal empowerment and legal assistance services. Faced with the choice of continuing its rights work with drastically limited budgets or dropping this work to focus on other issues and maintain its foreign support, EWLA has chosen the former path and is consequently struggling to maintain an effective presence at grassroots level and hold onto its professional staff. A similar situation was confirmed in a meeting with the Amhara Ethiopian Women's Association, which no longer has professional lawyers on its staff.

It is also the case that civil society involvement in land issues is very recent – there was very little civil society work on land rights before the CSO law. From the early days of the Derg through to the present titling activities of the EPRDF government, land reforms have been state-driven. Civil society experience in this area is therefore very limited. The lack of civil engagement is a significant problem however, not simply because it denies a voice to those who might be adversely affected by current policies and programmes, but because civil society can be of great service when shaping new and viable policy, and when it comes to implementing policy at grass roots level. Creating space for a new GoE-civil society dialogue is thus an important element in any plan to improve transparency in land governance.

So, while there are positive elements to the picture, there is much to be done to respect and work with local rights, implement principles of responsible agricultural investment, and improve land governance generally. The implications for future land strategy and land governance issues are discussed in the Conclusions and integrated into the Plan for Improved Transparency in Annex One.

Land Administration Issues and Transparency

This section considers land administration in the context of smallholders (i.e. highland areas), and the allocation of land to commercial investors (mainly in lowland areas of Ethiopia). The discussion is not so much a technical evaluation of what is being done but is rather intended to draw out the transparency implications in each context. Issues of complaints and grievances are also covered, but with a focus on the situation of smallholders.

Smallholders

In general terms, the question of transparency in land governance is not one of immediate concern at the level of smallholder land rights. The major land governance programme at this level is the current Second Level Land Certification programme, with its ambitious target of registering over 14 million parcels of land and issuing Holding Right Certificates to their legitimate occupants. There are no obvious transparency concerns with this programme. The GoE is clearly committed to its success, and the legal revisions of recent years have given smallholders more flexibility when it comes to using their rights to diversify or enhance their livelihoods.

The basic methodology stresses getting information out through public meetings, and then providing a dedicated team to help farmers identify and register their land. The Land Administration Committees (LACs) have an important role and are elected by their communities and must include women. Disputes do occur, but these are dealt with by the *kebele* and *woreda* administrations or referred to the local judicial courts.

A number of issues have emerged however, which are perhaps better seen in the context of the socio-cultural context rather than as governance questions *per se*. These are:

- The treatment of the land rights of women and other vulnerable groups
- How investors and land-based entrepreneurs get access to land held by smallholders (what is the role of local government, how it is being carried out, etc.?)
- Whether the certification programme is protecting local rights or making it easier for land to be acquired by third parties

Women and Vulnerable Groups

While the certification programme is working well enough, there is also some evidence that some women, and other vulnerable groups such as young children, the elderly and the disabled, are at risk of losing their legitimate land rights as cultural factors and the Certification programme interact and gender biases come to the fore.

Looking firstly at the Certification programme, it is recognised that those implementing it are aware of the need to ensure that women and other vulnerable people are able to access the programme and secure their land rights. This applies to women who should have their name on the Certificate together with their husband, or who are single heads of households and hold land in their own right.

Women headed households especially are however at risk of losing their land when they enter into an arrangement with a man (often a relative) to help them cultivate the land they hold. Ploughing the fields is male work in the cultural context of Ethiopia, and women on their own will either rent their land or work with a man on a sharecropping or similar contract. They are then at risk of losing their land at a later stage. Thus, in Amhara it is reported that 'male farmers who rented women's land refused to return it on time or return it at all upon expiry of the lease agreement; those who rented land from women...tried to transfer the holding right in collaboration with local corrupt officers and by organizing false and fabricated witnesses' (2015:84).

Meetings with *woreda* and *kebele* officials and LIFT officers also confirmed that there are visible cases where the men in these contracts attempt to claim the land is theirs when the Certification programme comes through their area. It also applies to orphaned children whose name should be on the Certificate even though a male guardian might be using the land and try to get his name inscribed instead; and to disabled people, who rely on others to exploit their land and again are vulnerable to losing their right at the point of certification.

A similar phenomenon can be observed with some guardians, who claim the land as theirs and get the Certificate in their name. Disadvantaged people with legitimate land rights are also exposed to the potential risk of the sharecropping partner assuming the right at this critical time. It is worth mentioning here that the SLLC process has a very transparent process of public display and correction procedures that allow anybody to see, review and accept or reject what has been done before the certificate is issued. There are opinions from the implementation field that confirm the process helps land holders, female and male and other vulnerable groups, to see, review and demand correction of any errors or stop wrongful claims. This is

supported by regular public awareness and communication, training of field teams and counterpart experts. The approach requires regular monitoring and improvement based on a periodic assessment of effectiveness.

Things are not all bad however. It is clear that many women are getting some information about the certification programme and using it to secure their legitimate rights. In Oromia it is reported that 'it is...fortunate enough that the majority of female heads of households know that they do have rights to acquire the land which belonged to them and their husbands upon divorce, or death of their husbands. The result also revealed that land grabbing from widowed or divorced females in the Oromia Region is still not common' (Haramaya 2013:127). Field meetings in Oromia confirmed that women are managing to access the certification programme. LIFT field staff talked of insisting on both husband and wife being present to sign the Certificates, and of the process in fact having a positive impact on the attitude of men in general towards the land rights of women.

What appears to be emerging from the literature and the field interviews is a picture of social and cultural norms undergoing change, with programmes like Second Level Certification having a significant impact in favour women. This is occurring against a backdrop of entrenched male bias in official structures, and deeply rooted cultural norms that resist change and are still prejudicial to the principles of equal rights for women enshrined in the statutory legal framework. A recent study of the gender dimension of the land registration process finds that although 'some important positive impacts [have been achieved] on women's land rights...despite statutory reforms at Federal and Regional levels to promote women's land rights, and commitment to women's rights at the high levels of government, the extent to which implementation meets these objectives is contingent upon their compatibility with potentially competing political and economic priorities, the interests of different state organisations involved in land administration, and the relations between the local party-state and rural communities'⁶⁶.

It is also very clear from the available literature, meetings with women at local level, and from the few NGOs that are working on land rights, that deeply entrenched cultural practices continue to work against women benefitting from their legal rights under statutory or 'modern' legal frameworks. This is clear in the Amhara report cited above:

In many areas, widowed, divorced and single headed women are facing unbearable challenges from the community because of oppressive traditions and religious beliefs. Even though there are different organs at regional and *woreda* levels (women's association; women, youth and children's bureau; public prosecutor office) that assist women, there is no coordination or systematic workflow to accomplish this task, and as a result, significant number of the region's women could not fight for their right in court of law that requires sufficient knowledge of the law, time and money (Bahir Dar 2015:84).

The difference in recognising property rights between formal statute law and Sharia law are particularly a challenge. Thus, in Muslim areas studied by the Bahir Dar University team:

The burden of the patriarchal culture and tradition on women is more severe and unbearable in Muslim communities of Oromo Zone and the Argoba *woreda* of North Shewa Zone. Among the common cultural challenges in these communities are:

1. Women are denied of landholding and property sharing rights, whether they have land registration certificates or not.
2. They are not made part of landholding inheritance from parents under traditional rule.
3. Daughters inherit 1/3, whereas sons inherit 2/3 of their parents' properties under the Sharia law. Land is inherited only by sons. Requesting equal share is considered out of the Muslim culture. As a result, women do not want to request or struggle for their rights due to the social pressure.
4. Women do not opt to bring their cases to court due to community influence. Instead, they get divorced and get their share according to the existing tradition (ibid:59).

Even in these areas however there are signs that things are changing due to programmes like SLLC. Thus, the same report notes later that 'women and vulnerable groups, particularly married women, have obtained numerous benefits from their land right provisions', including:

- improved participation in decision making and bargaining power of married women;

⁶⁶ Lavers 2014:17-18.

- increased respect for women by husbands;
- Improved sense of ownership, confidence and care for their landholdings, home or marital life due to the provision of equal rights in every aspect (ibid:62).

These are not questions of transparency as such. Many of the issues above can be addressed with improvements to participatory training skills and employing a different strategy to working with women and vulnerable groups. Attending public meetings and seeing the SLLC public displays during fieldwork for this report revealed that a lot more needs to be done. Although the public display procedure has contributed a lot to address the challenges stated above, the huge target of the programme puts a heavy burden on the field teams. This may not allow them to manage specific issues pertaining to women and other vulnerable groups to the desired conceptual level.

Possible improvements include:

- having more female field staff
- upgrading the participatory training skills of field staff in general
- developing better information material for women and other vulnerable groups
- conducting targeted information and training sessions for women on their own
- having specific days or times allocated for women only for key SLLC steps
- extended and continuous training for judges, public prosecutors, LAC, informal or customary court members, on the unique requirements and attention that women and other vulnerable groups require;

Another possible area of intervention of general relevance for supporting poor rural communities as well as the women and vulnerable groups within them, is the provision of direct legal and other support to them. In this way, local government and other staff can also be empowered with greater understanding of their rights and how to exercise them.

These points and the solutions proposed underline that the while there are problems at the level of local land administrations, a greater concern is the underlying sociology and gendered elements of agricultural production, and persistently discriminatory cultures in institutional structures. The traditional attribution of ploughing to men makes women vulnerable to the risk of losing their rights; orphans have to allow male guardians to take over their land and can also lose their rights; religious and other values contradict the rights that are established by statute and the Constitution. 'Transparency' in this context means challenging entrenched ideas and deeply-set gender biases with stronger gender mainstreaming and better-trained staff.

Given the concerns raised above it is suggested that more attention be paid to the public information and legal empowerment/legal support aspects of the programme, together with a greater focus on mainstreaming gender issues and achieving real reform in the institutional cultures that are carrying out certification on the ground and overseeing how the programme is being implemented. Efforts are being made in this direction. Lavers observes, however, that 'reforms to promote gender equality ... are top-down initiatives, rather than constituting a response to the demands of autonomous women's organisations. Indeed, the absence of women's organisations at the local level to hold government officials to account may well be one reason why implementation [of the gender element of the certification programme] has varied'. Yet there are NGOs in some regions that reach right down to the *kebele* level and provide legal and other support to women. They are poorly funded, however, and have very limited capacity to respond to the very high demand for their services⁶⁷.

It is also important to see this in the wider context. Federal and Regional governments are aware of the gender challenge, with ministries and bureaus specifically for women and youth affairs (the Ministry of Women and Children Affairs). These official bodies are also seriously understaffed given the huge areas and population they must serve - each Region has just one gender specialist - but they do offer a solid institutional base for future improvements. There are also very few staff dealing with public information. Some way is needed to get messages down to grassroots level and provide direct support to ensure that women and others are not excluded. The conclusion cannot be avoided that wider and deeper democratisation of the land governance system is needed, with a greater involvement of civil society and grassroots bodies

⁶⁷ The Consultant visited the Ethiopian Women's Law Association in Bahir Dar, Amhara Region; there is a national level association as well. However, not all regions have this type of organisation

Meanwhile, one way through this challenge is presented by the '1 to 5' structures of women's activists which are allied with the Regional delegations of the Ministry of Women and Children and Affairs. They enjoy considerable political support at Federal and Regional level and their limited but useful resources could be better used to achieve wider impact on the ground. While the '1 to 5' network has a political role in transmitting GoE messages and mobilising the population around government programmes, it could also be used to engage more effectively with women at the local level. The GoE is committed to making the land rights certification process work, and this can only benefit from a more bottom-up approach and wider civil society involvement. GoE policy makers will also be better informed about what is happening on the ground as they draft new policy and legislation.

Managing Change 'Post-Certification'

The admirable achievements of the SLLC will be easily lost if the structures that are left behind cannot manage the process of change that will inevitably follow. Leaving behind a public land administration that is able to keep the new records updated and legally secure is an essential condition for improving transparency in land governance. 'Titling' may be driven by a belief that secure tenure will encourage investment and greater productivity in land, but it is apparent that at this stage at least, the vast majority of farmers (including women) are wanting Certificates to protect their land. If they are not able to easily access and use the post-Certification system to register changes in their holding rights, the whole system will quickly become obsolete.

Such a process will also have a profound impact on the other two other issues flagged above – how investors and land-based entrepreneurs get access to land held by smallholders, and whether certification is protecting local rights or making it easier for land to be acquired by third parties. If transactions take place simply on the basis of informal agreements in which the Certificate is exchanged between the two parties, the database will again become obsolete and it will be impossible to track what is happening in terms of legality, and the accumulation or otherwise of land resources.

Little information is available about the two issues above, and it is recommended here that appropriate research be commissioned. The lessons learned will have important implications for how future land administration systems are designed; they will also inform other initiatives such as the provision of legal support to local smallholders as they meet and deal with outsiders who want to rent or take over their land in some other way.

Large-Scale Land Investments (LSLIs)

Critical literature on LSLIs in Ethiopia suggests that in the early stages of the present LSLI-based strategy (from 2007/08 onwards, when world food and commodity prices soared) there was a distinct lack of openness regarding the transactions that were being negotiated with external investors, some with foreign sovereign funds behind them⁶⁸. Setting aside the legality issue for the moment and examining the transparency aspect, there are three elements to consider here:

- The transparency and visibility of *agreements and transactions* made within the programme;
- The extent to which *all stakeholders, including existing rights holders*, can take part in the development of new projects and participate in their returns;
- Whether or not the *strategy and 'programme'* has been transparent.

Looking at the programme as a whole, the GoE has in fact been very open about its strategy and the role of LSLIs as a key element of the GTP1 framework. It has also been clear about how the programme has been implemented (with a focus on sparsely populated areas, carrying out full agro-ecological assessments, creation of the Land Bank, and so on). Furthermore, information about the land allocations and even the agreements are posted on open-access GoE websites.

The notoriety of the LSLI issue in Ethiopia is largely due to a few huge areas being conceded since the 2008 global food crisis (e.g. 100,000 hectares in the case of the Karaturi concession). Areas this big *must impact in some way on local rights*, even in a sparsely populated region, raising questions about how local people have been treated by government and investors alike.

However, the total area of these investments does not account for a large proportion of overall land use across the spectrum from smallholders through to small investors and the largest concessions. In 2010-14 Ethiopia is estimated to have had a total of 15.346 million hectares of arable land available⁶⁹. The total in the Federal

⁶⁸ See for example, the 2011 report by the Oakland Institute (Oakland 2011).

⁶⁹ World Bank, <http://data.worldbank.org/indicator/AG.LND.ARBL.HA>

Land Bank reached a peak of 3.3 million hectares, largely from the sparsely populated lowland areas. By 2013/14, a total of 1.33 million hectares (or around 9 percent of all arable land) had been allocated to just over 6,600 commercial farms. Of these, the great majority are in the 20-500-hectare range (89 per cent of the total, occupying 51 percent of the land allocated). This compares with 9.6 million hectares being cultivated by smallholder farms, which in 2012/13 produced 96 percent of total agricultural output⁷⁰.

The impact of LSLIs on land concentration is also perhaps exaggerated by critics. Farm survey data show that 97 percent of all commercial farms are purely Ethiopian owned, and large-scale allocations (above 1000 hectares) make up just 162 of the total number of commercial farms. While these do occupy a disproportionately large share of the total area allocated (508,000 hectares or 38 percent), the average size of these farms is just over 3000 hectares⁷¹. Only a very few are in the tens of thousands of hectares, and several of these have failed to become operational at anything like the scale envisaged.

Ali and Deininger make the point that a large part of the transparency challenge is to achieve 'sustained improvements in the quality of publicity of data on large-scale land-based investments'. This is a key condition if countries like Ethiopia are to 'put in place a regulatory framework to increase the likelihood that [the demand for land] is translated into sustained local benefits or to attract responsible investors and institutional capital'⁷². The GoE evidently has the capacity to collect and store this kind of data; all the interviews for this report point to a serious lack of capacity in the relevant departments to *analyse and interpret* the information they have, and to then use it as a management, oversight and policy-making tool. Improving this technical shortcoming can have significant positive impacts on transparency.

It could be argued of course that data and analysis can be concealed or restricted. Yet the GoE has been willing to make the farm survey data quoted above freely available (although admittedly the authors are from a high-profile international finance institution that works closely with the government).

The other area of debate – and a source of concerns over transparency – is the official view that land reserved for LSLIs (in the various Land Banks) is free from existing rights and can be more easily allocated because it is sparsely populated. The academic and technical literature on this topic points strongly in the other direction: in most countries virtually, all land is covered by some kind of right. Some areas appear unused or empty, but rights are likely to exist on a seasonal basis or because the local ecology only permits extensive forms of use. In some areas, bundles of rights belonging to different people or groups may overlap (in the case of pastoralists, for example, who may enjoy temporary grazing rights granted by the sedentary populations whose land they cross over). This is likely to be the case for the lowland areas found especially in southern and western Ethiopia, where pastoralists and shifting cultivators are notable by their absence at certain times of the year but are in fact using the whole landscape as seasons and land use patterns change.

The fact that there are use rights across apparently empty and sparsely populated landscapes does not exclude the possibility of investment, even at large scale. The issue here is twofold: firstly, it is about *how that investment is planned, developed and implemented*; secondly, it is about *how the investment impacts on local livelihoods, and what measures are included in investment agreements to compensate or ensure benefits for the local rights holders*.

This is about more than mitigation or compensation. If a government starts from the premise that investment should promote development and the achievement of wider social goals within the MDG/SDG framework, then it should ensure that LSLIs go beyond mere compensation and contribute explicitly to improving the livelihoods and wellbeing of those whose land is required for the new project. This is the benchmark against which all agreements should be assessed, supported by effective pre- and post-implementation socio-economic baseline surveys as well as the usual ESIA and viability assessments.

To sum up, the allocation of large areas to investors, seen as a programme, has been 'transparent enough' but could be improved. The GoE has been clear about its reasons for launching the strategy as a response to opportunities for foreign exchange earnings as world food prices soared, but it was guided by an over-simplified view of the target areas as being sparsely populated and free of existing land rights. This has given rise to international and civil society criticism. However, even inside Ethiopia, academic critics of the GoE have been free to analyse the situation and report on it in their writings.

⁷⁰ World Bank 2015:3

⁷¹ Ali and Deininger 2015:15.

⁷² Ibid:14.

It is also clear that the GoE has assessed the performance of the programme and found it to be wanting, and that it is prepared to consider other options. The data analysed by Ali and Deininger and discussed above confirm that most commercial land deals involve Ethiopians and occur at the lower end in terms of size of the land areas allocated. Moreover, these investors appear to be arranging smaller areas without much difficulty (although there are questions about the way in which some of these smaller, local deals are arranged). The GoE is also aware that the very large allocations are both problematic in terms of local and environmental impact and are not competing effectively with the far larger number of much smaller farms.

What has been most problematic therefore is the technical foundation and subsequent inappropriate *modus operandi* of the LSLI programme. The focus now should be on the strategy itself and the technical premises on which it is founded. There are also deeper issues concerning what constitutes development and who takes part and benefits from it. There are Constitutional provisions that make it mandatory for the GoE, as the elected executive arm of the State, to consult with local people when deciding what to do with land and natural resources. In this context the notion that 'land belongs to the State' does not give the GoE a free hand when allocating land to investors, even if it can argue that this is 'in the national interest'; and its actions should contribute to the overall wellbeing of those citizens who are directly affected.

These observations open the way for proposals that address transparency concerns using available legislation to develop a more inclusive and participatory model of investment in agriculture, with smallholder and large-scale operators each having important and mutually reinforcing roles. Evidence from other countries suggests that alternative approaches are available, and are being considered, whereby smallholders and others with existing acquired land rights can work more closely with or even become partners in large-scale enterprises that want to use their land.

The assumption behind this thinking is that if a participatory and inclusive strategy is pursued, the tensions and polemical nature of a flawed policy towards investment promotion will be reduced. The pressures to hide what is going wrong or react to international criticism by closing ranks will also diminish. Transparency will accordingly improve.

Public Access to Land Registration and Land Information

In spite of the efforts made to promote wide engagement with the SLLC programme and ensure that ordinary people in rural areas receive their Certificates, there are indications that subsequent access to land information will not be anything like as effective. Conversations with *woreda* and *kebele* officials, and with the LIFT project field officers, indicate very clearly that the question of post-project sustainability looms large. It will be essential to maintain records that have taken years and millions of pounds to establish; it will also be essential to have land administration teams that are able to *manage change* – accompany rentals and contracts, ensure that request to change the names on title documents are legitimate, and ensure that women and other vulnerable groups are being supported and dealt with effectively.

So, while there is much to commend the SLLC programme, a great deal of attention is required now to address the inherently weak state of the public land administrations. This is not just about leaving behind computers and some staff trained in the SLLC procedures. Upgrading the systems is one thing, but it also requires a fundamental change in administrative practice, entrenched attitudes that hide deep cultural and gender biases, and the creation of a sustainable land administration in which officials have a clear stake. Part of this process has to be the provision of easy access to services, and easy access to the information that is archived and managed the administration offices.

The 2015 analysis by Ali and Deininger also underlines the need to support sustained improvements in the quality and publicity of data on all kinds of land use. To attract investors who are prepared to work within the context of the VGGT and PRAI frameworks, clear and reliable data will be needed. In this context it is also important to note that Ethiopia is a member of the 2012 G8 New Alliance for Food Security and Nutrition which 'brings partners together to unlock responsible private investment in African agriculture to benefit smallholder farmers and reduce hunger and poverty'⁷³. In this context, while policy will continue to promote the expansion of private investment, the country must also focus on 'developing and implementing a transparent land tenure policy'⁷⁴.

⁷³ <https://new-alliance.org/>

⁷⁴ World Bank 2015:3

Consultation, Compensation and Grievances

Grievance mechanisms in the case of the smallholder programme appear to be working well. For example, meetings with some NGOs confirmed that cases where women's land rights have been 'poached' by male renters of their land have been handled well by the system which begins with the LAC and goes through the local land administration services if necessary. A few cases have been taken to court and have been decided in favour of the women involved. However, referring back to the discussion, this kind of support is very limited. It may work for the few women who can afford to appeal to the Women Associations, but many – most – do not know what to do, where to go and how to take things forward, both technically and financially. This is the more serious problem. On top of this, local elders, LAC and *kebele* officials usually side with whoever is economically better off or more powerful politically; this always puts women and vulnerable group in a disadvantaged position.

Proclamation 456/2005 does contain a brief reference to the use of 'arbitral bodies to be elected by the parties' or for disputes to be decided 'in accordance with the rural land administration laws of the region' (Article 12). Attention is drawn, however, to the cautionary remarks of Lavers referred to above regarding the uneven performance of different institutions in different contexts, reflecting the power relations and entrenched discriminatory cultures in administrative structures. The two regional reports commissioned by the LAND project also indicate widespread problems of poorly informed and culturally or gender-biased institutions and judicial services at local, *kebele*, and *woreda* level.

A key element in any grievance system is ensuring that those who are affected are fully aware of their rights and have the means to defend them. In this context, restrictions on use of external support in advocacy work have considerably weakened a lot of rights-based work by local civil society organisations. To strengthen the demand side of the complaints and grievances picture, legal empowerment measures are needed, as well as resources to assist the poorest and most vulnerable to take their grievances up through the various levels of arbitration and the justice system until they get a satisfactory response.

Comments have already been made about the need for more public information support and, in particular, gender-focused capacity to address this issue. Other options could include some form of legal empowerment programme which, if implemented by a reputable state agency of some sort, could overcome the limitations noted above. These options are considered and presented in the Plan for Improved Transparency in Annex One.

Expropriation and Compensation

The right to compensation was recognised in the 1997 land proclamation and has since been greatly strengthened – and detailed – in subsequent legislation. The main instruments covering this important area are Proclamation 455/2005 'To Provide for the Expropriation of Land Holdings for Public Purposes and Payment of Compensation', and its implementing regulation 135/2007; there are also subsequent regional directives that are equally important. Article 7(3) of Proclamation 456/2005 also determines what happens if a holder of rural land is evicted for the purpose of public use.

In these situations, compensation should be paid which is proportional to the development made on the land and the property on the land. The law states that the rate of compensation is determined by Federal or regional laws depending upon the nature and scale of the expropriation process and which level of agency initiates it. Alternatively, the state agencies involved can give suitable land as a replacement.

The 2005 proclamation was developed to provide a detailed and comprehensive response to the provisions of Article 40(8) of the Constitution regarding the payment of compensation for *private property* situated on land that is expropriated by the State for some public purpose. Note in this context that there is *no compensation for the expropriation of land as such* – this is in keeping with the Constitutional principle of property in land being vested in the State and peoples of Ethiopia, and the consequent prohibition on any form of alienation, mortgaging and marketing of land. The concept of private property is however quite broad and encompasses improvements made to the land as well as physical infrastructure and other assets that cannot be removed by the landholder. In other words, a value is given to labour expended on a piece of land as well as to objects, buildings, standing crops and the like.

The other key aspect is 'public purpose'. This is defined as: *'The use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development'* (Proclamation 455/2005, 2(5))

The power to expropriate resides at all levels of the government structure, depending upon the scale and nature of the project or public interest being invoked. Most processes are initiated at *woreda* level however, or by urban administrations in the case of towns and cities. The legislation also applies to holders or holding rights and to 'leasees' (private sector commercial occupants).

The legislation provides for clear procedures regarding periods of notification, notice to be given to the rights holders, and the time within which the land in question has to be handed over to the local *woreda* or urban administration. There is effectively no right of appeal – once compensation has been paid (and the State can pay this into a blocked account even when the landholder refuses to move or receive payment), the occupant must vacate the land within 90 days. Legitimate force (the police) may be used if necessary.

There are several key issues in this context:

- The nature of the 'public purpose' (grounds for expropriation)
- The assessment of compensation
- Complaints and appeals

Grounds for Expropriation

Article 3(1) of Proclamation 455/2005 defines the grounds for a *woreda* or urban administration being able to expropriate 'rural or urban land holdings for public purpose' thus:

Where [the *woreda* or urban administration] believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose (emphasis added).

This formulation is full of terms that are wide open to interpretation by those favouring a course of action which requires land expropriation: 'a better development project' is determined by whom? What is 'better' and who decides this?

The article opens the door for state agencies to work hand-in-glove with private interests to secure land through expropriation. The clear reference to private investors in the text makes this point very clearly. It is possible that this refers to private investors carrying out a project for the State (for example through a Public Private Partnership, PPP), but it is equally possible that this provision could be used in a less transparent way to facilitate a land enclosure (enclosing an asset which of course 'belongs to the State'), which is then handed over as a leasehold concession to an investor for what is deemed to be 'a better project'.

This last scenario in fact echoes many justifications heard in countries like Mozambique and Tanzania where quite strong and progressive land legislation has been set aside to provide land for FDI-based large-scale projects. In Ethiopia the prior creation of the Land Bank and the *de facto* denial that land rights exist in a specific area may mean that there is no question of any compensation being paid. This would especially apply to pastoralist communities who may claim a bundle of complex historical rights over land they graze and share with other local communities but upon which there is no 'private property' in the form of built assets or improved pasture and other labour-based improvements to the land.

Assessment of Compensation

Proclamation 255/2005 creates a framework for compensating those who lose their land through expropriation. This includes:

Rural land holdings

- The replacement cost of the property;
- The value of capital and labour expended on the land (in the case of 'permanent improvement to land';
- The cost of removal, transportation and re-erection of property that can be moved;
- Displacement compensation, which consists of:
 - Ten times the average annual income [the landholder] secured during the five years preceding the expropriation of the land (Article 8 (1));
 - In the case of rural landholders, if comparable land can be provided which is 'easily ploughed and can generate comparable income' the period of calculation using annual income reduces from ten to five years (Article 8(3)).

Urban land holdings and property

- The landholder will be provided with a plot of land of a size determined by the administration, for the construction of a dwelling house; and
- Be paid a displacement compensation equivalent to the estimated annual rent of the demolished dwelling house; or
- Be allowed to live rent-free for one year in a comparable dwelling owned by the administration.

On the surface and compared with other legal regimes, these would appear to be relatively reasonable terms. There are of course many grey areas open to interpretation. Thus:

- The calculation of 'annual income' from a farm plot may be very difficult to determine for smallholders who operate in the informal economy.
- The value of installed improvements and property may be based in an informal market and also hard to determine fairly or at a level that will allow the landholder to move to an area where he or she may have to work more in a formal market setting
- There is the question of who does the valuation.

Article 9/1 of the Proclamation says that valuations 'shall be carried out by certified private or public institutions or individual consultants on the basis of valuation formula adopted *at national level*' (emphasis added). Where there is no existing capacity to value property, this process will be carried out by committees of experts 'having the relevant qualifications and to be designated by the *woreda* or urban administration'. Again, this clearly places the incumbent landholder at a considerable disadvantage, and if there is already a capacity gap in local administrations it is hard to believe that it can be adequately filled by suitably qualified personnel outside the public sector.

A final and critical point in the context of negotiating compensation is that the incumbent landholder may have little knowledge of his or her rights. It is equally unlikely that landholders will have access to any technical or legal support when dealing with the local administrations (and possibly, with the investors behind them; on grounds for expropriation).

The interviews conducted around this issue indicate a huge problem centred on the question of compensation and how it is both calculated and paid (often there are long delays; issues like having a bank account are also common). Taken together with the queries above, regarding how 'public interest' is determined and the likelihood of private interests being behind the scenes, it is easy to see that there is a massive challenge facing the government in an era of uncontrolled urban expansion across the country.

Complaints and Appeals

In principle special administrative bodies will be set up to hear grievances related to expropriation. Where these are not yet established, complaints (which can only be heard in relation to the amount of compensation, not the expropriation itself) 'shall be submitted to the regular court having jurisdiction' (Article 11/1). Anyone who is dissatisfied with the decisions of either the court or the special body if it exists is able to appeal to a higher appeal court or municipal appeal court within 30 days from the date of the decision taken by the lower level court or relevant 'administrative organ' (Article 11/4).

However, such an appeal is only possible if the landholder being expropriated provides a document proving that he or she has already handed over their land to the *woreda* or urban administration (Article 11/6). In other words, affected landholders can find themselves in a situation where they have no home or land, but are still without compensation as they are challenging the level of compensation being offered.

Proclamation 455/2005 does provide for the Federal government to provide technical support to the Regions so that they can apply the legislation. The Federal Affairs Ministry is also charged with developing the tables and valuation formula for determining the payment of compensation.

For their part, the *woredas* and urban administrations are charged with 'providing rehabilitation support [to expropriated landholders] 'to the extent possible' (Article 13(1)).

Unfortunately, time did not allow any investigation into how these mechanisms are functioning. However, as already indicated above, interviews with senior figures working on urban planning and land expropriation policy and programming indicated clearly and without reservation that there is a massive problem in most towns and cities. The solutions proposed centred on capacity building – training and raising the number of personnel working in this complex area. Attention should also be paid, however, to the anomalies in the legislation

indicated above, and to some level of decentralisation when it comes to developing tables and valuation procedures to be applied in different parts of the country.

Urban-Rural Land Issues

This section presents an overview of the problems that result from the rapidly changing urban boundaries around Ethiopia's cities and towns, and how this change impacts on the land rights of rural populations who live close by. The pace of urban expansion is dramatic in almost every sense – massive building projects, infrastructure works and population growth. Much of this appears to be unplanned or at least only partially managed. There are many stories of corruption over land deals, and in the way that projects are approved and then modified to capture more lucrative markets. Compensation payments are a key issue. Transparency in land governance is a critical factor.

The Process of Urban Expansion

The hectic pace of urban expansion in Ethiopia is extremely evident not just in Addis Ababa but in all the towns and cities visited during the fieldwork for this report. Anecdotal evidence from all those interviewed strongly supports the impression of a process that is largely unplanned and driven by powerful economic interests at the expense of ordinary citizens. The corruption word appears in almost every conversation about the urban land and planning issue.

The result is an anarchic, interest-driven process that involves *ad hoc* shifts of urban 'frontiers' out into surrounding farmland. The boundary moves out and across land that yesterday was rural, today is now urban. In that shift, the value of the land rises dramatically. This process has also been driven by the huge public investment in infrastructure in the last 5 to 10 years, especially roads. Areas along new transport routes, or those which are now within easy reach of urban markets with far lower transport costs, quickly attract large and small urban developers alike.

The huge sums that can be made by then accessing that land and developing it, drive a demand for more and more of it. Who captures this added value is a key question. The lack of tenure security felt by the occupants of land that is suddenly now within or close to a new urban boundary is another. What can be done to bring order to this situation is a third.

Urban expansion is also being fuelled by incoming capital brought in by returning 'diaspora' Ethiopians not only in Addis Ababa and regional capitals like Bahir Dar, but also in smaller towns across the country. Towns and cities once regarded as small and unimportant are today growing in response to new trading and investment opportunities being exploited by local elites who are using customary structures and land rights to enclose local land⁷⁵.

It is also apparent that this rapid urban expansion is ignoring or 'leaving behind' large areas of under-used urban land that needs to be properly developed. It is probably far easier however for the urban counter parts to get land for urban development from one or two farmers close the present limits, than it is to get land from hundreds of people living inside the present boundaries. The issue then is about taking pressure off surrounding rural areas, rather than ensuring that the move outwards is 'transparent' and respectful of rights that are expropriated.

Institutions and Regulations

The first point made in an interview about urban-rural land issues was that 'there is no policy and no guidelines' for urban planning and expansion in Ethiopia. In the absence of any policy, the natural tendency is to move outwards to absorb the least-cost areas of land.

The only legislation that is available to regulate the process of urban expansion through expropriation of (rural) land is Proclamation 455/2005⁷⁶. This Proclamation lays out the conditions for expropriation as well as for the payment of compensation and is discussed in detail above. What is significant for the present discussion is to note that there is nothing in the law about the *process* of expropriation and urban expansion, how to do it, under what circumstances.

It is evident from interviews conducted that the installed technical and institutional capacity to manage urban planning, expropriation and compensation processes is extremely weak. There is virtually no effective Land Administration System covering any of the major cities or towns. There are very few if any trained professionals in the area of urban expansion planning, expropriation management, and valuation; all this has significant

⁷⁵ Korf, Hagmann and Emmenegger 2015.

⁷⁶ FDRE 2005a.

knock-on effects on how compensation is calculated using Proclamation 455 as the reference point, and how payments are then made to recipients.

Who Captures the Value?

A common perception is that city governments and their functionaries are the ones who are capturing the value that is created when the urban boundary passes across a rural field and encloses it within a new 'Master Plan'. According to a study by the World Bank⁷⁷, a fundamental problem is that there is no mechanism for converting land rights of rural landholders into urban rights: as soon as any rural territory is designated for urbanisation by inclusion in a Structural Development Plan (formerly, Master Plan) of a nearby city or urban centre, landholders in this territory are assumed to be subject to expropriation. Once this happens, the real value is added as the site is developed, and this value is captured largely by private interests.

It is feasible that there may be instances where municipal planners and others in urban administrations are in league with developers for whom they can 'arrange' new land through a shift in the urban boundary. However, it is equally true that the current expropriation process is predicated on the *absence of a land market*, and a compensation regime that also presumes that the holder of a holding right cannot sell their land. In other words, legally the land has no value. In the UK for example, just moving the zoning line from one side of a field to the other can result in a huge value rise that is captured by the owner of the field; in Ethiopia, even if a farmer could hold onto his or her right after the line has shifted, they would not be able to benefit because they cannot sell the land. In this context, an effective compensation scheme is the best and only approach to ensuring a relatively just outcome for those losing their land.

The same applies to the State. While the government can auction off a portion of the land it expropriates – a figure of 5 percent was provided in one meeting – most of the land is allocated administratively to developers. This was described as a 'non-profit process', given that the government already incurs considerable costs that are associated with the expropriation process and preparing the site for auction and allocation to selected developers.

This appears to be the point at which the transparency question appears forcefully. How this administrative process is conducted, how the developers are chosen, what conditions and criteria are set? These are important questions because it is the developer who makes the money and captures the value of the land shift from rural to urban. This is especially so if the developer – who might be allocated the land to construct affordable social housing – decides instead to target the private housing market. These processes appear to happen with some regularity. Where are the controls and sanctions?

New research shows how in some areas, incoming domestic capital drives an enclosure process with elites then able to exploit official attempts to impose order through new Master Plans and certification processes⁷⁸. In cities like Addis Ababa, it is likely to be more a case of urban-based interests working with contacts in government to enclose peripheral land, negotiate some compensatory package with those who are losing their land, and then capture the added value through the development rather than the land itself.

The bottom line in this process however is that not only do farmers lose out in real terms, so does the State as it fails to capture the real value of the asset that is being 'administratively' re-allocated for development. Hence one of the issues flagged during conversations about this question is the need to develop an effective 'value capture tool' for the State entities that administer these processes. This is in fact quite a common issue in many African cities where municipal governments fail to participate in the huge profits that are being made in contemporary property booms⁷⁹. The implications of being able to capture this lost value are clear, in terms of a greater ability to re-invest in public services and utilities, and also to consider a more robust compensation scheme for those who lose their land right at the start of the process.

What about the Holding Right Certificate?

It is clear that having a Certificate proving a holding right over land that is being expropriate is no defence against the process of compulsory expropriation as the urban frontier passes from one side of your land to the other. At this point Ethiopian law does not allow for a situation where the holder of a holding right maintains that right both before and after the land is converted from rural to urban use. The expropriation is justified using the 'public purpose' argument reference right back to the Constitution, with the Government acting as 'owner'

⁷⁷ World Bank 2012

⁷⁸ Korf et al, 2015

⁷⁹ Interesting models are found in Latin America. Developers are allowed to start a project and pay a fixed rate up to the first or second floor; above that they pay an increasing rate per metre per floor to the municipality

of the land in question in any case. Referring to the Constitution, what is being expropriated is not the land, but the right to use it. With the extension of the urban frontier, the underlying approved use has changed from rural to urban; the farmer has to give up his or her farm activity therefore; and in return is compensated with reference to the lost value of that activity.

As already discussed above, the term ‘public purpose’ is now so broadly interpreted to include cases where land is taken away from its rural holders and then handed to private developers. Questioning whether or not a project or boundary shift is in the ‘public purpose’ could not serve any purpose in a court of law, as the proposed use of the land would be for ‘public purpose’ whatever the ultimate use, and whether by a private or public entity.

That said, some informants spoke of farmers with land near a potential new urban frontier being very keen to secure their Certificates. Having clear proof of the holding right does apparently promote a more fruitful negotiation of compensation and open the way for a series of support measures that are provided along with it.

Compensation Packages

The issue of compensation and how – or even if – it is paid is perhaps even more contentious than the fact of being expropriated. The Proclamation 455 provides clear guidelines about how compensation is to be calculated, including what is known as ‘displacement compensation’. Details of this have been discussed above in the previous section. What is interesting in this discussion is that the compensation package is provided in the context of a wider GoE scheme to support those who lose their land, either to re-establish a similar livelihood elsewhere, or to be retrained or supported to establish a new livelihood in the new urban context. Some twenty years ago the compensation due was paid to generate what was called ‘income continuity’. A lump sum value was deposited at a bank, such that the interest would equate to the estimated lost annual farm income. Recipients were expected to leave the lump sum in the bank, unless they could demonstrate that they had a better, more productive way to use it. Training in new skills was provided in the meantime. The money was nearly always taken out however, to build housing or buy some useful asset for trading (horse and cart etc.); or ‘to use extravagantly’.

From 2005 onwards, this policy has shifted to one of ‘shock absorption’, whereby the State will support the expropriated household with compensation calculated to provide income for a period of ten years. The money is paid out in a lump sum again however; and once again most people take it out or use it unwisely.

The implication of this argument is that the expropriation and compensation process is a) within the law and b) fair. The hardship that results is then largely the fault of the person who misuses his or her compensation package. New approaches are being developed. For example, the person who is expropriated might be allowed to keep a portion of the land, with new formal title over it. The official position is that the State does all it can to a) compensate fairly, and b) provide support so that those losing their land can establish a new life either in town or on alternative land elsewhere.

There are also problems of bad management and lack of capacity on the administration side however. Interviews revealed how compensation payments are poorly handled, exacerbated by a lack of professional valuation skills. Evidently the systemic factors that sustain this situation must be addressed, but the lack of professional planning capacity, training in mediation and negotiation, and proper valuation frameworks and skills all contribute to the air of obscurity and interest-based development.

The Urban – Rural Interface

What literature is available on this issue and information from informants indicate that the way in which land is being enclosed and changing from rural to urban varies across the country. The most common account is of powerful urban interests pushing the urban frontier outwards and taking over adjacent farmland. But other quite different forces are at work in some areas.

Recently published research describes a land enclosure process which started on the periphery of Jigjiga in the Somali region of Ethiopia in the late 1990s⁸⁰. This dramatic urban expansion is being driven not by outsiders but by local elites who ‘have laid claim to much of the agro- pastoralist land around Jigjiga’. Until recently these developments had been handled on an informal basis – which is to say without much

⁸⁰ Korf et al, op. cit.

government involvement – involving ‘a broad range of people...neighbours, brokers and local officials [who] recognise the outcome of new land purchase or land appropriation’. Much of the resulting urban expansion has been outside the planning framework, but new moves to impose control and upgrade the urban plan have played into the hands of the ‘owners’ of this land, who have been able to ‘legalise’ their possession *vis-à-vis* the Ethiopian state by getting official recognition of their land titles.

Similar processes are at work in most other towns and cities and are evident to anyone driving into or out of Addis Ababa. Elites find different ways of initiating an ‘urban enclosure’ process over land they already control, or by using influence and power relationships to enclose the land of others. They are also able to take advantage of new official planning initiatives and titling opportunities to extract even more value from their activities. The pace of change in recent years, even in small provincial towns, is again shown by the Jigjiga research, where municipal archive data show that ‘the number of land files registered annually nearly doubled between 2007 and 2012 as a result [of the new Jigjiga master plan]’⁸¹.

Especially in the smaller cities and towns where the rural environment is that much closer, the question of institutional collaboration between the Federal and Regional government entities handling rural and urban issues is also a key issue. Everywhere the very limited capacity to manage and police the rapidly changing urban landscape is clearly being overtaken by the present dynamism of urban growth, and this intersects directly with rural land rights and how these are dealt with as part of this process.

Urban land issues at Federal level are overseen by the Ministry of Urban Development and Housing. Until recently, there was little dialogue with the Ministry of Agriculture (responsible for rural land), and no commonly-constructed strategy over the expansion of the urban boundary into rural areas. How to handle the farmers is identified as the big issue on one side. How to find land to build housing and factories is the issue on the other side. Very recently however, in early 2016, a new ‘joint platform’ has been created to bring the two sectors together so that they can work together to manage urban expansion and impose some discipline on what happens inside the new urban frontier. The Ministry of Urban Development and Housing will work with city and town governments to organise planning and impose standards for social housing etc. The Ministry of Agriculture will collaborate over how rural land is integrated into the new urban boundary, including ensuring that all those affected have properly certified holding rights which can then form the basis of a properly conducted compensation package.

Civil Society Involvement

It has already been noted in the assessment of present policy and laws in the VGGT context, that the lack of civil society involvement is a serious shortcoming. This is particularly evident in the urban-rural land conversion process and is one reason why small holder farmers receive very low compensation and are poorly supported as they try to integrate into the new system. This is a huge problem in all the big and small towns where farmers get a low *de facto* price for their land, while government then goes on to lease it for much more.

The GoE may have some concerns about the implications of greater civil society engagement, but it also needs to be underlined that in most countries, civil society groups play a positive role in similar circumstances. There is no doubt that this role can affect and reduce the gains to be made by small powerful groups who are able to manipulate their proximity to governance structures. But looked at from the perspective of impacts on social development, reduced costs to the State as people are better integrated, and probable impacts on the labour supply and consumer demand side of the urban economy, it is easy to see that more civil society involvement can only be beneficial to ‘the public purpose’. It is therefore important to provide openings for a new and constructive dialogue between the GoE and the civil society movement to take place.

Conclusions and Recommendations

There is evident potential for serious transparency issues in the current situation. Recent events in Addis Ababa and Oromia also indicate how easily this kind of situation can result in serious social unrest. Interviews reveal a conflicting and confusing picture of urban governments working hard to find land for essential housing and other projects; and interests groups exploiting the weaknesses in these governments to make huge profits which also fail to benefit the public purse.

Existing rights of rural landholders are affected whatever the nature of the process at work. Under current constitutional limitations, there would appear to be reason to develop a legal mechanism that would secure and preserve the holding rights of rural land users, before and after their land has been converted from rural

⁸¹ Korf et al, op. cit.

to urban use. This would only make sense if they were then able to sell installed infrastructure (a house or agricultural improvement for example) to a developer. Providing for holding rights to be maintained and then compensated for in the new urban context would possibly be a fairer way forward than compensation based upon the lost rural livelihood. But in fact, the underlying principle of compensation for what has been lost and to try and maintain an equivalent or improved livelihood afterwards is equally valid, provided that the compensation is fairly assessed and efficiently paid.

The answers that come out of the various interviews carried out suggest a forward-looking approach built around targeted capacity building and institutional development. Issues such as corruption and sanctions for illegal manipulation of the planning and other regulations lie in the realm of the rule of law and the over-arching political economy that drives current development. But putting into place basic administrative mechanism and boosting the professional capacity of the administrations involved will go a long way to imposing some order on the currently chaotic situation.

A short list of recommendations would therefore be as follows:

- Technical assistance to develop a new policy framework and appropriate legal instruments for a well-managed urban expansion programme
- Developing additional legislation and guidelines for the *process* of expropriation and compensation (not just the rules for calculating values etc.)
- Development of urban Land Administration Systems in all the main cities and towns; and ensure that these are accessible and open to promote transparency
- Capacity building and professionalization of the services handling all areas related to urban expansion and land issues, including zoning, expropriation, valuation, and compensation
- Provide material and technical support to the recently created 'joint platform' of the Ministry of Urban Development and Housing, and the Ministry of Agriculture, and partner municipalities.

Cooperation Partner Framework for Land

External cooperation support for land governance and related activities is overseen and coordinated by the G7 Partners Land Group. The group works closely with the GoE 'to improve rural land tenure security for all, including through appropriate land use management in communal and pastoral areas over the next five years, i.e. 2014 – 2019', and to 'strengthen transparency in land governance, including by supporting an improved legal framework and practices in relation to agricultural investment' (see Box 2 below). The Partnership is driven by a core group of main donors – UK, EU, USA and Germany – and is led by the Rural Land Administration and Use Directorate (RLAUD) of the Ministry of Agriculture of GoE. It also includes other partners on an *ad hoc* basis, such as FAO, the World Bank, Finland and Norway.

The partnership is implemented through meetings of the partners, with information on activities and progress disseminated to stakeholders through the Rural Land Administration and Use Task Team (LAUTT)⁸². Within this framework, the following principal cooperation programmes for land are currently in place, besides the LIFT project:

REILA – Responsible and Innovative Land Administration

REILA is a joint GoE/Finnish project, taken over from the previous ORGUT/Swedish programme. Its primary objective is to assist with the implementation of Second Level Certification of smallholder holding rights. The project began in 2011. It has a budget split as follows:

- National contribution: €1.2 million (all implementation costs, including per diems, facilities, furniture, and national experts from Ministry);
- Finland €12.7 million: TA and investment budget (direct to Treasury).

Technical assistance is provided by NIRAS. Planning for the project is done together by NIRAS and the Directorate of Land Administration and use in the Ministry of Agriculture, with investment decisions sent to the TA team for approval and funding.

The REILA project has four components:

- Public information (focus in Benishangul)
- Federal level: capacity building and 'harmonisation' with Ministry and Ethiopian Mapping Agency (remote imagery)
- Cadastre: public information, data storage etc. with data disaggregated for women
- Amhara focus on land titling (second level)

Targets: 140,000 Titles (second level certificates) in Amhara; 100,000 in Benishangul.

Box 2 Resources and Activities through the G7 and other Land Partners

- | | |
|-----------|---|
| Resources | <ul style="list-style-type: none"> • G7 Partnership: £68.2 million through DFID's Land Investment for Transformation Programme (LIFT); US\$10.94 million through USAID/Land Administration to Nurture Development (LAND). • German Co-operation: with EU funds and TA from Germany – €3.3 million over three years from 2014, to support <i>responsible agricultural investments</i> in Ethiopia and the <i>implementation of the UN Voluntary Guidelines</i> on land. • Government of Ethiopia: with a World Bank credit and technical assistance from the German government, undertaking the US\$112.13⁸³ million Sustainable Land Management Programme Phase 2 in the areas of Integrated Watershed and Landscape Management; Institutional Strengthening; and Rural Land Administration, Certification and Land Use. • Regional governments: significant capital funds committed to land administration activities in 2013/2014; more expected in their 2014/2015 budgets. • Additional resources from outside the Partnership: |
|-----------|---|

⁸² Rural Economic Development and Food Security Sector Working Group of the Donor Assistance Group (DAG).

⁸³ Includes in-kind contribution of US\$4.52 million for staff and office costs from the federal and regional governments

		<ul style="list-style-type: none"> ○ World Bank and Norwegian government grant support to SLMP2 (included in above total). ○ Finland €13.9 million Responsible and Innovative Land Administration project (REILA). (Not part of the partnership work plan at this stage).
2014 results		<ul style="list-style-type: none"> • LIFT land sector assessment completed, and initial pilot interventions commenced. • GIZ has completed the design of the Institutional and Capacity Support for the Ethiopian Agricultural Investment and Land Administration Agency (EAILA). • Review of implementation of land laws and regulations is still in progress with 2 of 4 regions complete and a drafting committee having been set up for the revision of the federal proclamation, during which the alignment of federal laws with international good practice will be reviewed. • While a full capacity building plan for RLAUD has not yet been adopted RLAUD is getting support for MSc fellowships and short-term training.
2015 Priority		<ul style="list-style-type: none"> • LIFT Second Level Land Certification (SLLC) completed in a further 8 woredas (districts) in the 4 highland regional states of Amhara, Oromia, Southern Nations Nationalities and Peoples, and Tigray, and commenced in 16 more. • Review of implementation of land laws and regulations complete • Draft revised federal proclamation aligned with international good practice in place. Capacity building plan for RLAUD commenced implementation. • Institutional and Capacity Support for the Ethiopian Agricultural Investment and Land Administration Agency (EAILAA) commenced. • M4P additional pilot interventions commenced. • Work commenced on development of a legal framework for land rights for pastoral and agro- pastoral communities that is in line with international good practice.
Key 2016 mile-stones		<ul style="list-style-type: none"> • SLLC and improved LA complete in 24 woredas; 2,400,000 certificates issued to land right holders. Implementation of National Rural Land Administration Information System (NRLAIS) commenced. Land administration (LA) regulations for pastoral and agro pastoral communities adopted by RLAUD Sector-wide M&E system developed and commenced operations in RLAUD and Regions
Key Targets	2019	<ul style="list-style-type: none"> • Support to developing new Land Use Policy and revised Federal land legislation • SLLC and Land Administration carried out in 140 woredas; 14 million certificates issued. • Improved land administration systems operational in the same 140 woredas. Process identified for extending SLLC and LA to rest of woredas in the country. • RLAUD and regions capacitated to effectively oversee the administration of rural land. • Up to 1.36 million smallholder farmers income up by at least 20.5% due to programme activities • Legal framework and procedures in line with international good practice are in place for the provision of land certificates to pastoralist and agro-pastoralists • Accurate and timely M&E information being prepared by RLAUD • Land laws and procedures facilitate effective and equitable land administration and are aligned with international good practice (land tenure and policy guidelines, FAO/AU). • All large-scale agricultural investments meet VGGT/RAI principles (FPIC, no involuntary disposessions or replacements, grievance mechanisms institutionalized and functioning).
Desired Impact		<ul style="list-style-type: none"> • Greater security of rural land tenure for all and transparency over land transactions in Ethiopia, sustained by capacitated federal and regional land institutions and a robust and equitable legal framework, leads to increased and sustainable farmer productivity and income; empowerment of women and girls; security of rights for pastoral and agro-pastoral communities; reduced conflict; and climate change resilient and environmentally effective agricultural and husbandry practices.

Sources: Documents provided by the LIFT Project office

USAID

USAID started work in Ethiopia ten years ago, but not in land. The agency became aware that in spite of good rains and a strong land endowment, the country still needed food aid support. Based on a study of agricultural production issues, it was decided that a major cause of this was the lack of land tenure security.

The situation at the time was that:

- Government took an egalitarian position, guaranteeing land for the poor.
- Land redistributions took place every 3-4 years.
- Farmers were reluctant to invest, especially in perennials and long-cycle crops.
- The result was disinvestment in land.

USAID discussed this situation with government and proposed a land administration intervention. The outcome of this process was the pilot second level certification and registration programmes with regional governments, in selected *woredas* and *kebeles*.

USAID came into land support formally after a 2004 study to see where its intervention could be most effective. USAID funded the testing of 6 methodologies for second level certification, with trials in 6 *woredas* in each region (24 trials).

This led to a series of programmes:

2004-2007: Harmonising the laws leading to the new proclamation 456/2005

2008-2013: Support to a framework project for implementing second level certification (this has now begun with LIFT and REILA). Also support to getting information about the new law to the judiciary and others responsible for implementing it. Other activities included:

- Studies including assessments of lowland and pastoralist land use and rights, and the need for clearer regulations on land disputes and expropriation in rural areas.
- Capacity building in regional GPS use and record keeping.
- Support to development of regional land laws.

2014-present: LAND Project (Land Administration for Nurturing Development) Project activities include:

- Funding 84 masters students at Bahir Dar University, in land administration and management (these will be the core of the new RLA system when it is instituted).
- Study of the expropriation of pastoral lands (Afar) with Amhara based consultants.
- Contract with Bahir Dar University to assess current regional land laws (this has been done for Oromia and Amhara; Tigray are requesting it to be done there as well). This will inform the current process to revise the Federal level proclamation.
- Support with high-end legal TA to the Commission drafting the new Federal Land Administration and Use Proclamation.

GIZ

GIZ is now beginning implementation of a new EC-funded project in the EAILA to improve land governance and help improve overall food and nutrition security⁸⁴. The project aims to achieve this by helping the GoE to establish a conducive and transparent land governance environment. It will plan and implement activities within the FAO VGGT and the G8 PRAI frameworks.

The project was to be implemented with FAO, but FAO has withdrawn as delays in securing agreement with the GoE pushed the project over its time horizon for available funding. GIZ remains as the main driver of VGGT implementation within Ethiopia. Its activities include two principal target groups:

- Local communities, indigenous groups neighbouring large-scale investments;
- Domestic and foreign investors who are expected to adopt the G8 PRAI and the VGGT frameworks.

⁸⁴ This section is based on interview notes and the Power point presentation, GIZ 2013. Support to responsible agricultural investment in Ethiopia. Conference on Building Public and Political Will for Agriculture ODA in Germany, Addis Ababa, November 2013

The project has four sets of objectives:

1. Capacity building work in the EAILA. It will draw upon lessons learned from existing investment projects; develop Ethiopian standards for investors as per the VGGT; and develop procedures for dealing with non-compliance by investors.
2. Human capacity building in land management and responsible agricultural investment at Federal level (EAILA) and selected regions. Designing training packages and implementing them for key personnel at Federal level (EAILA), Regional and *woreda* administrations, and for civil society organisations. Supporting universities in curriculum development for courses in commercial land management.
3. Developing an information and knowledge system for land-based agricultural investments. Assisting EAILA to develop and implement this system. Developing a monitoring and oversight system for EAILA. Assisting EAILA to conduct studies in responsible agricultural investment.
4. Supporting the recognition of legitimate tenure rights of resident populations and in particular indigenous people (in the far south of Ethiopia). Supporting EAILA to develop a database on large-scale land-based investments. Developing and promoting publicity for successful investments.

Ethiopia will be a pilot country for testing the implementation of VGGT and PRAI principles. The project was going to focus on Gambela region but has since shifted to Benishangul Gamuz region. This is an interesting development as it offers the possibility of exploring inclusive land governance models not only with communal and pastoralist groups, but also with small holders who have been given Certificates under the SLLC programme. Civil society organisations (CSOs) will also have an important role to play (although the question of limitations within the 2009 NGO legislation needs to be addressed).

Other Related Activities

The World Bank is implementing a USD 350 million Second Agricultural Growth Project. This project provides support for public agricultural services, agricultural research, agricultural marketing and value chains, project management and evaluation. There is a small element of land-based work in the regions involved in the project. Discussions with the World Bank identified an opportunity here for the LIFT M4P component to link up with the new Agricultural Growth Programme (AGP) to explore the synergies between the land certification process and supporting farmers to use their Certificates to engage in the marketing and other activities being proposed.

In addition, Phase 2 of the USD 95 million Sustainable Land Management Programme provides some land administration work organised on a watershed basis.

Conclusion

The GoE has continued to maintain firm control over the ownership and use of land. The constitutional provision that land belongs to the State is sacrosanct and is unlikely to change in the foreseeable future, justified by the concern of the GoE to avoid a concentration of land ownership in foreign hands and to ensure that resources are used in the national interest (or for 'public purpose'). Like many African states in this position however, Ethiopia has also embraced the free market and opened up to domestic and foreign investment. The principle of state ownership then creates significant complications for the land governance framework when it comes to recognising and respecting the acquired rights of citizens, how the land resource is used, and how land is transacted and used to create capital and secure investment finance.

The current land regime in Ethiopia is also strongly shaped by the egalitarian and social justice ideologies of earlier regimes. The reforms carried out by these regimes had profound re- distributional impact and created the current landscape of millions of smallholders, at least in highland areas. The more sparsely populated areas in the lowland regions were relatively untouched by this process, however, and today still exhibit communal forms of land holding as well as long-distance pastoralism.

The early reforms in the highland food-producing regions resulted in declining agricultural investment, and a recognition by the GoE that land tenure issues were the key to a new food security strategy within its 'Growth and Transformation' development agenda. This resulted in the early 'Level One' certification, or 'Green Book' programme to award more secure tenure rights to smallholders. The 1997 Land Administration and Use Proclamation then began a process of gradually strengthening the State-allocated land holding right. A new Land Administration Proclamation in 2005 brought some order to the land certification process and was followed by a raft of new Regional land laws. Important advances have been made to give smallholders greater freedom to use their land in line with their needs and capacities and to engage with other actors. These include enabling smallholders to rent out their land or make contracts with investors who want to use part of it.

Large-scale land investments (LSLIs) have also long been a feature of the landscape since before the Derg regime. They became a major policy instrument when world food prices rose sharply in 2007/08, but since then the GoE has been criticised internally and externally over the way it has handled local rights when allocating land to LSLI projects. There are now clear signs of a change in approach, as the GoE has analysed its strategy and recognised the need to take more notice of local rights. LSLI projects are here to stay as part of the ADLI national development strategy, but the EAILA is now working with GIZ to integrate VGGT and PRAI approaches into their work plan.

In terms of the FAO VGGT, it can be concluded that the policy and legislative processes of the past 15-20 years have been evolving towards a more participatory, rights-aware approach. Civil society involvement in land issues is however constrained by restrictive legislation. It is also clear that there are significant problems with securing the rights of women and other vulnerable groups. These problems are compounded by lack of accountability on the part of those who abuse their position to gain control over land rights that are not theirs; and by the complicity of service providers who deliberately side with these individuals in anticipation of economic gains or because of their social status. The judicial sector is also unfamiliar with the land law and how to apply it in practice, especially when it comes to choosing between deeply-set cultural norms and the more egalitarian norms of statute and constitutional law.

The overall impression today is of a government committed to securing smallholder land rights and recognising its failings in the LSLI context, but still concerned to maintain a high level of control over the way that land is allocated and used. While there are positive aspects in this situation, in a country with a dominant ruling party and with key institutions still being developed – including an under-resourced land administration that is over-stretched at all levels the principle of state control over land also offers opportunities for corruption and personal gain to those able to manipulate the levers of power and negotiate with the complex bureaucratic structure. There are issues of transparency and land governance which require attention in the short to medium term. These are summarised as follows:

Land Administration (Smallholders). Broadly speaking, implementation of the Certification programme shows no problems of poor transparency, with the GoE fully committed to what is the centrepiece of its land policy. There are, however, question marks over how vulnerable groups – women, orphaned children, and the elderly – are treated and included in the Certification programme. Underlying factors are gender biases in land administration structures and supporting sectors including the judiciary; and deeply rooted cultural factors that work against the formal advances in women's rights in statutory law. Lack of capacity in public information services and in gender mainstreaming is a clear constraint here, and there is a need to pay more attention to the legal empowerment of local people, backed up by capacity building of local government officers charged with implementing the various components of the GoE and Regional government 'land and rural development programmes'.

It is also not clear how land is being accessed by smaller investors making arrangements with smallholders; and if in fact the Certification programme is making it easier for a process of small-scale land accumulation to take place. All of these risks are exacerbated by the almost breakneck speed at which the certification process is being implemented; and the still evident weakness of local land administrations when it comes to *managing change in a post-Certification context*. LIFT is achieving impressive quantitative results in terms of the number of smallholders being surveyed and issued with Certificates, but the focus on numbers does not leave much time and space for addressing gender concerns and ensuring that local government teams are adequately prepared to carry on once LIFT has ended.

Gender and vulnerable groups. Most programme designs attempt to reflect concern for gender and social inclusion issues. The challenge basically lies in whether they have fully considered or injected sufficient additional inputs to adequately address gender equality and social inclusion issues. Land registration is a huge investment and capital-intensive program and while targets are necessary, it is equally important to ensure that this investment results in an accurate and just outcome. Due attention is needed for field staff capacity development with regard to social issues; development of new training materials; and a range of capacity building and legal empowerment activities.

Land Administration (LSLI context). Contrary to what is often said about Ethiopia, this report finds that the strategy of land allocation to investors has been implemented in a notably open and transparent way, particularly in relation to government being quite open about the strategy and targeting 'unused' land in the lowland areas as being 'free' and therefore able to be allocated to incoming investors. Some information on the LSLI process is openly accessible on a government website. New research using GoE farm survey data also shows that the scale of very large LSLIs has been greatly exaggerated, and that vast majority of

investment is by Ethiopians, accessing land either from the State agency (EAILA) or directly through discussions with local land administrations and smallholders who may want to release (rent) a part of their land. There are still transparency concerns, however, about the way in which the LSLI strategy marginalises local land rights and impacts on local populations. The GoE is however revising its approach and showing a clear commitment to integrating elements of the VGGT framework. This includes more openness to the reality of local land rights in investment areas, including communal and pastoralist systems. The issue here is twofold: firstly, recognising and then identifying on the ground, communal and pastoralist land rights; and secondly, developing the capacity to work with these communities and investors in a three-way process that can benefit all sides.

Land Administration (institutional). Lack of capacity, out-of-date methods and a weak Land Information Management System all encourage low transparency and inefficiency in land governance. Post-LIFT and post-SLLC administrative capacity will be weak, raising the spectre of rapid obsolescence of newly certified land records and sustaining an atmosphere of low transparency in the administration of changes in land rights (including rental and other contracts between holders of Certificates and investors). It is clear that having good data available, and analysed effectively, can do much to unlock entrenched thinking about land issues (as demonstrated in the use of farm survey data to change perceptions of the scale and nature of investor-driven land occupation). Addressing all these issues will be an important practical contribution to improving transparency; this is a core element of both the LIFT and REILA projects.

Urban land and expropriation. The current massive urban growth across Ethiopia extends urban boundaries into nearby rural land. A major challenge is to bring order to the chaos and ensure that expropriation is transparently and justly administered. Presently, interest groups and elites manage to manipulate weak urban land and planning structures to acquire newly urbanised land and capture the value added by new development. There is no policy framework for urban expansion, and no regulations to guide those carrying expropriation. In particular, the blanket use of the concept of ‘public purpose’ opens the door for expropriation linked to the ‘administrative re-allocation’ of land to private developers. There are no adequate Land Administration Systems in any of the urban areas of the country. Compensation legislation is adequate, but compensation must be fairly assessed and paid. Yet there is little capacity to do this, especially in the key area of valuation. Challenges include ensuring that. Institutional coordination between the entities dealing with urban and rural land issues has been very weak but should improve with a new ‘joint platform’ for the Ministry of Urban Planning and Housing, and the Ministry of Agriculture.

In spite of the questions identified above, the GoE is getting some things right, including an agricultural strategy in which enhanced tenure via the SLLC process is a core driver of investment and new production. In fact, current revisions to the land legislation, the development of a new Land Use Policy, and the turn towards the VGGT in the context of LSLIs, all put Ethiopia in a good position as a pilot country for implementing and testing the FAO VGGT and G8 PRAIs in practice.

Recent moves by the GoE in the cooperation context also open up interesting opportunities to develop a Plan for Improved Transparency. Adherence to the G8 New Alliance framework brings with it a GoE commitment to ‘developing and implementing a transparent land tenure policy’⁸⁵, and the GoE has also given the go-ahead for a GIZ/EC project at the EAILA to develop capacity and guidelines (including carrying out trial activities) for integrating the FAO VGGT and the PRAI into the work of this key agency in the LSLI context.

The conclusion then is that this is a good moment to consider a Plan to Improve Transparency. There are important caveats:

- The present regime regarding land governance is predicated on continuing strong State control over land, and this gives the State through the GoE an important economic and political lever when it comes to managing social and economic strategy
- The GoE may be open to new thinking on the question of how local rights are treated when allocating land, but this is limited to considering *practical* suggestions that would enable it to implement its existing programme in a more inclusive and pro-poor manner.

⁸⁵ World Bank 2015:3

- The strategic approach of the 'development state' model of the GoE is essentially unchanged; the ADLI strategy links smallholders and large-scale agro-enterprises to new industrialisation (food for the towns and cities, raw materials for new national industries).
- In this context, LSLI-based investment is here to stay: the challenge is to do it differently and in a more inclusive way.
- Civil society needs to be brought into the picture; plans to work with CSOs and national NGOs must be developed carefully and in a way that is pragmatic and constructive.

Where 'the State' closely equates to 'the Government', this can result in the principle of State ownership being used for personal gain or to achieve specific interest-based objectives. Developing a Plan for Improved Land Transparency will need to take account of this enveloping political economy and involve proposing measures that encourage transparency by providing a new implementation strategy and specific kinds of support that can produce a 'win-win' result in which present interest groups do not feel threatened, and indeed can build upon the notable and recognised achievements of the GoE over the last ten years.

An effective solution to problems in transparency and poor governance is to address the practical constraints on good governance and administration on the one side and look for more inclusive and participatory approaches on the other which can deliver the ADLI strategy for the GoE while still respecting and working with local rights and rights holders.

Many of the issues above can also be addressed by improvements in area that are 'apolitical' - gender-focused training and support provided by the LIFT project and providing targeted training for LAC and local government staff involved in both the SLLC process, and in other 'post- SLLC' land governance challenges. Included in this suggestion is the idea of spending far more time ahead of the SLLC and similar interventions, on preparing local people (and women and vulnerable groups), to take part in and benefit from the programmes being offered.

The objective is a process of constructive engagement, in which stakeholder (including civil society) is facilitated and gradually deepened. In this way:

- Rights are enhanced (the SLLC programme), encouraging new smallholder investment (and by pastoralists who are may seek to enclose grazing land to invest in new water points and other activities to respond to new regional economic opportunities⁸⁶);
- Key public services related to land administration and management, and to planning (urban-rural interface) are upgraded and made more accountable;
- Good quality data on land use and related issues are created, well analysed and made available for policy makers and land users alike;
- New investment by smallholders and communities is encouraged;
- Commercial investment by 'good investors' is encouraged, with an emphasis on managing the allocation of land between rights holders and those who can make best use of it;
- Rights are respected (consultations secure investment *and* gains for local rights holders);
- Unused or underused land is brought into production;
- Everyone wins, communities (including pastoralists), investors (domestic and foreign, large or small), and the Government (food and raw materials are produced to scale and at a quality level suited to making the ADLI strategy work);
- Transparency improves because a wider sense of 'buy-in' and ownership of the national development strategy is created.

It is useful to quote Ali and Deininger (2015) again: 'it is argued that in many developing countries, there is a need to go beyond the dichotomy of large vs. small and look instead at new ways of combining the two.' They also note that there is already a large literature, much of it based in concrete examples in many countries, that supports responsible agricultural investment following VGGT, AU and PRAI guidelines. Some of this literature

⁸⁶ See Korf et al 2015.

shows alternative, inclusive business models that allow small farmers and large farmers not only to co-exist but to actually work together, sometimes in the same business and on the same land⁸⁷.

Legal empowerment – educating people about their rights and how to use and defend them – is also an important element in any programme to improve land governance. The demand side of the rights issue is if anything more important than trying to make systems more accountable with some sort of magical technical assistance input or capacity upgrade.

In the context of land law and policy, a critical necessary condition is also to re-examine the issue of land rights within the provisions of the constitution. This will encourage the process of preparing a more inclusive, more open and transparent development strategy. That said, this issue, which will build on existing initiatives in the review of the federal proclamation and the work in pastoral and semi-pastoral land rights, can be addressed in a pragmatic and constructive way that offers the GoE the chance to build on past achievements and follow the new strand of better governance that is already found in the GTP2.

Finally, Ethiopia in fact enjoys considerable advantages due to its unique historical heritage and the comprehensive land reforms of pre- and post-1991 governments. While there are clear concerns regarding the lack of transparency in many areas of land governance, it is reasonable to say that the GoE, through its ‘development state’ strategy, with a strong investment in social sectors and especially education, is now at a stage where it can look for more democratic ways to move its development programme for the country forwards. Land strategy is a central part of this process, and once again, the country has important and positive elements in its legislation that allow for a flexible and inclusive process of agricultural development that unites both smallholder and investor in a common cause.

⁸⁷ See Cotula and Leonard (2010); Allan et al. (2013); Wolford et al. (2013). Linking smallholders and large-scale investors in supply chains is reviewed in OECD 2014

Annex 1 Improving Land Transparency in Land Governance

This Outline Plan addresses the issues and constraints identified in the Transparency Report, through several interlinked components. While each component can stand alone and be supported by one or more donors, together they contribute to delivering the GoE ADLI strategy as well as improved land governance. Once agreed by all stakeholders, the outline can be developed into a fully detailed and costed Plan.

Strategic Framework

The strategy for improving transparency in land governance is simple:

- Address the practical constraints on good governance and administration, including data systems and the urban/rural interface
- Improve communication and support for women and vulnerable groups
- Promote regular, inclusive and open dialogue around land governance issues
- Provide legal empowerment/legal support at community and local government level
- Support inclusive business models for investors which deliver on ADLI while still respecting and working with local rights and rights holders

This approach will:

- Enhance rights (SLLC programme) and encourage smallholder and local community investment (including pastoralists who want to diversify into other activities);
- Prepare land administration services for managing change and providing clear legal baselines for contracts and other forms of shared land use
- Generate good data *and analyse it*, to inform policy makers and land users alike
- Begin to address urban expansion issues with improved systems, legal instruments, and professional human resources
- Strengthen gender and vulnerable group support with additional human resources and training for local level land administration and related support services
- Create a space for the GoE and civil society to begin talking about land issues, and for lessons learned and other empirical data to feed back into policy discussions
- Improve the capacity of all rights holders (including women and vulnerable groups) to use their rights in practical, income enhancing ways
- Ensure that LACs and other key public-sector actors are fully conversant with the policy and legislative framework that are charged with implementing
- Promote 'good investors' willing to negotiate with local rights holders over land access and use, and thus generate real benefits for local people who give up their land

Outcomes:

- Unused or underused land is brought into production;
- Smallholder and local community livelihoods strengthened;
- 'Win-win' scenario where smallholders, communities, investors (domestic and foreign, large or small), and the GoE all gain
- Improved transparency through better systems, bottom-up demand for better governance, and stronger 'buy-in' to the national development strategy

Other Points

The inclusive approach will 'go beyond the dichotomy of large vs. small and look instead at new ways of combining the two' (Ali and Deininger 2015). This refers to the potential synergies between large investors and smaller farmers working in the same area and/or sharing land and other resources. The present legislative framework is already well developed to allow this; it is likely to be more so once the current revision of the Federal land law is completed.

Legal empowerment – educating people about their rights and how to use and defend them – addresses the demand side of the land governance issue and equip women and other vulnerable groups to defend and secure their rights when necessary. It is also key to helping people *use their land rights*, for example by

assisting with negotiations and contracts with investors, advising on how to use Certified holding rights to access credit and other services, etc.

It will also be important to track the development of the new legislation and to work closely with the GoE in its implementation. With the 'holding right' evolving into something more like a private property right, there is considerable potential for using it to support income enhancement and diversification for smallholders and others who are less able to use their land. Existing legal provisions for renting and contracting out land already form a good basis for this. It is also possible that these provisions could provide an answer to the question of what rural holding rights holders can do with their land once it becomes 'urban' as the Master Plan lines expand outwards. These and other issues can be addressed in the medium term through the dialogue mechanism proposed in Component Three of the Plan (see next paragraph as well).

Whilst the present legal review and development of a National Land Use Policy have been *relatively* well discussed, the process has nevertheless been quite contained. There is a need for greater dialogue with and feed-back from, land users of all kinds. Civil society groups are normally the interlocutors in this kind of discussion, and the GoE should be encouraged to see this as a positive contribution rather than a threat. The 'Land Forum' model used in Mozambique since late 2010 might be a useful example, where the Government retains considerable control while promoting stakeholder dialogue and feedback around practical land issues and policy points.

Developing inclusive approaches to agricultural investment – large and small, national and foreign – ties a lot of the above together around delivering the ADLI strategy of the GoE. The new GIZ project at the EAILA is an excellent starting point for this, and several elements of the Plan either link directly with this or support it through complementary activities (such as legal empowerment and legal support, and local government training in *using land legislation for development*).

Finally, Ethiopia has already achieved a great deal with the First and Second Level Certification programmes, and the lessons learned – positive and negative – from the LSLI experience since the mid-2000s. The Plan intends to build on these achievements and promote a strategy for *inclusive development* that will enable the GoE to work with all its citizens to meet the SDG goals and its own ambitious 'middle-income country' target. Other opportunities are created by adherence to initiatives such as the New Alliance for Food Security and Nutrition, and the gains made in health and education through the GoE commitment to the MDGs. The country is now at a critical point where it can begin to open up dialogue on land issues and look for more inclusive and democratic ways to move its development programme for the country forwards.

Elements of a Plan to Improve Transparency in Land Governance

Component 1: Stronger Key Public Services, with a Stronger Social Focus and Sustained Improvements in the Quality and Availability of Land Use and Related Data

The Transparency Report makes a case for improving transparency in land governance by providing an effective, well-trained and well-equipped Rural Land Administration. It also identifies serious weaknesses in the administration and implementation of urban expansion, with special attention to how rural land is expropriated and converted into urban land. These weaknesses foster a culture of corruption and un-transparent activities affecting the rights of ordinary citizens. The analysis of land use data by Ali and Deininger also underlines how good data collection and analysis can contribute towards better strategic thinking and land governance.

To address these points the following activities are proposed:

Land administration and management:

- Equip the land administration system to handle change management and ensure it is accessible, quick, and low-cost to ensure that rights holders use it at 'point of change'.
- Build in upwards and downwards accountability in the Rural Land Administration.
- Legal and practical training for build *kebele* and *woreda* officials including in the judiciary, in the basics of the national policy and legal framework for land
- Foster synergies and integration of land administration/certification and local land use planning, with wider participation and engagement by all stakeholders.

Data management and use:

- Strengthen data management and analysis to ensure good quality information is available to policy makers and land users alike.

Urban-rural Interface – Capacity-building for professional capacity and normative systems:

- Technical assistance to develop a new policy framework and appropriate legal instruments for a well-managed urban expansion programme
- Developing additional legislation and guidelines for the *process* of expropriation and compensation (not just the rules for calculating values etc.)
- Development of urban Land Administration Systems in all the main cities and towns; and ensure that these are accessible and open to promote transparency
- Capacity building and professionalization of the services handling all expansion and land issues, including zoning, expropriation, valuation, and compensation
- Provide material and technical support to the ‘joint platform’ of the Ministry of Urban Development and Housing, and the Ministry of Agriculture, and partner municipalities.

The RLA and LIMS support by the LIFT and REILA projects is already addressing these points but preparing government structures for a post-SLLC future is a key challenge. This requires more than just new equipment; it also requires new job descriptions, Terms of Reference and profiling for new staff, and relevant training. Detailed needs for the data system and urban-rural interface activities will require further assessment and development detailed capacity building proposals.

Component 2: Address Poor Public Information and Gender Mainstreaming Issues

The Transparency Report has identified a significant level of systemic challenge when it comes to ensuring that the land rights of women and other vulnerable groups are correctly identified, assessed, and secured through the SLLC programme. Women and others also need clear guidance on how to use their rights to access development support and link to new markets.

These are not strictly problems of transparency but are rooted in gender-biases in many local government and non-government entities that have a stake in land issues, and deep-rooted cultural factors that deny women their legal rights under formal statute law. Weaknesses in social communications strategies, materials for addressing these issues, and human resources problems, all contribute to the bumpy road that programmes, including LIFT, as well as governance structures must pass through and struggle to adequately address the issues.

To address these questions the following activities are proposed:

- Stock-taking of best practice in other GoE programmes and country contexts
- Enhanced social communication activities:
 - Training in participatory social communication techniques for field staff
- Provision of more support for women and vulnerable groups to engage in the Certification process and in follow-on programmes:
 - More female staff in field teams leading the SLLC process
 - Dedicated information material for women and vulnerable groups
 - Improved visual material to facilitate public meetings
 - Dedicated meetings for women, and dedicated periods for women to attend public displays etc.
- Managers to follow women and vulnerable group issues and adopt new approaches or strengthen relevant activities as required
- Making better use of available structures such as the ‘1 to 5’ mobilisation and information system at local level
- Identifying new NGO partners and developing a cooperative programme with them
- Supporting reinforcement of gender and vulnerable group staff in GoE structures at Regional level and below

This component will also link directly with Component Four, below.

Component 3: Promote Dialogue Between GoE and all Stakeholders Involved in Land Administration, Management, Planning etc.

It is essential to build in upwards and downwards accountability in the RLA, and to create space for other stakeholders – government departments, civil society, and business associations – to interact with the RLA and GoE at various levels.

This component supports the creation of a ‘Land Forum’ mechanism, led by the GoE (probably through the RLAUD), and operational at different levels and times.

Participants should include:

- All GoE and regional sectors that manage or work with land resources
- Local government structures (*woreda* and *kebele* teams)
- Agencies like the EAILA
- Civil society organisations
- Academic and specialist institutions
- Private sector interests and representatives
- Donor partners (when appropriate, if funded projects are being discussed for example)

This component would pick up the process created by the LGAF activity which is now completed and awaiting the launch of regional review meetings.



Meetings should be held at regional level at least once a year; the diagram shows a possible configuration for each regional meeting. A National meeting should also be scheduled yearly to contrast and compare experiences and contribute to policy and legislative discussions at Federal level.

It is important to include local level structures and ensure proper gender representation. Structures already exist at *kebele* and *woreda* level to

support implementation of the land rights certification programme – the Land Administration Committees (LAC). These already include women;

the LACs are also working reasonably well but need to be reinforced and supported to take on a broader role which matches post-SLLC land administration tasks.

The World Bank notes that an appropriate model to refer to might be the Consultative Forum on Land created by the Government of Mozambique in late 2010. Given the sensitive nature of the issues likely to be discussed, it is recommended that this mechanism be funded by a group of donors rather than by any single donor partner. This modality would promote the sense of the ‘Forum’ being a national initiative and not reflecting the agenda of any specific donor partner.

Component 4: Legal Empowerment and Local Government Capacity Building in Inclusive and Negotiated Rights-Based Development

This component of the Plan aims to address two complementary weaknesses identified in the regional reports commissioned by the LAND project, and also observed in discussions with informants and during field visits:

- a lack of knowledge about land rights and related legislation on the part of land users and especially women and vulnerable groups
- a matching lack of knowledge and understanding of the legislation and how to apply it, amongst LAC, kebele and woreda staff, and amongst local level judicial structures (formal and informal)

The proposal is to develop this component based upon the FAO ‘Twin-track’ training model developed in Mozambique⁸⁸. This model integrates legal empowerment at community level with reinforcing capacity and

⁸⁸ See Tanner and Bicchieri 2014

changing attitudes amongst ‘frontline’ implementation level public sector officials (including administration, policing, and judiciary). Activities for each group include:

Community level:

Create and train a corps of *paralegals* to:

- Inform and advise smallholders and communities on land and other rights (with a focus not just on defence of rights, but also on *how to use them to support new land use and livelihoods strategies*);
- prepare local people to discuss and negotiate with investors and the State over access to local land (lease, rent, contract clauses in land legislation);
- provide basic legal assistance in dispute resolution;
- Provide basic legal assistance during negotiations and contract development with other actors (investors etc.) – using inclusive business models.

Local government capacity building:

Interactive seminars with all relevant officials covering:

- Fundamental rights in the Constitution
- Gender and women’s rights issues
- Key elements in the legislative framework and how these can be used to develop a more inclusive approach to rural and agricultural development
- Inclusive business models linking smallholders/pastoralists and investors using existing legal instruments (rentals, contracts), joint-ventures and other approaches
- The links between inclusive development of this kind and the local planning process

This component interacts closely with Components 2 and 5. Ideally it would be implemented by a reputable legal training entity, such as a leading University Law Faculty, which can bring both credibility regarding the messages transmitted, and a politically ‘safe pair of hands’ to the challenge of empowering people with a view to constructive engagement with other actors.

Component 5: Integrate VGGT and PRAI Frameworks into the Work of EAILA and the LSLA Investment Process, Including Building Methodologies to Identify and Register Holding Rights of Communal and Pastoralist Populations

The inclusive development approach requires local land rights to be recognised and defined on the ground. This needs research into communal and pastoralist land use systems (already supported by USAID with Bahir Dar University), and the piloting of an effective and implementable ‘fit-for-purpose’ rights identification and recording methodology.

Lessons learned are available in the extensive literature on this issue. A good model is provided by the innovative ‘community land rights delimitation’ approach developed in Mozambique with FAO support⁸⁹. This approach identifies and proves acquired rights through a participatory rural diagnosis methodology, focusing on the land use and production system of the community or pastoral group in question. These systems include the social relationships and local (customary) land management structures. The delimitation process proves the acquired rights and establishes the limits of the territory which they cover (which equates to a form of collective holding right).

At the same time a Community Land Use Plan can be developed that might identify areas that can be allocated to investors with the prior consent of local people (this land could then enter the Land Bank without any controversy over rights being marginalised).

The component will then explore how to promote interactive engagement between delimited communities and external investors who want to use all or some of the delimited land. It is important to note that the limit which encircles the system on the ground is defined as an ‘open border’. This means that investment can and should take place *inside* the delimited area – this answer concerns amongst some in government circles that the methodology excludes investment and prevents underused land resources from being developed. Indeed,

⁸⁹ See Tanner, C., Norfolk, S., and De Wit, P. (2009)

precisely the opposite is intended, generating a process of agrarian transformation along the lines favoured by the GoE in any case (for example, a more sedentary form of land use in some cases).

The component is grouped around two sets of activities:

Research and regulatory development:

- Continue and extend research into land use systems (national universities/USAID)
- Develop and pilot an adapted version of the Mozambique/FAO delimitation methodology
- Include some form of Community Land Use Development Plan as rights are delimited and recorded (this might pre-identify opportunities for inclusive investments)
- Develop a regulatory framework for certifying/registering collective rights

Pilot programme:

Provide resources for trial delimitations in selected areas:

- Train and support communities to negotiate with investors and develop constructive and viable inclusive business agreements (fits with Component 4).
- Develop communications and advertising campaign to identify suitable investors (pre- advised on requirement to develop and work with inclusive business principles).
- Facilitate and mediate meetings and contract negotiations between investors and communities (again interaction here with Component 4, use of paralegals, local government officers trained for the purpose, etc.).

It is envisaged that this component could be taken over by GIZ in the context of its new project at the EAILA. Alternatively, a separate but complementary project could be developed that would run alongside the GIZ project and would also be based at the EAILA. The component is fully aligned the VGGT and PRAI frameworks.

Component 6: Rural Land Taxation and Long-Term Sustainability of Land Governance and Administration Institutions

This component is intended to provide the longer-term funding for a sustainable post-SLLC land administration system, and other activities proposed in Component One. By ensuring continuity and the resources to upgrade land administration and other services, an effective land tax and land charge system can also begin to address issues of petty corruption that occur in administrations where low pay and poor career development are common features.

At the present time it is confirmed by the GoE and others that there is a very low revenue stream derived from land taxes and related administrative charges. In most countries these taxes and charges form the basis for land administration budgets and other land governance services.

It is proposed that the LIFT Project support a short-term consultancy to carry out a full review of the present land tax and land charge arrangements in Ethiopia, at both Federal and Regional level. The resulting report would include recommendations about how to proceed to developing a new project or integrating new activities either into this Plan for Improved Transparency, or into future support to the GoE.

Outline Timing and Costing of the Plan

COMPONENT	PERIOD	ESTIMATED COST	COMMENTS
Address weaknesses in the key public services	To end of current LIFT project	LIFT RLA budget; TA costs for other elements over three years. Up to GBP 0.5m	TA support and professional training Ethiopia/overseas
Address poor public information and gender mainstreaming issues	To end of current LIFT project	<ul style="list-style-type: none"> • More gender and VG staff • Participatory training courses for 'frontline' staff • Improved visual materials : Up to GBP 0.5m	Find additional resources or adjust present budget
Support forum for open multi-stakeholder dialogue on land and development	To end of current LIFT project	GBP300,000 per year Support for meetings (1 x region; 1 national, per year) Up to GBP 0.5m	Cost-shared with other donors, foster national ownership

COMPONENT	PERIOD	ESTIMATED COST	COMMENTS
Legal empowerment and local government capacity building in inclusive and negotiated, rights-based development	To match current EAILA/GIZ time frame	(TA, equipment, training programme and materials development; field trials; M&E/lessons learning) GBP 2-3 million	Through a law faculty; FAO 'twin-track' model (FAO Development Law Service as partner?)
Recognise and identify rights of pastoral/communal communities and develop inclusive LSLI process	Central level support and pilot already with GIZ; Plan could extend to other areas	(TA, implementing pilot-tested approach in 3 other areas) GBP 2-3 million	Collaborate with GIZ EAILA project
Land taxation in support of sustainable RLAS	2-month study	Consultant based study with recommendations	Within current LIFT framework

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