

Ethiopian Land Administration Professionals Association (ELAPA)

Land Policy Training Module



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Module One:

GENERAL THEMES ON LAND POLICY FORMULATION AND IMPLEMENTATION

Unit 1

The Features, Context and Importance of Sound, Viable and Effective Land policy

Land policy gives clarity, predictability and certainty to the direction and path pursued by a legal regime and regulatory institutions. It addresses core issues related to land including access/ownership, use, tenure security, control, transfer, administration and management with a view to efficiency, equity and sustainability in the context of good governance.

1.1 Core features of land policy

The *Framework and Guidelines on Land Policy in Africa* provides the following definitions for land policy, land reform and land tenure:¹

“**Land policy**”: the set of agreed principles to govern ownership (or access to), use and management of land resources to enhance their productivity and contribution to social, economic, political and environmental development and poverty alleviation.

“**Land reform**”: a process which involves comprehensive restructuring or redesign of at least three components of the land system; namely its property structure, use and production structure and the support services infrastructure.

“**Land tenure**”: the nature of and manner in which rights and interests over various categories of land are created or determined, allocated and enjoyed.

Global Land Tool Network (GLTN) defines land policy as follows:

“A land policy can be defined as a set of rules and guidelines that govern how a country’s administration will govern, manage and administer land in that country. It should strengthen access to land, tenure security; it should especially ensure the land rights of poor and vulnerable communities; ensure sustainable land use; provide direction for fit-for purpose land administration services; and guide the prevention and resolution of land conflicts and disputes.”²

Activity:

- Discuss whether there can be land policy in the absence of a written policy document

¹ Framework and Guidelines on Land Policy in Africa, AUC-ECA-AfDB Consortium, 2010, Addis Ababa, Ethiopia

² Global Land Tool Network (GLTN): Available at: <https://gltn.net/land-policy-and-legislation/>

a) Goals and Objectives of Botswana’s Land Policy, August 2015 (Paragraphs 50 and 51)

[Para 50]: Land is an important resource, the very base on which the nation stands. ... Specifically the policy will: ...

- ii. Promote *access, equity, efficiency, land rights security and transparency in land management and administration*; and
- iii. Be *responsive* to emerging opportunities and dynamics of planning and development in the country. [*Italics added*]

[Para 51]: The overall goal of the policy calls for improvement in the land administration and management, both from a system, environmental and economic perspective. ... The object is to *use* land, *conserve* and *protect* it for future generations. On the basis of these, the overall objectives of this policy are to:

- i. Protect and promote the land rights of all land holders;
- ii. Ensure that all eligible citizens have the opportunity to *access* and *use* the land;
- iii. Encourage citizens’ *retention of rights to land*;
- iv. Promote *equity in access* to land and natural resources;
- v. Improve *land management* system on *customary, state land and freehold land* to make it *predictable, transparent, reliable, consistent and timeous*;
- vi. Establish an up-to-date, efficient and accessible *land information* centre; and
- vii. Promote *compatible and best use* of land, and other land resources.

Activity:

In light of the words indicated in *italics* above

- Discuss sources, documents or instruments in Ethiopia’s legal regime that can ensure or promote “access, equity, efficiency, land rights security and transparency” commensurate with the objectives stated under Paragraph 50(ii) of Botswana’s Land Policy.
- State your views on ‘compatible and best use of land’ (Para. 51(vii)) in the context of sustainable use, conservation and protection (Para. 51(vii)) of land units:
 - i) adjacent to Lake Tana, Zway, Haramaya etc
 - ii) at the hilly parts of Addis Abeba (e.g Yeka hilly land units/parcels across Megenagna Square).

b) Policy Actions in Sections 5.1 to 5.6 of Ghana’s National Land Policy (June 1999):

- “- Securing Ghana's International Boundaries and Shared Water Resources
- Facilitating Equitable Access to Land
- Security of Tenure and Protection of Land Rights Ensuring Planned Land Use
- Developing Effective Institutional Capacity and Capability
- Revision of the Policy Document”

Activity:

Section 5.6 of Ghana’s National Land Policy provides: “The provisions of this policy document and the legislations derived therefrom will be reviewed and adjusted periodically, to reflect emerging realities and land administration challenges as and when necessary.”

Reflect upon the Ethiopian context in relation with the ‘*responsiveness*’ in land policy envisaged in Section 5.6 of Ghana’s Land Policy and Section 50(iii) of Botswana’s Land Policy cited above.

1.2 The importance of sound, viable and effective land policy

As stated in GLTN's Report 5/2014:

“Land usually plays a central role in a country's economic, social and political development and the context is often defined by historical, cultural and political influences. A country's long-term national development strategy usually defines how land issues are to be addressed and it links the land sector to other related sectors for social, economic and political development. As a natural resource, land often determines the livelihoods of poor people in a developing country. ...”³

“Land is one of the most sensitive political issues in any country and the *political will for reform* is reflected in a government's willingness to have an open, consultative and inclusive land reform agenda. Often, *vested interests create conflict and hinder the effectiveness* of land reform processes, so [there is the need] to engage stakeholders at various levels and build key relations with decision makers and interest groups in order to understand their views and positively influence the reform process. ... *Without clear political will, land reform processes are delayed and disrupted...*”⁴ (*Emphasis added*)

Activity:

- a) Discuss the themes in the quotes above in the Ethiopian context and share views regarding the factors that have caused delay and procrastination in land reform in Ethiopia) in spite of various research findings that call for reform.
- b) A Policy Guide issued by the British Ecological Society (May 2017) states that policies “*guide actions in order to achieve a goal*” by describing “*an objective or course of action ...*”. State your reflections on the role of sound, viable and effective land policy in the attainment of goals such as equitable, efficient and sustainable access, use and control of land.
- c) State your reflections on the following elements under “Importance of land policy” (FIG, 2013, p. 1) which indicate that the absence of land policy can be “a missing link” with regard to effective land regimes.
 - Lessons learnt: policy, a missing link of successful land reforms in Africa
 - Need for comprehensive/ intersectoral land policy
 - Development/ implementation/ monitoring
 - Rural/ urban
 - Other land uses ...
 - Land policy responding to specific national challenges
- d) Discuss the following quote in the context of land policy as a direction in the initiation, drafting, enactment, implementation, outcome monitoring and impact assessment of laws: “*If you don't know where you are going, any road will take you there.*” (Lewis Carol)

³ GLTN “How to Establish a Land Sector Non-State Actors Mechanism”, United Nations Human Settlements Programme (UN-Habitat), 2013, p. 2
<https://gltn.net/land-policy-and-legislation/#>

⁴ Ibid.

-
- e) Role play
Share your reflections and observations in the equity, efficiency, livelihood quality and environmental sustainability balance in the following laws enacted in the absence of land policy:
- the 1975 rural land reform
 - the 1975 urban land reform
 - Post-1990 land laws
- f) Role play on *lessons learnt*:
- Groups A and B: Lessons learnt from Ethiopia’s rural land reform (1975)
 - Groups C and D: Lessons learnt from Ethiopia’s urban land reform (1975)
 - Groups E and F: Perpetual permit in urban land under the land reform in 1975 *versus* leasehold under Proclamation 80/1993, 272/2002 and 721/2011

1.3 Context and root causes

The following issues are identified by FIG⁵ [Federation of Surveyors] as complex issues related to land in Africa:

- Diversity (Ecological, historical, economic, and political; legal pluralism...)
- Rapid change (Population growth; urban development; climate change...)
- Political implications (• State sovereignty over land; • Customary based land rights/ systems; • Gender and access/ ownership of land; • Land for agricultural development/ other economic uses; • Land taxation; • Land use planning; • Challenge of innovative/effective land administration systems; • Emerging land issues: land governance in development, LSLBI [large scale land based investments] ...)

Activity:

- a) Discuss the issues above (identified by FIG) in the Ethiopian context
- b) Read the following and relate the Ethiopian land regime with ‘*investment*’ and ‘*sustainable land management*’

“The Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods ... highlights that good land policies and management are key to achieving agricultural transformation with equitable access to land and secure land rights being critical to *investment* and *sustainable land management*.”⁶

- c) Paragraph 3 of Kenya’s National Land Policy (August 2009) states the Policy’s *vision* as:

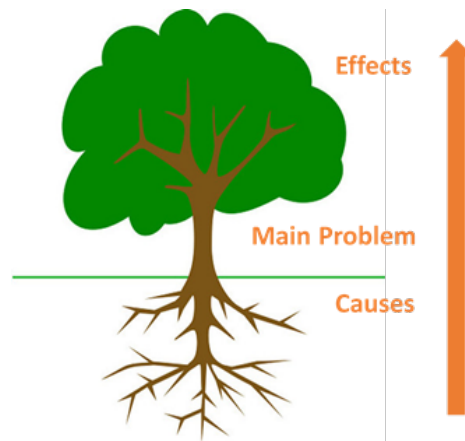
“A National Land Policy that will guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity”.

Paragraphs 4, 5, 7 and 10 respectively deal with *mission* of the policy, *objectives*, *principles* and *policy review* that is envisaged to be conducted “every ten years to take into account current and future needs in view of social and economic dynamics in the land sector”. Reflect upon the current and future needs in the Ethiopian context that necessitate land policy.

⁵ FIG, 22 May 2013, p. 2

⁶ 2023 Conference on Land Policy in Africa (CLPA-2023) , Draft Concept Note, p. 1 (African Land Policy Centre, Economic Commission for Africa)

The concept of the 'Problem Tree' Analysis



Source: Sidaroth Kong; September 2016

Activity

Carefully examine the following issues and consider them as *the trunk* (i.e., *the problem*), and identify *the root* (i.e., *causes*) and *the branches* (i.e., *effects* of the problems). You are then expected to change the causes of the problems onto *means towards the solution* of the problems so that you can think of an issue that deserves attention as an element in land policy:

- Shortages of open spaces and green areas in various urban centers in spite of the 30:30:40 urban plan ratio (or at least 30:25:45 proportion for cities established before 1950) for (i) roads and other infrastructure, (ii) green areas and shared public space (iii) for construction of buildings –based on the *Urban Plan Preparation and Implementation Strategy* (MoUDH, July 2016, p. 26);
- The hyacine weed (አንባጭ) at Lake Tana;
- Steady shrinkage of Lake Abyatta; the degradation of Lake Zway; and the tragic damage to Lake Haromaya
- The nexus between Ethiopia's land regime and population growth (unmatched by economic development) and adverse, such as malnutrition in children;
- The contribution of Ethiopia's land legal regime to high level of land fragmentation and ethnic-based mass displacement;
- The increasingly growing charcoal (ከሰል) business in Addis Ababa and its impact on the environmental sustainability;
- The laissez-faire and widespread Chat/Khat (ጫጎ) farming (including at lake shores and sloppy lands) prompted, *inter alia*, by cash returns and export 'revenue' in spite of its adverse impact on food security, mental health upon addition, social health, etc

Readings on the Problem Tree

- Self-discovered readings by browsing "Problem Tree Analysis"
- Sample reading: Problem Tree Analysis, 7 pages, compiled by Leonellha Barreto Dillon:
<https://www.yoursaytweed.com.au/31175/widgets/181820/documents/80965>

Unit 2

Components, Models and Processes in Land Policy Formulation

2.1 Introductory issues

- a) Reality, truth, theory, concept, idea
- b) Critical thinking, analysis, thinking outside the box, lateral thinking
- c) Concerns relating to the context in policy formulation
 - Facts
 - Issues
 - Stakeholders, and prioritization of needs and interests
 - Courses of action and their short-term/long term effects
 - Practicality of the option that is preferred
 - Policy choice

2.2 Components of national interest in land

Reading: McAuslan⁷

McAuslan raises the question: “What are the essential national interests in land which would or can justify national intervention into land relations in the form of a land policy and formal institutions of land management?” He then discusses the following interests that necessitate land policy:

a) Efficiency

“In any society land is a scarce resource. It may be scarce because of population pressure; because little of it is habitable or usable; because the resources of capital necessary to make it habitable or usable are themselves unavailable; because certain practices make extravagant uses of land; or because too much land is owned or under the control of people who prefer the land to lie idle than to be brought into productive or socially beneficial use. ... [E]fficiency in the allocation use of a scarce resource like land is a sufficiently important goal for society to aim for to provide a justification for the governmental organs that society to have policies about it and to seek to implement those policies.”

b) Equity

“...a fair and reasonable proportion of the resources of society, in this case land, [should] be made available to all members of society and that as a corollary of that, steps be taken to ensure that this is done and that the position is maintained. Why should this be so? First, I would argue that equity can itself be regarded as an aspect of efficiency. A labour force which is badly housed in overcrowded, poor environmental conditions is likely to be unhealthy and hence inefficient; better housing, more open space for recreation, a pollution-free environment is both more equitable and more efficient. The same point can be made for rural society. If, as

⁷ Patrick McAuslan ‘Land Policy: A Framework for Analysis and Action’, *Journal of African Law*, Spring, 1987, Vol. 31, No. 1/2, , 185-206

is beginning to happen in some countries in Africa, more and more land is turned over to agribusiness, -estates growing export crops run by multinational corporations- then the amount and quality of land available for food crops shrinks; the rural population can no longer adequately feed itself let alone produce a surplus for urban populations; such land as it can use is degraded through overuse with further falls in food production and a vicious circle sets in; malnutrition, further migration to urban centres, foreign exchange having to be spent on the import of food for the urban population and local funds used to subsidise food prices. An equitable distribution of land between peasants for food crops and cash crops, and agribusiness would achieve a more efficient use of national resources although it might reduce some private profits. ...

... Equity in land policy then focuses in part on the importance of ensuring that the citizenry feel that they have a stake in society, that the society of which they are a part is worth supporting if not actively in the sense of participating in government then at least passively to the extent of not becoming involved in trying to overthrow the institutions of government. ...”

c) Certainty

“Efficiency and equity may be seen as economic and social aspects of land policy. Certainty is much more of an administrative and legal aspect. It is not difficult to think of statements in cases when judges have stressed the importance of certainty in property relations as a reason for denying a party a claim to which in fairness and justice, it might be thought he or she is entitled. ...

... [J]ust as equity may be seen as an aspect of efficiency, so certainty may be seen as contributing to both efficiency and equity. A system of land relations could not be regarded either as efficient or equitable if the interests of people in the land were constantly likely to be disturbed; if redress was impossible to obtain from any provided agency so that one had to resort to self-help, and there was a general lack of knowledge about who had what claims to what land. All societies ... realise that failure to provide effective mechanisms for establishing an element of certainty in land relations will quickly lead to a breakdown of social and political relations. Certainty can make a reality of efficiency and equity”

d) Safeguarding the state and the national patrimony [including the environment]

“... When the wealth of a country consists of and is bound up with the efficient and equitable use of land, it is very much a matter of national concern that that land does not pass into the hands of aliens, particularly foreign corporations acting as absentee landlords concerned with short-term high profit projects only, rather than long-term lower profit projects combined with ecologically sound management and renewal of the land.

... A further important aspect of protection of the national patrimony is the environmental and ecological dimension. Indeed some might argue that this should be seen a separate national interest in land policy, so important is it now seen to be. But the aim and purpose of an environmental aspect to land policy is to protect and enhance the quality and usefulness of land by discouraging bad and encouraging good land use practices. The time has long passed when environmental considerations were seen as inimical to development; now it is widely recognised that not to take account of environmental considerations in planning and executing development projects is inimical to development. ...”

e) The recognition of [different circuits]

Land policy in:

- circuit one (customary rights in land), pp. 195-196
- circuit two (informal land holders), pp. 196-198)
- circuit three (formal land titles), pp. 198-201)

Activity

- a) Give ranking (in the Ethiopian context) among the factors that cause land scarcity indicated in the quote above (page 6) under the title ‘Efficiency’.
- b) Relate equitable access to land that is conducive to efficiency *vis-à-vis* free riding and laissez-faire ‘access’ which can cause ‘tragedy of the commons’ whereby the commons can be overexploited and depleted as a result of the desire to maximize individual benefits at the expense of sustainability.
- c) Discuss scenarios whereby national intervention in policy making can accommodate and balance ‘equity’ and efficiency’.
- d) Give examples of fixation on ‘efficiency’ in disregard to ‘equity’ and the vice versa.
- e) Assessment conducted in 2020 in six regional states shows the following:

... በጣም የተለመዱ የሕግ ነክ ችግሮች ወይም ግጭቶች ውስጥ በቀዳሚነት ከመሬት ጋር የተያያዘ (34%)፣ ወንጀል (20%)፣ ከጎረቤቶች ጋር ያለ አለመግባባት ወይም ግጭት (11%)፣ የቤተሰብ ጉዳይ (11%)፣ የቤት ውስጥ ጥቃት (6%)፣ ከገንዘብ ጋር የተያያዙ አለመግባባቶች (4%) እንዲሁም ከአሠሪ እና ሠራተኛ ጋር የተያያዙ (4%) እንደቅደም ተከተላቸው ናቸው።

Relate the magnitude of land related disputes with the issue of ‘certainty’ highlighted under 2.2(c) above.

2.3 The need for compatible land use in the context of efficiency, equity and environmental sustainability

This section focuses on the attention that is required to be given in the course of harmonizing compatible land use that balances the national interests in land (that are discussed in Unit 2, Section 2.2, i.e. efficiency, equity, certainty, national patrimony and environmental sustainability) in the context of good governance that is a crosscutting enabler.

a) The need for compatible land use

The Draft FDRE National Land Use Policy provides the following definitions to land use, land use policy, land use plan, optimal land use and land suitability:

“**Land Use:** means a process /an action put on a unit of land to produce optimized economic, social and environmental benefits.”

“**Land User:** means any person who is legally entitled to use and develop land resources.”

“**Land Use policy:** means a legal instrument that guides different alternative types of land uses [which] should be practiced and the related land resources [that should] be properly managed to deliver optimum social, economic and environmental

benefits accrued for the present and future generation without causing significant damage to the environment.”

“**Land Use Plan:** means a practice whereby the option that gives greater benefit without causing land degradation, environmental pollution are determined and implemented from among the different use options a land can give on the basis of physical, biological, social and economic information.”

“**Optimal land use:** means best use of specific plot of land among competing land uses.”

“**Land suitability:** means state of best fitness of a plot of land among competing land uses.”

b) Trade-offs –versus- complementarity

In earlier literature, the sole concern of most economic pursuits was ‘*maximization of profit*’ while the current mainstream thinking is in favour of *wider social goals* which balance profit, social wellbeing and environmental sustainability. The notion of ‘*trade-offs*’ had impliedly given primacy to ‘*efficiency*’ (optimal land use in economic development). However, facts on the ground clearly proved that certain environmental damages can be irreversible. There is thus growing support towards ‘*complementarity*’ between efficiency, equity and environmental sustainability rather than ‘*trade-offs*’. This balances the extremes of ‘*trade-offs*’ (under the guise of ‘*efficiency*’) and *ecocentrism* (which eventually leads to environmental degradation in the absence of economic development and social wellbeing).

Activity:

- Read the following excerpt from the Draft FDRE National Land Use Policy, Section 1.3 ‘titled *Justification for a national land use policy*’ and (i) state your views regarding the word ‘trade off’ in the second paragraph; and (ii) reflect upon the restrictive definition that should be given to the term ‘trade off’ in light of the caveat mentioned in the third paragraph (of the following excerpt) regarding the need to avoid “focusing on short-term benefits of land exploitation to the detriment of long-term conservation and sustainable use of land resources.”

“Land uses and users are diverse. Without sustainable land uses, land may not provide maximum and sustainable socio-economic and ecosystem benefits for our present and future generations. The major land use challenge for Ethiopia is how to arrest and reverse the severe degradation of our land resources.

... Optimal land use requires a land use policy at the national level that can provide framework policy to regulate various competing land uses and mitigate potential conflicts that may arise from these competing demands on finite land resources. A land use policy is a vital tool to balance the trade-offs between economic growth, sustainable land development, conservation and utilization of land resources.

... In the absence of a land use policy, the development of land may become arbitrary, focusing on short-term benefits of land exploitation to the detriment of long-term conservation and sustainable use of land resources. ...”

2.4 Caveats in policy formulation

(Source: Stephen H. Linder and B. Guy Peters, "From Social Theory to Policy Design," *Journal of Public Policy*, Vol. 4, No. 3 (Aug., 1984), pp. 237-259)

a) The need to avoid the 'garbage can model':

The need for coherent theory on how "government should intervene in the most efficient and effective manner rather than legislative acts and policy making by trial and error, or, analogy with other policies & programs or by intuition."

"where all inputs into the decision are thrown into the garbage can and the decision makers decide which bits to retrieve as and when it suits them (Cohen, March and Olsen, 1972). In such a decision-making environment the results of any round of choices are scarcely predictable." (p. 238)

b) Two options to avoid the 'garbage can' model (p. 238)

"- *Option 1*: Employ social theory more explicitly in making public policies (especially macro-level social theory as guide for action)"

"- *Option 2*: A more comprehensive theoretical understanding of the social world within which policy analysis functions (NB- Focus on the policy analysis itself rather than broader social or political theory)"

c) The need for effective and efficient public interventions –rather than random interventions– through a theory of policy design by using models such as the following:

2.5 Models in policy Design

Excerpt: (Source: Linden & Peters, From Social Theory to Policy Design, p. 241)

"The **model of causation** allows the analyst to associate certain outcomes in the society with certain initial states; disease results from germs. There may be alternative models of causation - disease coming from an imbalance of humors in the body or from [negative] thoughts - and these alternative models may be associated with world outlooks such as Marxism."

"The **model of evaluation** allows the analyst to map the outcomes of the policy process, or the initial state of society, into a set of normative premises about policy and society. These premises may be very broad, e.g. justice, or they may be more policy specific, e.g. efficiency."

"Finally, the **model of intervention** guides the analyst in the selection of the locus and form of intervention into ongoing social and economic processes in order to produce a desired outcome. Thus, this would be a theory of at what stage government should intervene, and which of the tools in its toolkit (Hood, 1984) it should select."

"We will argue that any macro-level theory will tend to provide very inadequate guidance in each of these three aspects of policy-making, and that again there is a need for a theory of policy design to aid in the formulation of policy, such a theory to contain within it guidance for understanding causes, evaluating outcomes, and guiding interventions."

Activity

- a) Reflect upon initial states in the Ethiopian context (by identifying a certain year's realities that you recall) relating to the availability and price level 'affordability' of cereals (including teff) and discuss whether the land regime is among the variables that have caused the problem.
- b) Try to recall the initial states of house rent availability (and affordability of house rent) in Addis Ababa and relate them with the urban land law regime (including urban planning and its implementation) if you think that it is one of the variables that have caused the problem.
- c) Try to recall the initial states of transportation services based on a specific year that you recall, and relate them with the urban land law regime (including urban planning and its implementation) if you think that it is one of the variables that have caused the problem.
- d) Relate your reflections in 'a', 'b' and 'c' above with:
 - the options in land policy design highlighted in Section 2.4 (b) & (c) above and
 - the models of causation, evaluation and implementation in policy design (Sec. 2.5)

2.6 Steps in Land Policy Formulation

Section 4.6 of the *Framework and Guidelines on Land Policy in Africa* provides the following summary on the steps that should be pursued in the formulation of land policy:⁸

Summary of Fundamental Steps in Land Policy Development

“Land policy development is clearly a complex, interactive and often long drawn out exercise. Reduced to its fundamentals, however, the process may be conceptualized as consisting of the steps summarized...below.

...

1. Stakeholder consultation and identification of salient problems in the land sector;
2. Preparation of working drafts for further discussion with stakeholders.
3. Appraisal of institutional and financial/budgetary options;
4. Refinement, processing and approval of the national land policy
5. Design of implementation programmes and rationalization of institutional responsibilities for implementation;
6. Enactment of new and revision or repeal of existing land and land-related legislation
7. Further dissemination of information to the public, training and capacity building to support implementation”

Activity: Role play

In a group of four or five, one of the group members is expected to moderate the discussion while three members state their reflections from any three categories of stakeholders with regard to salient problems in the land sector.

⁸ Framework and Guidelines on Land Policy in Africa, *supra* note 1, p. 29

Activity

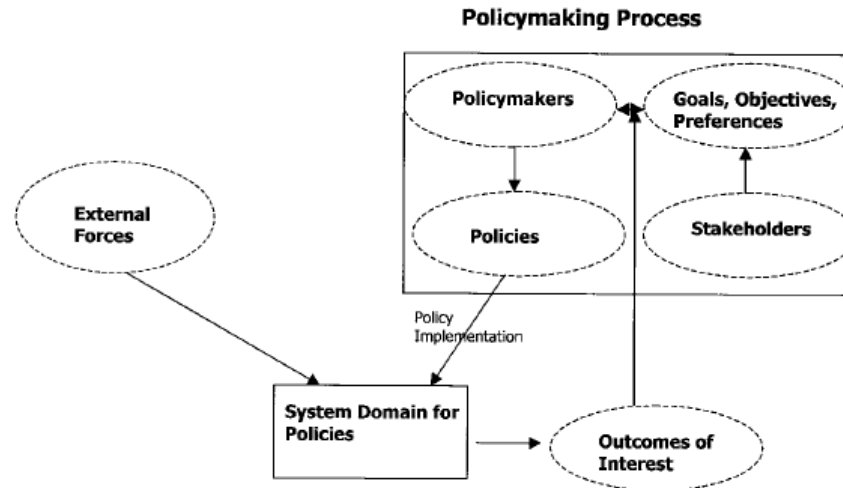
Read Section 4.5 of the *Framework and Guidelines on Land Policy in Africa* (titled “Appropriate Strategies for Land Policy Development”) and discuss the following themes in group:

- Clarifying roles in land policy development (Section 4.5.1, p. 26)
- Recognizing the role of indigenous institutions (Section 4.5.2, p. 26)
- Consultation with the land using public (Section 4.5.3, pp. 26, 27)
- Engagement with civil society organizations (Section 4.5.4, p. 27)
- Launching the land policy development process (Section 4.5.5, p. 27)
- Building capacity for land policy development (Section 4.5.6, pp. 27, 28)
- Ensuring availability of financial and human resources (Section 4.5.7, p. 28)
- Communication for land policy development (Section 4.5.8, p. 28)
- Providing anchorage for further policy development in land-related sectors and sub-sectors (Section 4.5.9, p. 28, 29)

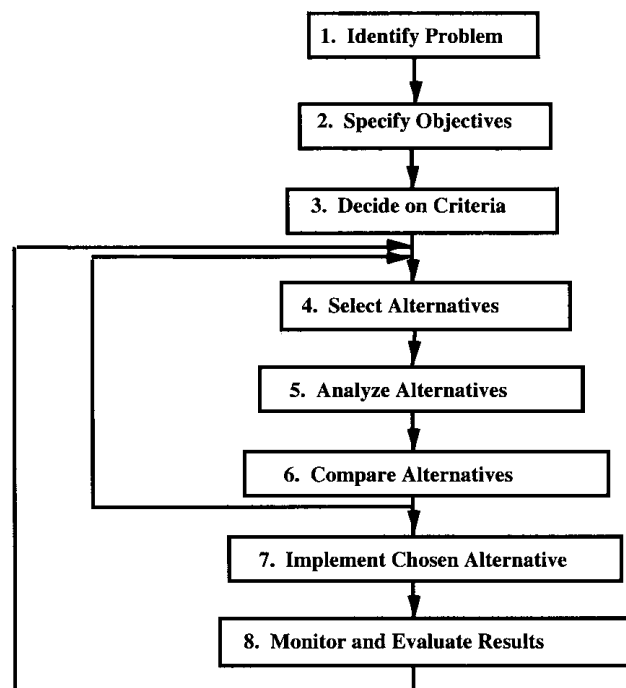
2.7 Processes in policy formulation

Reading:

Warren E. Walker (2000), 'Policy Analysis: A Systematic Approach to Supporting Policymaking in the Public Sector', *Journal of Multi-Criteria Decision Analysis*. 9: 11–27



Elements in the policy analysis approach
Source: Walker (p. 13)



Steps in a policy analysis study.
Source: Walker (p. 14)

Unit 3

Land Policy Implementation: Process, Principles and Practices

3.1 Introductory notes on policy formulation and implementation as framework and output towards goals and success

Excerpt:

“... Whereas *policy formulation* stands at the top and *builds up the framework, implementation is a direct consequence* of the decisions so to speak of the output of policy formulation. Several tools exist for both parts which assist in achieving their goals and which support the forthcoming and success of the process. Scenario technique is the vital one for policy formulation, control of success the one which provides the necessary quality of implementation. Both share the tools *participation, awareness raising & public relations* and *project management*. Project management ensures a consistent course of events, whereas participation and awareness raising target at the overcoming of political and especially social barriers and at guaranteeing success ... of ... plans, implemented measures, etc. under the aspect of acceptance.”⁹ (*Italics added*)

3.2 The linear model in policy formulation and implementation

Extract with omissions:

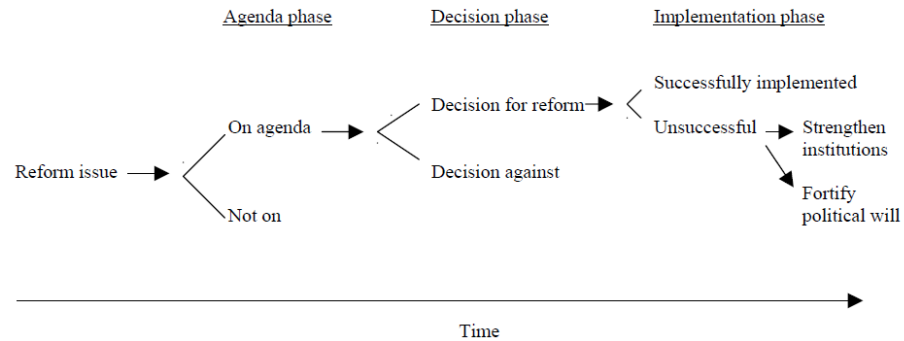
Rebecca Sutton (1999), *The Policy Process: An Overview*, (Overseas Development Institute, Clarendon Press Ltd London), pp. 9 - 11

“Variously called the linear, mainstream, common-sense or rational model, this model is the most widely-held view of the way in which policy is made. It outlines policy-making as a problem solving process which is rational, balanced, objective and analytical. In the model, decisions are made in a series of sequential phases, starting with the identification of a problem or issue, and ending with a set of activities to solve or deal with it. The phases are:

- Recognising and defining the nature of the issue to be dealt with
- Identifying possible courses of action to deal with the issue
- Weighing up the advantages and disadvantages of each of these alternatives
- Choosing the option which offers the best solution
- Implementing the policy
- Possibly evaluating the outcome”

⁹ “Policy Formulation and Implementation”, Portal Transport Teaching Material, (Institute for Transport Studies, University for Bodenkultur, Vienna, 2003), p. 10

The Linear Model:



Source [stated in Rebecca Sutton]: Grindle and Thomas (1990)

“This model assumes that policy makers approach the issues rationally, going through each logical stage of the process, and carefully considering all relevant information. If policies do not achieve what they are intended to achieve, blame is often not laid on the policy itself, but rather on political or managerial failure in implementing it (Juma and Clarke 1995). Failure can be blamed on a lack of political will, poor management or shortage of resources, for example.

There is much evidence to suggest that this model is far from reality. ...”

“... There has been an ongoing debate within political science on whether policy-making is a rational, linear process or a more chaotic procedure, dominated by political, practical and socio-cultural forces. Various models have been developed to explain the process.”

“One of the most important themes discussed in sociology and political science is that of development ‘narratives’. These are stories, which simplify complex development situations, often used by policy makers to guide their decision-making. They often develop the status of conventional wisdom. ...”

“Another important theme within the political science and sociological literature is the importance of interest groups, power and authority. ...”

3.3 The incrementalist model, and the middle ground between the linear and incremental

a) The incrementalist model

“Policy makers look at a small number of alternatives for dealing with a problem and tend to choose options that differ only marginally from existing policy. For each alternative, only the most important consequences are considered. There is no optimal policy decision - a good policy is one that all participants agree on rather than what is best to solve a problem. Incremental policy-making is essentially remedial, it focuses on small changes to existing policies rather than dramatic fundamental changes. What is feasible politically is only marginally different from the policies that exist, drastically different policies fall beyond the pale. In this model, policy-making is also serial, you have to keep coming back to problems as mistakes become apparent and are corrected, and new approaches to the issues are developed. The model suggests that major changes occur through a series of small steps, each of which does not fundamentally ‘rock the boat’. The ‘policy process is one of disjointed incrementalism or muddling through’ (Lindblom 1980).”

b) The mixed-scanning model

“This covers the middle ground between the rational (or linear) and incrementalist models (Walt, 1994). It essentially divides decisions into a macro (fundamental) and micro (small) classification. It involves the policy maker in taking a broad view of the field of policy. The rational/ linear model implies an exhaustive consideration of all possible options in detail, and the incrementalist approach suggests looking only at options which from previous experience are known to exist. In contrast, a mixed-scanning approach suggests taking a broad view of possible options and looking further into those which require a more in-depth examination.”

3.4 Policy as an outcome of reasoned arguments, social experiment and interactive learning

a) Policy as arguments

“Juma and Clarke (1995) describe this approach as one in which policy reforms are presented as reasoned arguments. Policy is developed through debate between state and societal actors. Participants present claims and justifications which others review critically. Language not only depicts reality in such arguments, but also shapes the issues at hand in these debates. It is a means of communication of ideas, but also serves to reflect certain political stances, moulding social reality according to outlook and ideology.”

b) Policy as social experiment

“This sees social change as a process of trial and error, which involves successive hypotheses being tested against reality in an experimental manner. It is based in the experimental approach of the natural sciences.”

c) Policy as interactive learning

“This approach is rooted in a criticism of development policy as being ‘top-down’, not generated from the communities in which policies are implemented. It argues for an ‘actor-perspective’, emphasising the need to take into account the opinions of individuals, agencies and social groups that have a stake in how a system evolves. The approach promotes an interaction and sharing of ideas between those who make policy and those who are influenced most directly by the outcome. The advocacy of participatory rural appraisal methods by Chambers (1983) is an example of this.”

Activity:

1. Discuss whether Ethiopia has land policy. If you consider Article 40 of the Constitution as ‘land policy’, state your reflections whether such laws can be regarded as a policy instrument, and whether a constitutional provision fulfils the flexible nature of policies.
2. Read the following quote and reflect upon your response to Activity 1:
“...virtually all countries have some sort of national land policy or a variety of instruments and mechanisms available to influence, guide or regulate land relations which, if carefully examined, point to some sort of national view on land relations. One can in other words have a national land policy without having formally to articulate it in the shape of a document ...”¹⁰
3. Compare the viability of the *linear (rational)*, *incrementalist* and *mixed scanning* models in the formulation, implementation and revision of land policy in Ethiopia.

¹⁰ McAuslan, *supra* note 7, p. 190.

Unit 4

Alternative Land Policy Options in the Ethiopian Context, and Stakeholders

4.1 Introductory issues

- a) Hobbesian conception of land ownership
- b) Marxist concept of land ownership
- c) The laissez-faire concept of land ownership
- d) Regulated markets
- e) The mixed approach in land ownership (private/free hold, private/leasehold, public, community/common property such as grazing lands)
- e) The land regime in developmental states of the 1960s until early 1970s (e.g. South Korea)
- f) The land regime in China's 'socialist market economy'

4.2 Preambular aspirations in Ethiopia's post-1975 and post 1991 urban land laws

Cited in EN Stebek (2020), "Urban Land Lease in Ethiopia: The Need to Examine Preambular Justifications in the Laws", *Ethiopian Civil and Commercial Law Series* (Volume X), Muradu Abdo, Editor, Addis Ababa University School of Law, Chapter 2, pp. 51-72.

a) Proclamation No. 47/ 1975

- enabling urban areas to afford opportunities of work and shelter;
- rectifying the acquisition of "extensive areas of urban land and numerous houses" by "an insignificant number of feudal lords, aristocrats, high government officials and capitalists who ... have created artificial shortages in the supply of urban land, thereby inflating its value ...";
- giving an end to the "... exploitation of the many through house rent"...;
- addressing problems relating to subjugation and oppression of "... the urban-dwelling workers and other toiling masses" who are "used as mere instruments for the furtherance of the comfort and luxury of the ruling class" thereby necessitating "economic, political and social rights which should have been made equally available to them", and the need to open to them "all the opportunities afforded by the urban center in which they live ... on the basis of equality";
- "... in order to bridge the wide gap in the standard of living of urban dwellers by appropriate allocation of disproportionately-held wealth and income as well as the inequitable provision of services among urban dwellers and to eliminate the exploitation of the many by the few, it is necessary to bring under Government ownership and control urban lands and extra urban houses."

b) Proclamation 80/ 1993

- "the non-transparent application of the permit system of land holding and utilization provided for in the Proclamation referred to above is beset with loopholes making it difficult to control discriminatory treatment of applicants and corruption;"

-
- “the need to promote the economic development of urban centres necessitates the control and appropriation of unjustified gains realized during the transfer of the right to use urban land whose value has appreciated;”
 - “it is necessary to lay down the framework within which Ethiopian investors can participate in the economic development of urban centres in accordance with the Economic Policy of the Transitional Government and the laws and regulations issued for the purpose of implementing said policy;”
 - “it has been recognized that in order for the economy of urban centres to grow and for their sources of revenue to expand, those who build dwelling houses and establish development enterprises need to have land tenure terms long enough to enable them to plan their activities in advance, to recover their capital expenditure and to enjoy secure landholdings;”
 - “it has been found necessary to provide for the planned development of urban centres with a view to creating appropriate conditions for the provision of health facilities and other services to urban dwellers and for the economic development of urban centres;”

c) Proclamation 202/ 2002

“ ...

WHEREAS, it is believed that transferring urban land by lease for a fair price, consistent with the principles of free market, will help achieve overall economic and social development and to help build capacity enabling progressive urban development based on the life span that a landed property may have and the period it requires to recover investment costs, the special nature of the investment, and the land use specified in conformity with Master Plan;

WHEREAS, it has been found necessary, arising from these circumstances, to develop optimum conditions in which lease will become exclusive urban land-holding system and to remove obstacles of and to [expedite] the process of permitting and holding urban land by lease based upon investment plan made in conformity with Master Plan;”

d) Proclamation 721 of 201

“WHEREAS, the sustainable rapid economic growth registered across all economic sectors and regions in the country has necessitated continuously and increasingly the demand for urban land which requires such an appropriate administration that ... is efficient and responsive to land resources demand;

WHEREAS, the prevalence of good governance is a foundational institutional requisite for the development of an efficient, effective, equitable and well-functioning land and landed property market, the sustenance of a robust free market economy and for building transparent and accountable land administration system that ensures the rights and obligations of the lessor and the lessee.”

Activity

Discuss the facts on the ground *vis-à-vis* the aspirations and rationale stated in the preambles of the proclamations

4.3 Alternative land policy implementation models

Reading: McAuslan¹¹ (pp. 201-206)

“... At one end we have complete *public ownership and control*, public ownership of all land and hence public regulation of all aspects of land relations, the *public ownership model*. At the other end we have *no regulation at all*, a complete free market in land with parties left to their own bargains and to decide for themselves how and in what manner they will use state facilities like courts to settle disputes. If parties prefer arbitration, domestic tribunals, traditional dispute settlement machinery, even self-help provided it does not disturb the public peace, then so be it. In other words the opposite end of the continuum to the model of complete public ownership and control is *the model of complete privatisation and freedom from state control*. In between these two is a wide variety of possibilities but they can be classified as: (i) *a regulatory model* where public agencies *regulate one, two or all three of the three fundamental rights of ownership-use, income gathering and disposition* and (ii) *a facilitative model* where public agencies exist and may or sometimes must be used to facilitate the exercise of the three rights.” (p. 202) [*Italics added*].

a) Public ownership and control

“Complete public ownership and control of land is commonly thought as a socialist land policy. In fact that is not necessarily so. It was a feature of many colonial land regimes ... [Fn 34]. It is also a feature of strict Islamic land regimes. A feature of these land regimes is that freehold ownership of land is not permissible; private individuals may obtain land from the state but only for limited periods, and limited interests and the terms on which the land is obtained allow the state wide rights of re-entry if those terms and conditions of development are not complied with. The state uses its residuary rights of ownership, its reversionary rights in effect, to ensure development and to control the use which is made of the land; transactions which might be undertaken in respect of the land; and via rent payments and rent review clauses, obtains a share in the profits derived from the land. Even in the customary system where such exists, persons on the land derive their rights to be there not from a traditional source but from the state. [Fn 35] The arguments in favour of such an approach come down to this: that land is too important a resource to the state to allow private individuals to own it. If it is legitimate for the state to have a national land policy then it is logical and indeed necessary for the state to ensure that it can implement its policy. Implementation is most effective through ownership and control.”

“The arguments against such an approach are equally to the point: the disadvantages of large-scale governmental involvement in land relations far outweigh the presumed advantages. They include expense, corruption; misallocation of resources; inappropriate solutions to problems and agency capture. All these disadvantages can be shown to have happened somewhere-they are not a particularly Third World phenomenon. Agency capture for instance-the defacto control exerted by persons and organisations over a public agency established to control and regulate those very persons and organisations is a phenomenon much discussed and researched into. ... For example the involvement of estate agents and small builders as

¹¹ McAuslan, *supra* note 7, pp. 201-206

members of local planning authorities in the UK is well known. The inappropriate solutions and misallocation of resources in connection with low income housing-vast high rise blocks of flats-are as prevalent in Europe and N. America as they are in Africa and parts of Asia. So too is corruption in land transactions. I am not arguing here that public administration in respect of land relations is inevitably inefficient and corrupt though I think some people would so argue. I make the point that, in deciding whether to adopt this particular model of policy implementation, one must not be starry eyed about the benefits of public ownership and control. At its best (Singapore is a good example Fm36) it can work and meet all the fundamental components of a land policy, but a realistic assessment of this model, looking at its plusses and minusses in practice around the world, would suggest that states should think carefully before adopting it; and that where such a model is or has been adopted, constant monitoring is necessary to ensure that it works to carry through the land policies implicit in it and does not impede them.”

(pp. 201-202)

b) The complete free market model

“... [T]he model of privatisation, of no state control, of a completely free market both in land and in dispute settlement about land ... is much favoured in certain circles in Western Europe and North America- deregulation is the catchword-and so inevitably it is surfacing in the World Bank and the IMF. ...”

“This too is a theoretical rather than an actual scenario. It really is impossible to point to any state where there is a perfect free market in land producing perfect Pareto optimal solutions: no one is made worse off by any changes. Rather, the evidence tends to suggest that a totally unregulated market in land produces land hoarding and speculation; a loss of land rights by the poor; a depletion of natural resources; and the external costs of land development-pollution, public health problems, degradation of land, transport costs-passed on to the public sector to deal with, and, particularly in countries where the three circuits of land relations are present, conflicts which may not be easily resolved. The free market in land is not costless and, as the UK has found, the costs of exerting control over a virtually totally free and unregulated market in land which existed in the eighteenth and early nineteenth centuries have been very great and are in effect still being paid today. [Fn37] Whatever the theorists of an unregulated land market might be able to prove via elegant equations, reality would suggest that here too this approach is not a practical proposition, as its actual costs to society would far outweigh its presumed benefits.” (p. 202)

c) The regulatory model

“This brings us then to the variety of solutions somewhere along the continuum, all of which assume, that there will be a mix of public and private inputs into the implementation of land policy and all of which can be workable in the three circuits. Take first the regulatory model closest to complete public ownership and control, private ownership with public regulation of all the three rights of use, income and disposition, a model which in effect embraces the alternative of selective regulation. We find that the vast majority of states in the world-capitalist as well as socialist, developed as well as underdeveloped-have mechanisms to

control the private use of land: town and country planning laws, zoning laws, environmental impact assessment.” (p. 203)

“Widespread though this model is, it has two major deficiencies in respect of Third World countries. First it is on the whole inappropriate in the first and particularly in the second circuit, and secondly, it does not work at all well in the third circuit. I speak with some confidence about this as my knowledge is derived both from my work on planning housing and land matters in Third World countries in Africa, Asia and the Caribbean and from my students from those countries who come, year after year with first- hand knowledge from having lived and often worked in the real world of land relations in all circuits. In the third circuit the laws are often ignored with impunity. They are either based on out-dated metropolitan models or, where localised, backed up by too few resources or have still paid too little attention to local conditions. In the second circuit the laws are ignored by the land users; to do otherwise would often be to go without homes or land to use to obtain food, or an income; or are used spasmodically and oppressively by officials to dispossess squatters, bulldoze their houses and other erections and destroy their crops. Second circuit land users, even if willing to comply with the regulatory model, cannot afford the professionals and fees needed to do so. In the first circuit, regulations are likewise ignored, where they apply at all, as not paying sufficient attention to traditional models of regulation which indeed they are often designed to replace. In short, the standard regulatory model, beloved of western and western trained administrators and lawyers, and I include myself in that category, does not work in respect of land relations in the Third World. We have to think of something rather different.” (p. 203)

d) The facilitative model

“A facilitative model of land policy implementation creates certain arrangements and mechanisms for *facilitating actions and decisions in respect of land, provides that these mechanisms if used, will produce the desired results*, but if not used, will not produce the desired results and may lead to future difficulties when further actions in respect of land are undertaken. Financial benefits too may flow from using the facilities, financial penalties may result from not using the facilities criminal law is not used as a sanction; self interest is the driving force. A typical example of a facilitative mechanism is a system of land title registration. If titles are registered, transactions in land become easier and cheaper to undertake than if they are not; or should be-and title registration can only work effectively if all transactions have to be registered.” (pp. 204-205)

“I suggest that this is the alternative which lawyers and administrators in the Third World and indeed consultants and others from elsewhere should develop as the principal model of implementing national land policy in the three circuits of land relations. Rather than criminalising failure to seek permissions, this is a model which could be developed so as to reward compliance and impose penalties of a fiscal or financial kind of non- compliance. Thus to register a land transaction would create the conditions for a loan at favourable interest rates, for reduced land tax liability and for increased assistance in complying with the necessary regulations governing land development. If registration is in fact a simpler, cheaper way to manage land, this should be reflected in reduced costs of public administration. Compliance with regulations on land development could likewise be tied in with loan facilities, tax liabilities and further permissions on alternative uses.” (p. 205)

“...If we accept the case for national land policies based on the five fundamental components discussed earlier, we have to confront the fact that policies with no means or extremely ineffective means of implementing them are useless; one might as well have no policies at all. My argument is that a *facilitative model of policy implementation offers a greater possibility than any of the other three models*, that policies might actually be implemented in all the three circuits as the model seeks to harness the self interests of land users to the public interest in implementation rather than, as with the other models, set them at loggerheads with each other.” (p. 206)

Activity

Discuss the option or combination of options that suits the Ethiopian context

4.4 Factors in sound land policy formulation and implementation

a) Political will

The following quote from GLTN in Unit 1, Section 1.2, shows the key role that political will and engagement of stakeholders play in the formulation and implementation of land policy:

“Land is one of the most sensitive political issues in any country and the *political will for reform* is reflected in a government’s willingness to have an open, consultative and inclusive land reform agenda. Often, *vested interests create conflict and hinder the effectiveness* of land reform processes, so [there is the need] to engage stakeholders at various levels and build key relations with decision makers and interest groups in order to understand their views and positively influence the reform process. ... *Without clear political will, land reform processes are delayed and disrupted...*”¹² (*Emphasis added*)

Activity:

Which organ of the government is expected to initiate land policy, and what are the factors that have caused delay in the initiation of a written document on Ethiopia’s land policy?

b) Evidence-based policy-making

The following principles in evidence-based policy making show the need to (i) gather rigorous evidence about viable and sound policy direction which includes due attention to its beneficial outcomes and the cost it can entail; (ii) monitoring implementation and evaluation of assessment; (iii) use rigorous evidence for improvement by scaling up what works and setting aside consistently ineffective elements, and (iv) encourage innovation and new approaches.

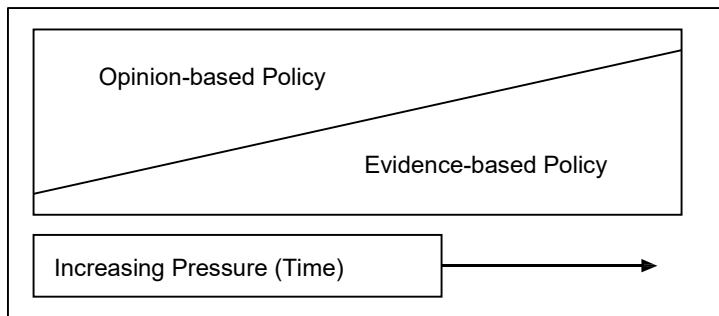
- “Build and compile rigorous evidence about what works, including costs and benefits.”
- “Monitor program delivery and use impact evaluation to measure program effectiveness.”
- “Use rigorous evidence to improve programs, scale what works, and redirect funds away from consistently ineffective programs.”
- “Encourage innovation and test new approaches.”¹³

¹² Ibid.

¹³ Principles of Evidence-based Policymaking, Evidence Collaborative.org (September 2016), available at: https://www.urban.org/sites/default/files/publication/99739/principles_of_evidence-based_policymaking.pdf

As noted by Sutcliffe and Court, the “pursuit of EBP [Evidence-Based Policymaking] is based on the premise that policy decisions should be better informed by available evidence and should include rational analysis. This is because policy which is based on systematic evidence is seen to produce better outcomes. The approach has also come to incorporate evidence-based practices.”¹⁴ Sutcliffe and Court also cite Davies (2004) and who uses the following diagram to show the “*shift away from opinion based policies being replaced by a more rigorous, rational approach that gathers, critically appraises and uses high quality research evidence to inform policymaking and professional practice*”:-

The Dynamics of Evidence-based Policy



Source: Adapted from Gray (1997)

In the following excerpt, Brian Head uses ‘evidence-informed’ rather than ‘evidence-based’. He notes that “the close linkage between good information and ‘good policy making’ is routinely undermined by two important mechanisms: political and organizational.”:

First, the policy process is inescapably anchored in political values, persuasion, and negotiation (Majone 1989). In this politicized context, some kinds of evidence are inevitably seen as more relevant than others for underpinning policy positions. These political dynamics are expressed through the preferences and agenda setting of political leaders, legislators, lobbyists, and stakeholders, mediated through media communication and public opinion. ... Evidence is harnessed to competing arguments about ends and means, and the political decision-making process is inherently marked by conflicts, trade-offs, and compromises (Lindblom 1979). In light of this political context, the early ambitions of ‘evidence-based policy’ have recently been heavily qualified, with many writers now adopting the more modest phrase ‘evidence-informed policy.’

Second, in different public organizations, the information needs and practices of senior managers will vary considerably. While access to accurate information is very important in all agencies, the specific administrative practices and procedural rules governing information selection and use in each type of organization are crucial for the way evidence is identified and utilized. Thus, patterns of evidence use and information management

¹⁴ Sophie Sutcliffe and Julius Court, *Evidence-Based Policymaking: What is it? How does it work? What relevance for developing countries?* (Overseas Development Institute, UK, November 2005), p. iii

vary across policy domains (e.g., social policy, economic development, environmental regulation) and across organizational types associated with different public sector functions (e.g., service delivery, regulatory oversight, and policy development). ... [P]ublic agencies undertaking such functions are likely to have different information requirements.”¹⁵

Activity:

- Discuss the challenges in the pursuance of evidence-based/ evidence-informed land policy making in the Ethiopian context
- State your reflections on the potential variation in information selection and use in various institutions (in Ethiopia) that are associated with service delivery, regulatory oversight and policy development.

c) Stakeholders in the formulation and implementation of land policy

- Landholders: individuals, institutions (rural, urban, peri-urban)
- Rural communities and urban neighbourhoods
- Regulatory institutions,
- the public at large,
- the private business sector,
- civil society organizations (CSOs),
- academics/researchers, and
- other stakeholders

Activity

- a) List down avenues of shared needs and interests among the stakeholders listed above
- b) Discuss avenues of potential disharmony in the needs and interests of stakeholders.

¹⁵ Brian W. Head (2016), “Toward More ‘Evidence-Informed’ Policy Making?” *Public Administration Review*, Vol. 76, No. 3 (May/June 2016), 472-484 at 472, 473

Module Two:

CONTEMPORARY LAND ISSUES IN ETHIOPIA

Unit 5

Key Issues in Ethiopia relating to Land Tenure Security

5.1 Introduction

Ethiopia has several complex land tenure issues which affect the country and its people in different ways. These issues range from tenure security of the landholders to the environmental conditions of the country which warrants a careful treatment of such issues by a comprehensive land policy. In this unit and the following an attempt is made to identify such issues on a micro level.

Land is the source of economic and social prestige in Ethiopia. In the past 40 years, land has been at the helm of the Ethiopian political debate. The Dreg's measure to nationalize all land and extra urban houses was one that changed the age old land tenure system and triggered support and opposition equally by the time.

With the fall of the Dreg from power, the current constitution was adopted in 1995 that embraces literally the principle of its predecessor in terms of land ownership. The FDRE Constitution under article 40, that deals with "Right to property", provides details about land rights in Ethiopia. Article 40 (3) of the constitution answers the core question of land ownership issue in Ethiopia:

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.

Regarding its means of acquisition, sub-article 4 states that Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. Likewise, concerning the pastoralists of the lowland areas, sub-article 5 declares that Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their possession. Although the peasant is denied private ownership rights to the land itself, s/he is guaranteed a "full right to the immovable property s/he builds and to the permanent improvements s/he brings about on the land by his/her labor or capital. This right includes 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" (Art. 40(7)).

Thus, unlike the Derg era, peasants will have full right to their produce and can sell it at market value. The source of land acquisition for urban residents is not clear although Article 40(6) is said to be the closest one which emphasizes that "...government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law." Moreover, the constitution guarantees peasants and pastoralists against arbitrary eviction by the state. The Constitution clearly says: "... the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property" (Art. 40(8)).

To implement the constitutional principles, set of proclamations have been adopted at federal and regional level. Some of the federal laws are:

- Federal Rural Land Administration and Use Proclamation No 456/2005
- Federal Expropriation Proclamation No 1161/2019
- Federal Urban Land Lease Proclamation No 721/2011
- Federal Urban Land Registration Proclamation No 818/2014
- Federal Condominium Proclamation No 370/2003
- Federal Urban Planning Proclamation No 574/2008

5.2 Concept and types of land rights

Land rights are intrinsic rights, which a person may enjoy over a certain property. Such rights may emanate from law or customs, as the case may be, and provide the person a claim over a certain property in exclusion of others. There are different types of rights recognized to exploit the land such as ownership (most complete), lease/rent, mortgage, inheritance, donation etc. Hence, the owner of the land has the most complete rights such as using the land, collecting benefits from the land (such as rent), and transferring it wholly or partially to others by sale, donation or inheritance. Hence a group of persons may have different claims over a certain property at the same time. For example, an owner may rent his house to a tenant and at the same time borrow from banks by mortgaging the same house. In such cases, the owner has title to the house, while the tenant and the bank have different types of rights all of which mutually exist.

Land right in Ethiopia is a concept which is not fully settled and adequately defined. The Ethiopian Civil Code sets the basic land rights although its applicability in respect to land is limited. The Code recognizes owners, usufructuaries, possessors, and creditors as having rights over the land. The FDRE Constitution bestows ownership of land and other natural resources on the state and the people and selling or exchanging the land is prohibited (Art 40/3). Under the current legal regime, the urban and rural land is administered through two different legal frameworks and institutions. While the rural land is being administered by Rural Land Administration and Use

Proclamation No 456/2005 and subsequent regional rural land administration and use proclamations, the urban law is governed by the Urban Land Lease Proclamation No 721/2011 and other regionally adopted urban laws which are all based on this proclamation.

Rural land use rights are known as “holding rights” which provide the right to use and enjoy the land, renting/leasing the land, inheriting the land or donating it to others. Rural land holders enjoy all rights except rights of sale and probably mortgage.¹⁶ On the other hand, under the Urban Land Lease proclamation, the encompassing right is called “lease right”. This is by itself a right granted to users for a fixed period of time (e.g. 99 years for residential land) and within the fixed period, the lessee has the full right of sale, use, sub lease, mortgage, contribute it as a share or inherit or donate it to others. The controversial point is whether the person can receive market price for the land during mortgage or expropriation of the land.

In urban areas there is another layer of rights of urban land holders. This is called “permit right”, a land right related to land properties not converted to lease holding. These types of rights are found in land rights received before the promulgation of the first lease proclamation in 1993 and over those lands and houses which have been annexed from rural areas. As per the lease proclamation, all permit holdings shall be converted in due time to lease holdings since only land and houses under lease holding are transactable.

Within the urban and per-urban areas, there are also other property types called informal settlements. These are called informal because the source of land is illegal since people build their houses either on government land or on lands illegally purchased from farmers. These settlements usually built without building permits and hence by law considered as illegal once. The measure taken by government is mostly demolition of houses and clearing of the land without compensation although there is also regularization of these sites, means legalizing them by converting them to leaseholds. This happens upon special decision of city administrations.

In some regional states such as Somali, Afar and Oromia there is also a customary land tenure which gets little recognition from the law. Even if land is by law owned by the state and people of Ethiopia and its administration is given to regional governments, the rural land in these regions is mainly administered by customary rules. So issues like grazing land rights, water rights, right of way of cattle and acquisition and inheritance of rural land is mainly governed by customary laws. There are efforts to address these rights in formal laws although the effort is not yet completed

¹⁶ Mortgaging land was entertained by the Federal Government for long time and this right was included in the draft Rural Land Administration and Use proclamation. However, this draft is not adopted. However, some regions go beyond this and allow mortgage under their regional rural and land administration laws.

5.3 Issue of ownership

The FDRE Constitution puts ownership of all land and natural resources in the hands of the Ethiopian Nations and nationalities and the state. Administration of the land is given to the state on behalf of the people. Hence the state as guardian of all land and natural resources administer it as it sees fit.

However, the idea of state/public ownership of land creates several problems. The question of public ownership of land in Ethiopia has been a topic of debate for many years. According to a study published in *African Affairs*, the institutionalization of ethnic federalism and the persistence of neo-customary tenure result in considerable ambiguity, particularly regarding the land rights of non-indigenous minorities. The analysis highlights tensions between these three sets of land tenure institutions—state ownership, ethnic federalism, and neo-customary tenure—and their implications for minority land rights. A case study of land-based conflict in many parts of the country, based on fieldwork conducted in 2009 and 2010, demonstrates the continuing relevance of these land tenure institutions and associated ideas in land debates in Ethiopia.¹⁷

Questions

- a) Define land being owned by the people and the state? In what way can ownership right of the people be explained?
- b) Does the constitution give ownership of regional land exclusively to people who are born in the region?
- c) The policy justification given for denying private ownership of land was to avoid monopoly of land by the elite and thereby displacing the farmers from their holdings. It is particularly pointed out that during period of hardship farmers would sell their land to unscrupulous speculators and in the absence of industrialization which is ready to accept the rural migrants, a chaos would ensue. How do you see the validity of this assertion? Do you think privatization of land is a timely issue? What advantages and challenges do you see if land is privatized in urban and rural areas?

¹⁷ Tom Lavers (2018), "Responding to Land-based Conflict in Ethiopia: The Land Rights of Ethnic Minorities under Federalism", *African Affairs*, 117/468, 462–484

5.4 Issues of rural land: Restrictive Land rights

The rural land proclamation guarantees, farmers and pastoralists free access to land for crop production and pasture. The rural land right is termed as “holding right” that guarantees lifetime use right over the land, right to transfer the land by gift or inheritance to family members, lease/rent the land to investors or fellow farmers and right to manage the land. This right is equal to private ownership short of right to sell.

This package is commendable except that the rights mentioned above are limited in some ways. For example, farmers are restricted from leasing/renting whole land for fear of displacement after renting the land for longer years. They are not also able to rent for more than some years (as determined by regions). On top of that, farmers are supposed to live continuously in the farm area and failure to do so would result in loss of land. Hence, a farmer who disappear from the farm area for some years (2, 3, 5) following the land would lose his land. This is said to be holding farmers in their village even if they want to move to cities in search of other jobs and by renting their land. This in turn increases the pressure on rural land and leads to land fragmentation.

Farmers cannot transfer land (through their will) to whosoever they want from among their children. Most importantly children who have their own income and who live outside of the villages are not eligible for inheritance/donation of land. This rule is based on principle of equity to transfer land to those who are in need of it. This creates however, less interest from children who live in urban areas to support families as they would not get the land. It also created countless fights among siblings in the rural areas and hence increased land conflict in rural areas.

The law prohibits mortgage of land and hence this affects the ability to receive credit from banks. Of course the revised proclamation, under consideration, has changed this by allowing farmers to mortgage their land to get credit from financial organs. This is designed in a way not to violate the constitution. Hence, the maximum period for banks to hold/use the land in case of default is 10 years and after that the land would be returned back to the farmer.

Question

How do you assess the pros and cons that this rule would create?

5.5 Access to urban land

Accessing urban land for residence and investment is tough business in Ethiopia. Urban land is source of several problems due to imbalance between demand and supply. As Ethiopia is a land of agrarian society, more people are yet to come to urban areas. Urbanization is at its infancy representing only 23% of our population although its growth is one of the fastest in the world representing 4.3% (Wondimu 2012). With the boom of population, shortage of rural land and

natural resources and expansion of education, and lately instability across regions, urbanization will grow rapidly in the next decades which require efficient land supply.

In the absence of efficient land supply, people will continue to live in irregular settlements. Irregular settlement is also exacerbated due to weak implementation of the cadastral system and corrupt officials at urban administration. And the measure which is taken against the irregular settlement in Ethiopia today is questionable (Regularization, demolition.....).

Some of the problems associated with poor supply of housing stock in urban Ethiopia are:

- The restrictive rules under the existing lease proclamation that puts bid as major source of land acquisition method. Lease bid prices are always very high leaving the field only for wealthy players or business entities who would sell the land gradually at profit. Urban land holding today is the most unfair type.
- Inefficient urban land administration system. Urban land administration are backward which lack adequate staff, information system-cadaster, and leadership
- High cost of land acquisition and corresponding absence of alternative land acquisition discourages urban centers to get land by expropriation
- High cost of building materials left many from owning houses
- Planning implementation problem on refill and densification that would otherwise would allow efficient land utilization and thereby settling more people in small land space
- Lack of good governance: urban land administration is known for its opaque way of doing business, mal administration, corruption and irresponsibility
- Inefficient housing supply by the state: the state tries to deliver housing units through condominium and similar state led housing projects. The Ethiopian government has been working on addressing these issues through various initiatives, such as the Ethiopia Urban Land Supply and Affordable Housing Study (EULSAH). However, bureaucratic hurdles and implementation challenges have made it difficult to achieve the desired outcomes.

Questions

- a) Do you think government should continue in building housing units for the public? What are the challenges and advantages of such initiative?
- b) What alternative housing supply do you suggest? If the private sector or individual based housing construction is to be suggested, what should be the role of the state?
- c) Do you think urban land should be allotted to individuals at low fee for housing purpose? How do we reconcile with the income of urban centers generated from lease?
- d) What methods do you see that help urban centers to boost their income other than land tax and lease fee?

Before the current lease proclamation (Proc. 721/2011)

... እ.ኤ.አ ከ2013 እስከ 2017 የመሬት አቅርቦት መረጃ በከተማ ¹⁸

ተ.ቁ	የቀረበ መሬት					
	ከተማ	በምድብ ሄ/ር	መቶኛ	በጫረታ ሄ/ር	መቶኛ	ድምር ሄ/ር
1	ባህር ዳር	1,173.91	94.5	68.74	5.5	12427.7
2	መቀሌ	1,131.12	88.5	146.78	11.5	1277.9
3	ሀዋሳ	1,127.44	98.1	21.69	1.9	1149.1

5.6 Expropriation and compensation

It is natural for a land to be taken by the state or one of its organs for public purpose activities. To discharge its obligations, the state will always require land for construction of roads, dams, airports, public places, educational and health centers or other such similar activities. In any law around the world this is a recognized right of the state. Hence, private ownership of land is subject to the expropriation power of the state. However, this state power is limited by two important conditions:

- i) Expropriation of land for public purpose activities and
- ii) Payment of fair compensation

The government in Ethiopia is also empowered with this type of authority. The Federal government adopts the expropriation proclamation and regulation to govern this measure. The main problems in these areas were: inadequate compensation for property loss and inconvenience and unlimited state power of expropriation.

Many research outputs suggest that the compensation paid has been unfair and does not reflect the equal ownership of land by the people. For example, in urban areas where the land (land +building) is the most important asset, compensation is assessed based on cost of assembling of similar asset on the land. It is not the worth of the house what the law guarantees, but the cost of materializing/building the house. This categorically disagrees with what people would get from market, had they been allowed to sell it to a willing buyer at market value. For example, a home owner in Addis Ababa may sell it at average price of 30 million, but the city administration gives him an average of 3 million for as compensation.

Fair compensation is usually interpreted as one equal to market value. The state must guarantee what the market otherwise would give to the land owner. Further, the compensation package given for farmers is inadequate which forced them to sale the land when there is speculation of urban expansion to the area. This is the typical case of major urban centers in Ethiopia.

¹⁸ የከተማ መሠረተ ልማት ሴክተር የአሥር ዓመት ልማት ዕቅድ ፍኖተ ካርታ (2013-2023) ገጽ 43

The other related issue is the state power of expropriation is justified on broader grounds. Public purpose in many countries is strictly interpreted as including activities of pure public nature such as building roads, schools, market place, railways, energy bases, airports and the like. In other countries, private ventures which may contribute to the public indirectly are not considered as public purposes. A good example is taking land from one individual and transfer to another to build a hotel or entertainment facility. The broader the exportation power of the state, the higher a threat it becomes on private ownership which is also protected by the constitution.

Hence, what we see is a clash between constitutional provisions. While in one point (Art 40.1, 3, 7) the people are given right to land ownership and property they created over the land, on the other, this right may be easily trumped by the state at low cost for it. Hence, there is a need to balance this by ensuring fair compensation. It is also high time to think of allowing privatization of urban land and permit free sale of land in urban areas.

More recently the Ethiopian government has revised the expropriation proclamation and introduced more ambitious compensation modalities:

- Property compensation- compensation for private property (building and trees ---)
- Displacement compensation-
- Economic loss compensation-
- Social ties compensation
- Resettlement assistances
- Priority right of land development

Although these seems compensation types of good intention, there is fear from urban administration side that this may hamper the necessary economic development if the burden of compensation is too much.

Question

What do you suggest to solve this problem/ deadlock:

ለመሬት ዝግጅት የሚወጣ ወጪና ከመሬት ማስተላለፍ የሚገኝ ገቢ ተመጣጣኝነት፡-

ከተሞች ከመሬት የሚያገኙት ገቢ ለመሬት ልማት ወጪ በቂ እንዳልሆነ ጥናቶች ያሳያሉ። በዚህ ምክንያትም በዘላቂነት የሚፈለገውን መሬት እያቀረቡ ካለመሆናቸውም በላይ የአቅርቦት ፍላጎት ጫና ሲመጣ የልማት ቦታው ነባር ተጠቃሚዎች መብት ባላከበረና የኑሮ መናጋት ባስከተለ ሁኔታ እየመሩት ይገኛሉ። ከመሬት ተገቢውን ገቢ ያላገኙት መጀመሪያም ለመሬቱ ያወጡትን ወጪ መረጃ በአግባቡ እንዲይዙ የሚመራ ሥርዓት ካለመኖሩም በላይ በመነሻ የሊዝ ዋጋ ሲቀምሩ ግምታዊ እና ወጪን ያላገናዘበ እንደሆነ ከዚህ በከፋ መልኩ ደግሞ የሚያቀርቡት መሬት ከ85 በመቶ በላይ ከገበያ ሥርዓት ውጭ ወጪን በማያስመልስ መልኩ በምደባ እንደሚሰጡ ይታወቃል፡ ፡ ይህ እንደተጠበቀ ሆኖ ከመሬት የሚገኘው ገቢ ወጪው ከሚፈለግበት በኋላ ስለሆነ ካስተላለፉት መሬት እንኳን የተወሰነ ወጪ ለመሸፈን ገንዘብ የሚደርሰው ወጪው ከሚፈለግበት ጊዜ በእጅጉ

የራቀ ነው። እስከ አሁን እንደታየው ሊዘ ሲተላለፍ ከሚሰበሰበው ቅድመ ክፍያ ውጭ ምን ያህል ውዝፍ እንዳለ አይታወቅም። በአግባቡም እየተሰበሰበ አይደለም።¹⁹

5.7 Fragmentation of institutional framework relating to land use

Ethiopia has no as such a land policy that encompasses land administration and use matters. Land use is a subject usually treated together with land administration in land policies. Land use is not addressed in comprehensive way in Ethiopia that left the use of land to each respective government organs. Hence the road authority, urban centers, rural agricultural bureaus, ministry of environment, ministry of mining, ministry of natural resources etc do follow their own way of doing in using the land. Hence, a land which produces highest quality teff may end up as football field or university compass. A water body with rich biodiversity may be converted into industrial park or a forest land with rich flora and fauna may be given for large scale agricultural investment. Most pressing issues, natural commons (forest and grazing lands) are given to youth groups for whatever purposes which diminish their natural gifts. This uncoordinated use of land costs Ethiopia for loss of forest, water bodies, wild animals and fertile lands.

Besides there is also violation of existing land use plans especially in urban areas that affect the lives and health of urban residents. It is common to witness in urban areas, green areas and parking lots are changed to high building or residential lots without careful consideration.

5.8 Pastoral lands

Custom prevails in much of the lives of the pastoral communities. The pastoral land in Afar, Somali, Gambella, Borena, and Benishangul regions only represent about half of the land in Ethiopia although with few residents. Land administration and dispute settlement in these areas were mainly done through customary ways. The pastoral communities in Afar, Somali and Borena (Oromia) solely live by raising animals and the range land is the base for their lives. However, there is no enough protection of this range land, as the rural land laws are designed based on the livelihood of the highland sedentary lifestyle.

Secondly, the land administration laws need to recognize and embrace the customary role of clan heads in administering land and resolving disputes.

¹⁹ የከተማ መሠረተ ልማት ሴክተር የአሥር ዓመት ልማት ዕቅድ ፍኖተ ካርታ (2013-2023) ገፅ 46

Unit 6

Key Issues in Ethiopia relating to Land Administration and Management

6.1 Land valuation

Land valuation and taxation in Ethiopia is a complex issue. According to a legal analysis on real estate valuation in Ethiopia *via* land policy, the lack of a properly developed land market makes property valuation a daunting business in Ethiopia²⁰. The market problem arises owing to the land policy pursued for the last four decades since it was first proclaimed in 1975. In Ethiopia, land and all natural resources are owned by the state and the people of Ethiopia. What is counted as a 'private property interest in land' is thus a land use right; be it, in terms of usufructuary rights (use rights alone) or lease rights. As such, the market price of a given piece of land under urban municipality could be calculated from the prevailing lease price or can be deduced from the government valuation processes while compensating properties expropriated by the order of a government.

A study on the assessment of real property valuation methods practice in Ethiopian cities found that the current valuation system is not effective and efficient. The study also identified that the valuation process is not transparent and lacks standardization.

In short there is no mandatory and standard rules and procedures for valuation of real properties. Significant of the market is dominated and influenced by informal brokers. Such brokers mostly determine the selling and purchasing prices of real properties (land and buildings). They inflate the market in order to get more from the percentage of the commission. Even public (urban administration, tax authority) and private institutions (banks, insurance) follow different methods and approaches to value the worth of a real estate property.

As Ethiopia lacks standardized valuation system, different organs follow different approaches. For example, valuation methods followed for mortgage, expropriation and taxation are different in nature which otherwise shouldn't be the case.

²⁰ Habtamu Bishaw Asres (2019), "Real Property Valuation in Expropriation in Ethiopia: Bases, approaches and Procedures", *Africa Journal of Land Policy*, Vol 2(3).

6.2 Land Taxation

Land taxation is an important source of income for the government. In Ethiopia the tax collected from land property is not well developed both in urban and rural areas. The tax collected from rural land is based on the size of the land held by farmers. Power of land taxation is given to Regional State as per Art.97 cum Art. 99 of the FDRE Constitution.

a) Rural land use and agricultural tax

These land-based taxes constitute less than 0.5 percent of total tax revenue. And tax rates vary by region. Land taxation is consistent with two principles of taxation, economic efficiency and ease of administration (Bird and Slack 2005; Skinner 1991). Land taxes are economically efficient because, with fixed land supply, they are unlikely to induce behavioral responses. Area-based land taxes are often introduced, as in Ethiopia, where rural land markets do not exist or do not function well, making it difficult to administer value-based taxes. However, a tax based on the land size is likely to undermine the equity principles because it is not always correlated with property values, productivity, or agricultural income. Yet empirical analysis of the distributional impact of land taxes has received little attention. Notable exceptions have found that area-based land taxes are regressive in Rwanda (Ali et al. 2020; Kalkuhl et al. 2018), in Indonesia, Peru, and Nicaragua (Kalkuhl et al. 2018), and in Ethiopia (Hill et al. 2017; Mesfin and Gao 2020).²¹

b) Urban Real Property tax

Tax base refers to the reference used for the determination of the annual property tax. Here, the Ethiopian law recognizes that only property owners not lessees, public or private, are required to pay property tax. *Thus, the tax base considers the size of the plot under possession and the annual rental value of the privately owned property.* (Urban Land Rent and Urban Houses Tax Proclamation No. 80/1976) According to Article 5 of the Proclamation, a legal possessor of urban land is required to pay annual land rent that is to be assessed on the basis of the size of the plot and location of the plot in the concerned city, to be categorized as Grade 1, 2, or 3. The Proclamation clearly indicates that the plot used for the construction of residential or commercial purposes would be treated differently.

With respect to the property tax payable on urban houses, the Proclamation stipulates that the percentage of the annual rental value of the concerned house will be used as a basis for determination. The schedule attached to the Proclamation specifically indicates that for the annual rental value of up to ETB 600; 1% tax rate applies. It defines the rate progressively with the increase in the annual rental value and recognizes 4.5% rate for values that exceed ETB 6,000

²¹ Hitomi Komatsua, Alemayehu A. Ambelb , Gayatri Koolwalc , Manex Bule Yonis, *Gender and Tax Incidence of Rural Land Use Fee and Agricultural Income Tax in Ethiopia*, World Bank Group, 2021

The valuation and assessment of annual property tax begins with the assumption that land is extra-commercial. Thus the land rent is a nominal amount. The annual rental value of buildings is determined again without appreciating rent as an investment return. The Proclamation itself and the thinking this socialist legislation considered rent as exploitative in nature. Thus the annual assessed rental value of properties for tax purposes was far below the market rate.²²

This proclamation from the Derg era, has not yet been revised. But currently a draft Real Property Tax proclamation is already drafted and under consideration to be submitted to the Council of Ministers. However, Addis Ababa City and some regions, revised the rates by directive in more recent years.

The Draft Real Property tax (land and building) proclamation states that the tax base will be based on the value of the property (land=building). For properties which have no value, replacement cost of such property will be considered.

- 5. የንብረት ታክስ ስለመጣል በዚህ አዋጅ በተለየ ሁኔታ ካልተደነገገ በስተቀር በኢትዮጵያ ውስጥ፤
ሀ/ በሊዝ ይዞታ ስራት በሚተዳደር ማንኛውም የከተማ ቦታ የመጠቀሚያ መብት፤
ለ/ ከሊዝ ይዞታ ስራት ውጪ በሆነ ነባር የቦታ የመጠቀሚያ መብት እና
ሐ/ በቦታ ላይ በተደረገ ማሻሻያ እና በቤት ባለቤትነት ላይ በዚህ አዋጅ መሰረት የንብረት ታክስ እንዲከፈል ይደረጋል።
- 6. የንብረት ታክስ አጠቃላይ ምድቦች የንብረት ታክስ በሚከተሉት ሁለት ምድቦች ይመደባል፤
ሀ/ በከተማ ቦታ መጠቀሚያ መብት ላይ የሚጣል ታክስ፤ እና
ለ/ በከተማ ቦታ ላይ በተደረገ ማሻሻያዎች እና በከተማ ቤት ባለቤትነት ላይ የሚጣል ታክስ።

Questions

- a) In the absence of valuation standards and experts, state your views regarding the smooth implementation of the proclamation?
- b) In a country where land is not considered as freely transactable (lease proclamation, constitution, etc), what will be the value of land?

6.3 Land registration and cadastral system

Cadastre is a land information system to provide information about rights, use or values on land. It is usually (but need not always be) parcel-based. This means that the important information carrier in the system relates to piece/parcel of land. The purpose for which the cadastre has been established has first of all been for land administration by governments (taxation and control of land use and distribution of land rights). The second most important purpose has been to provide security of tenure for the land owner/user, for the land market, for investments and as working

²² See details Alemayehu Negash & Bekalu Tilahun, Property Taxation in North-east Africa: Case Study of Ethiopia, Lincoln Institute of Land Policy Working Paper 2009.

capital (mortgaging). The third growing need of a cadastre is to provide land information for sustainable management of the land resources in a perspective of environmental concern, both from governments and land users.

Cadastre is not only an information system, but also a process. It can include the processes of adjudication land rights, of distributing/ allocating land rights, of solving disputes around land use rights, of determining appropriate land use, of controlling land use, of facilitating land markets and of controlling the development on land markets. The procedures needed to control these processes and to make them transparent and participatory are essential parts of a cadastral system

In Ethiopia, land registration and cadastre are two separate but complementary systems that operate interactively. Land registration is the process of recording rights on land, which provides a safe and certain foundation for acquisition and disposal of rights in land, where disposition includes transfer, leasing, and mortgage of the holding rights. Cadastre, on the other hand, is a comprehensive land information system that records the legal, physical, and economic characteristics of land. It provides a framework for the management of land resources and supports land administration and land-use planning.

Land Registration in Ethiopia is governed by two separate laws, Urban Landholding Registration Proc. No. 818/2014. *The proclamation aims to ensure uniform protection of landholding rights of private, joint holders, associations, government, and non-governmental institutions by enabling urban landholding registration.* Land registration process in urban areas cover about 4.5% of all urban land in Ethiopia.

The Ethiopian government also initiated rural land registration program since the late-1990s. By now it is the largest program of such nature covering tens of millions of farmlands around the country. It garners millions of dollars of support from the World Bank, USAID, UKAID and Finland (REILA). It is said so far 31 million parcels are registered and of which 28 million are certified.

From urban perspective, the process has gaps owing to different factors. Among others, it lacks adequate trained personnel, lack of awareness by property owners, growing number of informal properties which need to be formalized/regularized before adjudication and registration and lack of adequate preparation from local woredas to organize documents necessary to undertake the registration works.

Unit 7

Challenges in Formalizing Land Policy in Ethiopia

7.1 Lack of political will

Land policy formulation in Ethiopia could be challenging owing to different factors. The biggest challenge is lack of willingness from the relevant government organs. Political will is a crucial factor in land governance. To use Derrick Brinerhoff's definition, political will is "the commitment of actors to undertake actions to achieve a set of objectives...and to sustain the costs of those actions over time".²³ Political will is essential for carrying out much-needed reforms in land governance. Without political will, "reforms simply don't happen". However, "political will has become global shorthand for explaining why reforms succeed or fail, leaving it as an almost useless 'black box'..."²⁴ It is thus important to understand political will "in a more operationally useful way that helps us understand what to actually do about it."²⁵

In the context of Ethiopia, the importance of political will in land policy formulation and adoption cannot be overstated. The "growing population ... small size of land holdings in many areas, pressure on natural resources ... and the policy to attract foreign direct inward investment in land"²⁶ are some of the major challenges to land governance in Ethiopia that warrant sound land policy. Therefore, it is crucial that the government demonstrates political will to address these challenges and implement reforms that promote sustainable land governance.

However, lack of political will can be one of the problems in adopting land policy in Ethiopia. The recent exercise of drafting of Land Use Policy for example shows this challenge. The draft Land Use Policy has taken a lot of resource and time. It was presented to the ex-Prime Minister who appreciated the attempt and felt the urge to adopt the policy to avert further damage to the land in Ethiopia. However, the draft policy has taken a long time to be approved. Lack of political will from various organs has delayed the process; and hence so far the draft Land Use Policy has not been submitted to the Council of Ministers for approval. The draft is yet at the auspices of the Ethiopian Integrated Land Use and Planning Institute.

²³ Cited by Heather Marquette, Columbia Center for Sustainable Development, February 12, 2020:

<https://ccsi.columbia.edu/news/political-will-what-it-why-it-matters-extractives-and-how-earth-do-you-find-it>

²⁴ Ibid

²⁵ Ibid.

²⁶ Food Security and Land Governance Factsheet, Ethiopia (LANDac), p. 1

7.2 Gaps in awareness regarding the need for formal land policy

Many politicians and writers unduly assert that there is land policy in Ethiopia by considering other lateral policies and the existing laws. The FDRE Constitution and other land related proclamations are among the sources cited as land policies by some writers. Others consider the different policies such as environmental policy, water policy, rural development policy, forest policy, etc. as land policies because they contain elements that raise issues such as land tenure, land management or land use matters.

However, this is an erroneous assumption. Thus, an initiative to adopt a land policy may encounter challenges from the outset by such reluctant bodies. They may say that adopting new land policy is redundant to what we have achieved so far. Such views are not consistent with the core features of land policy. It is to be noted that unlike laws, a policy (i) deals with the direction or path to be pursued by laws and administrative decisions, and (ii) is flexible and responsive to changing realities in contrast to the rigid procedural processes in the revision of laws.

7.3 Harmonization of laws and policies

A sound land policy is a road map to land use, land tenure and management activities. Under normal circumstances a policy comes first, and then it is followed by laws and regulations. In Ethiopia, there are laws and lateral policies with fragmented ideas that are not harmonized by policy.

There is indeed the challenge that if the land policy is to be formulated taking into consideration best standards and practices, there can be elements that contradict existing laws and policies. This reality envisages the legislator's will to change such laws and harmonize them with the policy.

7.4 Informed and inclusive participatory process

GLTN defines land policy as “a set of rules and guidelines that govern how a country's administration will govern, manage and administer land in that country. It should strengthen access to land, tenure security; it should especially ensure the land rights of poor and vulnerable communities; ensure sustainable land use; provide direction for fit-for purpose land administration services; and guide the prevention and resolution of land conflicts and disputes”²⁷

GLTN further notes that the process of land policy development “is essential to social and economic development and should:

“ [b]e inclusive and have the, full and informed participation of all stakeholders, including women ...;”

“[e]nsure national ownership in the land policy formulation process to enable smooth and easy implementation of the land policy document, especially at the grassroots;”
and

“[r]ecognize the roles of local and community-based land administration structures alongside those of the state and how these can best collaborate”.²⁸

²⁷ GLTN, supra note 2.

²⁸ GLTN, Land Policy and Legislation: <https://gltn.net/land-policy-and-legislation/>

Thus one of the key challenges that should be addressed in the preparation of land policy is the need to ensure stakeholder participation that is inclusive and well-informed. Such participation and effective consultation are among the foundations of viable land policy that introduces a land administration system, *inter alia*, relating to “the determination of user needs, the creation of new administrative and organizational structures, [and] the preparation of new legislation”.²⁹ Moreover, it facilitates the adjudication and determination of rights in land, the surveying of land and property boundaries, the management of land information, the establishment of financial management procedures”³⁰ and it further enhances the awareness and engagement of all stakeholders.

Questions:

Give examples of

- a) inclusiveness in the process of land policy development
 - b) collaboration between community based land administration structures and formal/state structures.
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²⁹ Mark Marquardt, Land Policy and Land Administration, Best Practices for Land Tenure and Natural Resource Governance in Africa , ppt, October 2012, slide 17.

³⁰ Ibid.