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Securing Land Rights in Africa

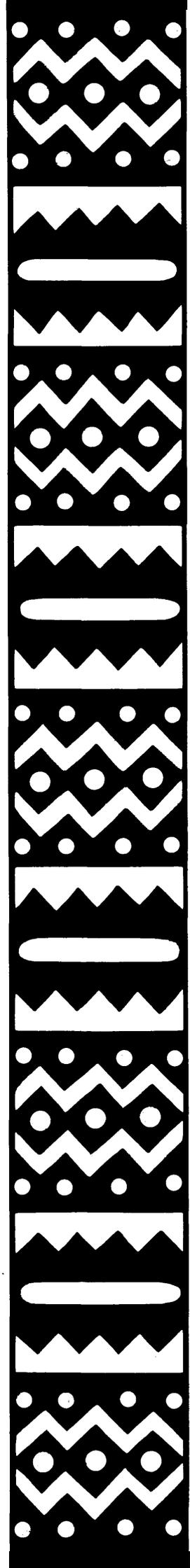




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PREFACE

This research examines the current processes of land rights registration in Ethiopia, Ghana, and Mozambique and assesses their outcomes for poor and vulnerable groups. Land is becoming increasingly scarce in many parts of Africa, and mounting competition for this valuable resource is driving conflict between and within groups. Many governments have initiated a review of land legislation and established new structures for land rights administration. At the same time, there is considerable informal documentation of ownership and transactions in land taking place in many areas, as people seek to strengthen their claims over land and natural resources. Informal processes include the increased use of written contracts, witnessing of agreements, the emergence of new forms of rental and sharecropping arrangements, and other kinds of local collective action, often around management of common property resources. However, such informal documents and processes are not usually legally binding.

While registration might, in theory, be expected to help poorer groups confirm their claims to land, in practice registration has often served to redistribute assets towards the wealthier and better informed. We are keen to ask the question - is this inevitable? Can provisions be made which explicitly address the need to level the playing field between poorer and better-off groups in relation to registering claims over land? In Ethiopia, land registration systems are being designed and pilot programmes carried out in several states. In Ghana, an ambitious Land Administration Programme has begun, which has chosen to do much of its work through Customary Land Secretariats. In Mozambique, the 1997 Land Law is being implemented, a law which has been recognised internationally as demonstrating a strong pro-poor approach. What lessons can be learnt, from these cases, to inform policy and practice for future interventions in the registration of land rights in Africa?

The study tests a set of interlinked hypotheses, which assert that:

- Land registration is not inherently anti-poor in its impacts;
- The distributional consequences of land registration will depend on the design of the process and governance of the institutions responsible for its management; and
- Land registration procedures can be elaborated to address systematically the risk of bias against poorer, more marginal groups by considering issues including location, registration fees, language used, and recognition of secondary rights.

While the hypotheses can be broadly accepted as valid, and the study did identify examples of “good practice”, there are also many lessons to be learnt about the design of registration systems if they are to protect effectively the rights of poorer groups. Work in all of the case study sites pointed to the critical role of institutional governance.

The results of this research project come at a particularly opportune time. In 2005, a “High Level Commission on Legal Empowerment of the Poor” is in the process of being set up with an independent secretariat jointly hosted by UNDP and the UN Economic Commission for Europe (UNECE). It seeks to make property rights accessible to all, especially the poor and marginalized, and by so doing, contribute to poverty reduction and achieving the Millennium Development Goals (MDGs). Evidence suggests that formalising property rights through individual title can have negative consequences for poor groups and in particular, for women and those relying on secondary rights to land. It is therefore important to base recommendations on empirical findings from diverse settings to avoid “one size fit all” solutions.

This research project was coordinated by the International Institute for Environment and Development (IIED) working with:

- Mekelle University, Mekelle, Tigray, Ethiopia
- SOS Sahel, Addis Ababa, Ethiopia
- Institute of African Studies, University of Ghana, Legon, Accra, Ghana
- Land Studies Unit, University of Eduardo Mondlane, Maputo, Mozambique
- Royal Tropical Institute (KIT), Amsterdam

The project adopted an iterative approach using reference groups at the national level to advise the researchers as work proceeded, and to disseminate findings. A proactive strategy was adopted to feed findings into relevant debates at local, national, and international levels. This included a major conference, which brought African policy

makers, opinion leaders, and researchers together with international agencies and experts to discuss “Land in Africa” in November 2004¹.

The research has addressed three sets of questions:

Firstly, questions on the design and process of registration:

- What land and what land rights are being registered?
- How is land registered and by what institutions based at what level?
- What is the basis of registration and whose rules and procedures are being followed?
- How are boundaries demarcated and recorded and with what forms of technology?
- Where are land registers stored? In what language are they recorded? How accessible are they to the public?
- Have precautions been taken to ensure equitable access to the registration process, such as cost, language used, and place of registration? Has this made a difference in practice, in terms of who can register their rights?
- What happens to secondary rights because of registration?

Secondly, questions on the governance of registration processes:

- Which state and non-state actors are involved in registration processes?
- What political and legislative framework governs the actions of the actors involved in land registration? How is accountability to a broad constituency assured?
- How do these institutions deal with disputes? How transparent are these conflict resolution processes?
- How well do the different institutions involved in land registration coordinate their activities?
- How do formal processes of rights registration interact with “informal” processes for securing rights?

Thirdly, questions related to equity of outcomes:

- Who is seeking to register land rights, and why? Who are the winners and losers in the process?
- What happens to the claims of weaker groups in society?
- What happens to unregistered rights in practice?
- How are land rights of smallholders affected by the policy thrust to attract large, sometimes foreign, investors?
- How are land rights of more disadvantaged groups changing in peri-urban contexts where competition for high value land is intense?

Seven research reports have been produced under the common title “Securing Land Rights in Africa”.

Research Report 1: Can Land Registration Serve Poor and Marginalised Groups? Summary Report

Research Report 2: Land Registration in Tigray, Northern Ethiopia

Research Report 3: Land Registration in Amhara Region, Ethiopia

Research Report 4: Land Registration and Women’s Land Rights in Amhara Region, Ethiopia

Research Report 5: Land Registration in Eastern and Western Regions, Ghana

Research Report 6: Land Registration in Nampula and Zambezia provinces, Mozambique

Research Report 7: Land Registration in Maputo and Matola cities, Mozambique

¹ See <http://www.iiied.org/events/landinafrica.html> for further information.

1. INTRODUCTION

This report presents findings from research investigating the question of whether land registration can serve the poor. The land registration system investigated is simple, inexpensive, and locally controlled. The findings indicate that such a land registration system, within a context of strong local government, *can* serve the poor. But the details of the registration mechanism are critical to the level of its success.

The research was conducted from 2002 through 2005² in the Tigray National Regional State³ in northern Ethiopia by a team from the regional university, Mekelle University, working together with researchers from the International Institute of Environment and Development, with funding provided by the Social Science Unit of the UK's Department for International Development.

The results of the research were enriched by the three other cooperating teams simultaneously carrying out the same research program in Ghana, Mozambique, and another part of Ethiopia. The research examined the current processes of land rights registration in Tigray and assessed their impacts on the assets and livelihoods of poor people. For a more detailed introduction to the research, see the Summary Paper (Research Report 1), where the literature review and the research hypothesis and questions are set out more fully.

In brief, because land is becoming increasingly scarce and sought after in many parts of Africa, many governments have recognized the importance of reviewing land legislation and establishing new structures for land rights administration (Toulmin & Quan 2000, Palmer 2000), including registration of rights to land (Stamm 2000; Land In Africa Conference 2004). Arguments for registering title to land (Quan 2004, Deininger 2003) include the benefits of reduced transaction costs; easier transfers to more dynamic farmers and larger holdings; capitalization based on title as collateral; increased and longer-term investment; and more property tax. Complicating the analysis, it appears that some of these benefits may also accrue through 'informal' efforts to improve security of title (Lund 2000, de Soto, 2001, Toulmin & Lavigne Delville 2001, Ostrom 1998).

But more importantly, there is a competing experience that provides grounds for concern that as land becomes scarcer, poorer and more vulnerable groups see their claims weakened, leading to their increasing marginalization and impoverishment (Barrows & Roth 1990, IIED 1999). While registration projects might in theory be expected to help poorer groups confirm their claims to land, in practice registration has often served to redistribute assets towards the wealthier and better-informed (Bruce 1986, Green 1987, Migot-Adholla et al 1994). Thus, land may become a political asset in many disputes at local and national levels.

But, is this inevitable? Are there situations where provisions have been made which explicitly address the need to level the playing field between poorer and better-off groups as it relates to registration of claims over land? If so, what do such provisions include? How can the poor gain greater voice within local institutions and ensure their broader accountability? The experience of the Tigray State helps to provide answers to these questions.

² By the Ethiopian Calendar (E.C.) the first day of the Ethiopian year, e.g., Meskrim 1, 1996, is September 11, 2003 of the Gregorian Calendar (G.C.) used in Europe and the Americas. All dates in the text are Gregorian.

³ Hereafter referred to as Tigray or the Tigray State. The town of Mekelle is the State capital.

2. LAND REGISTRATION ECOLOGY

Despite increasing interest in registration and protection of interests in land, comprehensive treatments (e.g., Deininger 2003, *but see* Atwood 1990) often barely mention the essential mechanics of registration and often do not adequately distinguish between registration and what is registered. One benefit of having three countries in the present research has been to raise awareness of the important differences lurking in the details. The historical and political differences between the countries lead us to a better understanding of the diversity of systems.

In the process of clarifying the terminology of land registration during this research, an understanding of the ecology of land registration has evolved. A first step in understanding the ecology has been to recognize the difference between rights to interests in land and their registration.

Interests in land, such as the right to determine the use(s) of a piece of land at a particular time, the right to exclude others, the right to determine future holders of defined interests in the land – what are often referred to collectively as a “bundle of rights”, like a bundle of sticks – have evolved over time, sometimes endogenously, sometimes due to colonial or commercial or revolutionary influences, often a combination of all of these. As a result, the types and allocations of interests in land are tremendously varied, and may be held by one or many individuals and many types of organizations, including the state⁴.

However, whatever the underlying rights to interests in land may be, registering them is a distinct, though obviously intertwined, activity. This is not to say that the rights to interests in land are unimportant; different sets of rights clearly have significantly different consequences, some of which are discussed in the research findings, e.g., when they affect the ability or inability of registration to deliver desired social consequences such as increasing capitalization of assets in land.

Instead, the importance of the distinction between rights and registration lies in highlighting the separate effects of each. Thus, the same rights to the same interests in land may be registered in many different ways and the research hypothesis to be tested is that the manner of registration has its own effects, particularly social effects on the margins, separate from the configuration of the rights to the interests in land registered.

Despite the multitude of apparently different registration systems⁵, most seem to entail some combination of bits and pieces from the following general categories:

- **Identification** of a piece of land: This may be done with simple (and often cheap) or sophisticated (and usually more expensive) technology. For example, a piece of land within a small community may be defined simply by the name of the holder (or a notorious previous holder) or the names of the neighbours; it may be marked on the ground (e.g., with natural landmarks, stone walls, steel pins or fabricated monuments); or it may be described with various types of measurements – for example, of hand measured straight line segments and right angles, or using other technologies that allow more complex shapes to be measured more accurately – with the result that the land can then be relocated on the ground at a later time with some degree of accuracy, for example when there is a dispute.
- **Creation** of rights: Separate from the Registration System, but essential to it, is the creation of the various interests in the piece of land and the allocation of rights to those interests⁶ Various social institutions and organiza-

⁴ For example, just to mention a few of an almost infinite set of possible examples, it might be an individual or the State that holds the right to decide on use(s) of land, another individual or perhaps the community that holds the right to exclude others, and yet another individual or a large group of individuals, perhaps a family or an association, who hold the right jointly to actually use (or not use) the land.

⁵ Official websites of nations and states are particularly useful for understanding the different functions of the essential components, e.g., <http://www.ros.gov.uk/index.html> (Scotland); <http://www.landregistry.gov.uk.html> (England and Wales).

⁶ The bizarre nature of interests in land appears to be limited only by failure of imagination. Unless prohibited by law they might include such wildly different interests as the use of very selective aspects of the land (e.g., the right to take a specific number of a certain type of fish during a specified time period from a specific reach of a particular river crossing the land), temporary rights (e.g., the right to an interest in the land – often rents – during the life a person, with the right to that interest then passing to as yet unborn and unknown humans or even non-humans such as favourite dogs), and such useful oddities as the income from a specific tree on the land or the right to hold a particular event on the land or the right to look across the land from a neighbouring land or for neighbouring land to be free from shadows cast by structures on the land or pollution created on the land.

tions create or restrict the initial interests (e.g., royal or state grants of land, local land-use plans, community bylaws or customs), and allocate rights to hold, use or benefit from those interests in the land. The evidence is often documentary, but, where creation is the result of unwritten transactions, statements of witnesses may be the only evidence. Cognisance of all the sources of rights is important if the evidence of them is to be effectively preserved.

- **Transformation** of rights: Also separate from the registration system but essential to it, is the transformation of rights to interests in the piece of land. Changes in the initial interests or changes in the person or persons or organizations with rights to those interests occur through private transactions (e.g., sales or leases of all or part of an interest) but also through more complex transactions (e.g., government regulation or takings, or adjudication of divorce or inheritance or incompetence or dissolution) accomplished through one, or some combination of, forums – administrative or judicial, government or private sector, local and community-based or distant and centralized, cheap or costly. This may be done all at once, and updated periodically, or on a piecemeal basis as individual transactions or disputes arise, but the systems for registration and adjudication must mesh smoothly.
- **Preservation** of evidence of the original rights and the transformations (documentary or witnesses): For example, the original of documents, or a copy or certified summary, may be lodged in collections (one or more, publicly accessible or not), kept safe from natural elements and human tampering, and, often, helpfully indexed by the names of the actors, the dates of the transactions or events, the piece(s) of land affected, or all of these. There may be one or more collections (e.g., one exclusively for land and other more general ones in, for example, different administrative and judicial bodies with different jurisdictions.) This duty may be entrusted to the interested parties, the state, private enterprise, or a combination. Preserving aging witnesses is more difficult, and their disappearance may make documentary systems attractive even to the illiterate.
- **Registration** of ‘title’: The rights of the various current holders of specific interests in the piece of land are recorded in some form. It is important to realize that “title” is a legal conclusion based on evidence interpreted in light of rules – a conclusion that may be in error or, even though never actually in error, may change from time to time as a result of changes in the rules or legal reasoning (e.g., a new local government land-use plan, or judicial abandonment of socially unacceptable private land-use restrictions such as covenants prohibiting certain people from holding certain rights), or the ever-occurring transformations resulting from death, divorce and the like. Keeping the records of conclusions about title up-to-date is a key element of such systems if trust in the accuracy of the recorded conclusions is to be fostered. It may be accomplished by placing the burden on interested private parties, disinterested private organizations (e.g., for-profit title insurance companies or otherwise insured legal experts in the USA), government, or some combination. The structural form of the registration (e.g., whether each piece of land is registered separately or groups of pieces of land held by some party at some time in the past are registered together) may have serious consequences affecting updating.
- **Assurance** for reliance on registration system errors: Insurance, or some other guarantee of, or mechanism for providing, compensation or rectification is often provided for those who rely on what turn out to be errors in the system. Sometimes the compensation mechanism is provided by government, sometimes by private insurers; sometimes government does not compensate but provides a different solution – e.g., redistribution; and sometimes there is no recourse at all.
- **Enforcement** of rights: Whether as a part of the registration system or separately, protection or enforcement of the rights to the various interests in the piece of land is essential. This may be accomplished through a single body or a combination of informal and formal forums, administrative or judicial, government or private sector, local and community-based or distant and centralized, cheap or costly; it may be done periodically and all at once or episodically and individually. Without such protection, rights and registration of rights lose much of their value.

Different national and state systems combine these pieces in different ways, for example allocating different pieces to government and to the private sector, and it is not uncommon even in highly developed, long-standing systems for one piece or another of the system to be in transition from one type to another in order, ostensibly, to improve it.

Having this ecology in mind leads researchers to look for the pieces, or their absence, in the field (or in field notes). And, just as understanding that there may be more than one way to select the details and organize the elements of such a system builds a degree of tolerance for unusual arrangements, knowing the function of missing elements helps explain the level of effectiveness of the overall system.

It should be apparent that the list of elements in the ecology of land registration parallels the first seven research

questions identified in the research design. This parallel highlights the significant linguistic component in the research. Special care has been needed to determine the meaning of words used by respondents. Every effort has been made to base meaning on function rather than just record the word chosen. Often the words come from a realm that is actually quite unfamiliar to those who have written or used them.

3. LAND POLICY AND LAW⁷ IN ETHIOPIA AND THE TIGRAY STATE

3.1 Evolution at the National Level

The major challenges to land policy in Ethiopia have been the growing population, the small size of land holdings in many areas, and, as a result of these two, the rising number of landless people, on one hand, and the need to create an enabling environment for agricultural development and a growing economy on the other hand. Complicating this already difficult equation, land policy is still often regarded in Ethiopia as part of welfare and food security policy and as a way to dampen rural-urban migration.

Using land to address all of these policy goals together is now becoming less effective, as more and more people become landless and land-based work becomes a smaller part of the economy of many households and individuals. Disaggregating this set of sometimes conflicting policy goals from a single land policy might lead to innovative solutions. However, a more continuous approach has arisen recently, making innovation less urgent, because better community-based malaria control has made feasible the opening of far off western lowland areas historically unpopulated due to malaria.

Important recent events in the history of Ethiopia are the overthrow of the imperial feudal regime of Haile Selassie by the socialist military dictatorship known as the Derg in 1974, and the subsequent civil war which ultimately led to the overthrow of the Derg in 1991. The Derg introduced a major program of land reform, nationalizing all land (whether privately held, imperial, feudal, or church; rural or urban) and, significantly, extinguishing most⁸ previously existing rights to interests in land, together with the systems for securing those rights.

In addition, the Derg prohibited the renting out of land, and other transactions (sales, mortgages, sharecropping and hiring in labour) were severely restricted. Nationalization was followed, in areas controlled by the Derg, by redistribution of land through Peasant Associations, and in areas coming under the control of a multitude of socialist groups rebelling against the Derg, as in Tigray under the Tigray People's Liberation Front (TPLF), by redistribution of land through local revolutionary committees within more traditional local village governments. As it happened, Tigray was the first area in which large numbers of local governments came under the sway of what was to become the post-Derg form of government, a fact which has had significant consequences for decentralization of land registration systems in Tigray.

Following the fall of the Derg, the new federal government, in which the TPLF has played a leading role, drafted a new constitution which was enacted in 1995. In it land *per se* remains public property, and sales and exchanges remain prohibited or restricted. But use of the land was liberalized, as it long had been in the areas first liberated from Derg control by the TPLF, by allowing renting in and out of both land and labour. The constitution also assigned legislative power over land to the federal level of government and reserved implementation of federal land laws to the States.

Meanwhile, despite the authority to legislate being in the federal government, Tigray State and two other new states in the new federal system (Amhara and Oromia) embarked on drafting specific state legislation for management of land, adopted in 1996 (Oromia and Amhara) and 1997 (Tigray). But in 1997, just prior to the Tigray State proclamation, the Federal House of People's Representatives delegated its legislative authority to the States, subject to guidelines⁹, and recognized pre-existing State proclamations that met those guidelines, thus legitimising most of the Amhara and Oromia state proclamation provisions, and the actions (such as land redistributions) that had already been taken in accordance with them.

⁷ A helpful supplemental overview of changes in land laws in Ethiopia may be found in Warden 2001.

⁸ The Provisional Military Government of Ethiopia (1975), Proclamation No.31 of 1975, A Proclamation to Provide for the Public Ownership of Rural Lands, Addis Ababa. Whether the "extinguished" rights to interests in land might be revived, either politically or through judicial action, is unknown. Efforts in other countries have had mixed results. In addition, some villages in Tigray have reallocated land to the church (e.g., in Felig Daro a plot of traditionally irrigated land that is leased to a local farmer each year by auction.)

⁹ Proclamation No. 89/1997, Rural Land Administration Proclamation Of The Federal Government Of Ethiopia.

A number of studies of land holding and land transactions have been conducted at the state and local levels in a variety of areas across Ethiopia since 1991. (See, Rahmato 1994, Hoben 1995, Holden 2001, Hoben 2001, EEA/EEPRI 2002, Teklu 2003, and studies cited therein.) These document the many concerns – from the small size of land holdings and low levels of technology in use to the uncertainty felt by land users who have seen land taken from some and given to others – and show large variances depending on the area studied (particularly between northern and southern Ethiopia) and the research theories applied (*à la* Atwood 1990).

However, little focused attention has been given to land registration in Ethiopia for the simple reason that, until 2004, only in Tigray State had formal land registration been undertaken since the end of the feudal period. The one large-scale retrospective study designed to quantify the determinants of investment in rural land in Tigray between 1991 and 1998, did not differentiate functionally between changes in land security due to registration (begun at the very end of the study period) and changes in the rights registered (e.g., discontinuation of frequent land redistribution), but found that farmers' perception of increased security from all sources was a factor in some farming decisions, e.g., to plant trees, though it did not increase investment by sharecroppers or short term lessees (Gebremedhin 2002).

3.2 Changes In Land Law In Tigray State

The objectives stated in the 1997 Tigray land proclamation¹⁰ are to provide more security, facilitate land transactions, and reduce instances for litigation and dispute. In general, it conforms to the 1997 federal guidelines, adding detail in areas the federal land proclamation guidelines identify. Thus, the Tigray State land law also includes provisions both ensuring and limiting inheritance of land (designed to increase security and, thus, investment in land, as well as to prevent further fractioning of land into smaller than economically viable pieces, and to ensure that the most needy descendant(s) obtains the parents' land¹¹), as well as some environmental protection provisions of the most common varieties¹².

Shortly after that legislation, the Tigray State Agriculture Bureau, with the assistance of the State Justice Bureau and others, designed and administered a land registration process for cultivated¹³ land in Tigray, described fully in the section 4, below.

As the study results show, one key aspect of the resulting Tigray land administration and registration system is that it was designed to be implemented at the *tabia* level of governance, very close to the people. This has been important.

However, in 2004, a second Tigray State land proclamation reorganized the role of government in land administration, creating a new dedicated Environmental Protection, Land Administration and Use Authority (EPLAUA, or "the Authority"). One key difference in the provisions of the new Tigray land proclamation is that it requires that the Authority have a presence from the State level of government to the *woreda* level, where it is a Desk within the Bureau of Agriculture and Rural Development Office. At the time of writing, the Authority is in the process of staffing up and defining its way of working. It has printed and distributed new forms (with Development Cooperation of Ireland assistance) and sent a directive to its staff to prepare for a renewal of registration and certification activity. The activity is specifically being designed to register and certify the land of those who did not get certificates in the first round (usually because forms ran out or the Agbe Technical Trainees' tenure ended before their work); those who have taken land since then as a result of hillside common land privatisation (usually young people for whom there is no cultivated land available); and others who have received land from the *tabia baito* (available because of lack of heirs or emigration)¹⁴.

The creation of the new Authority, with its ability to provide on-going continuity in the registration process, is, in part,

¹⁰ Proclamation No. 23/1997, Rural Land Utilization Proclamation of The Tigray National Regional State.

¹¹ In March 2002, after the completion of the initial round of land registration, Tigray State finally adopted regulations providing more detail for the implementation of the state land administration law, one portion of which provides the specific guidelines for registration of interests in land. Rural Land Utilization, Investment, Agricultural and Natural Resources Development Regulation Proclamation No. 15/2001/02.

¹² In addition, there are several separate new environmental, forestry, and water proclamations, as well as long-standing provisions in the Civil Code, which are dealt with by separate agencies. Such issues are often also delegated to state level when disputes arise within a single state; when disputes arise between users in different states, federal agencies mediate.

¹³ Cultivated land includes all types of land that are used for growing crops, including fallowed land.

¹⁴ Interviews, Tigray Environmental Protection and Land Administration and Use Authority, February 2005.

Historically, Tigray has had a complex land tenure system since the Axumite period, though modified after the monarchs of Tigray accepted Christianity around 320 AD. Traditionally, every Tigrayan was entitled to a piece of land by virtue of belonging by birth to a certain community, regardless of the village land tenure system.

Risti – privately held land passed by inheritance, or **Des-a** – shares of communal land

The *des-a* system attracted newcomers to a village by making land available to incomers. The *risti* system operated through ancestral claims to land and made it more difficult for incomers to acquire land. Each village was responsible for land allocation and could decide whether it wanted to change from one system to the other, in whole or in part. Thus, procedures for redistribution of land have long existed, taking into account the quality and location of the land and using a kind of lottery for allocation of plots in order to ensure fairness.

However, as churches and monasteries were established, for support and maintenance they were given land rights:

Gulti – right to levy taxes on the peasants in the area equal to one third (*Siso*) or one tenth (*Asrat*) of their production. Eventually the tax rate rose to 50% or more.

Rim – land given to the church, farmed either by the clergy or by peasant tenants paying the salary of a priest plus a fifth (*himisho*) of the produce.

Under these additional taxes, Tigrayans grew progressively poorer, and nature's variances became more deadly. Mortgages failed and transferred more and more land to a wealthy few. Though the plough arrived earlier than almost anywhere else in Africa, there were few additional changes in farming. Increasing numbers of people cut more trees and grazed more livestock; deteriorating land produced less.

By the time of the Derg land reforms in 1975, which also marked the beginning of the TPLF struggle, 25% of the peasants in Tigray had little or no land: 45% had less than a hectare, 23% between half and one hectare and 21% between one and two hectares. A very small group of people, usually those in positions of feudal power or the church, owned a great deal of land.

By 2001, an Ethiopian Economic Policy and Research Institute survey found that out of Tigray's 3.5 million subsistence small-holder farming citizens (85% of the Tigray State's total population), 75% had too little land to produce a living, the highest percent in Ethiopia. Thus, not only is Ethiopia one of the poorest countries in the world, Tigray is one of its poorest parts.

a direct response to findings of this research shared with local policy makers, particularly those concerning the lack of updating. But the wording of the new Tigray land proclamation makes it clear that the changes are also, in part, a result of experience-sharing with other States, particularly the Amhara National Regional State, which had by 2004 finally begun its own land registration program and, building on not only the Tigray system but also its own local experiences, adopted a more formal structure, removing authority over land from local village officials.

Therefore, one very significant question not explored by this research, because it has not yet been settled and implemented in Tigray, is whether Tigray will continue its distinctive local *tabia* land registration system or be influenced by the more formal Amhara system designed to remove authority over land from local government.

A second important, and apparently related, factor in the Tigray land registration environment has been that, as a matter of State policy decisions, large-scale redistribution of land has not occurred in Tigray State since about 1989, except under new irrigation schemes and on recently privatised community hillside afforested areas. Though there are still small-scale land redistributions, at the *tabia* level, which are one source of changes in land title, these do not appear to be disruptive to society in the way that large-scale ones had been in Tigray and have, more recently, been elsewhere, e.g., in Amhara State.

Influences on The New Structure of Land Registration in Tigray: Amhara State's original 1996 state-level land law was quite similar in content to that in Tigray. However, in Amhara a redistribution of land took place as recently as 1996/1997 under that 1996 law. Some researchers have claimed that the Amhara land redistribution was carried out in a punitive manner by local governments, undermining trust in local government (*see*, Hoben 2001). Before Amhara State land registration recently began, a newer state land proclamation was enacted. According to the wording of the new law itself, and interviews with Amhara officials (February 2005), Amhara State adopted a very formal government land administration structure from the State level down to the community specifically to remove land administration and registration from local government control.

There are several circumstances that still cause local small-scale land redistributions in Tigray. When a person dies without eligible heirs¹⁵, that person's land then returns to the local government council. In addition, land may be taken away from most, though not all¹⁶, rural land users who are absent from their village for more than two years¹⁷. In such cases, the land is made available to those without land on a village waiting list that includes both young men and women first coming of age to hold land and people returning to the village¹⁸. In most highland villages there are now a large number of such people because there is no more land in the *tabia* to give out. The only land available to these people is a share of their relatives' land or small hillside or marginal land plots suitable only for a house and garden or tree plantation, or land acquired through leasing or more traditional sharecropping.

One effect of the intersection of current land policy choices in Tigray, including the rule forfeiting rural land after an absence of two years, is that almost all land in each *tabia* is now held by people within the village, effectively abolishing transactions in land between people living in different *tabias*. And almost all rights to interests in land are homogeneous usufructory rights recently granted by the state at the *tabia* level. Information about land is, according to local people, therefore, very local, very easy to come by, and quite reliable. These facets of the situation have diminished the number of land-related disputes. Disputes that do arise are usually resolved within the *tabia* using a) traditional social dispute mechanisms (e.g., elders), b) the social court – a hybrid¹⁹ judicial system, or c) local government administrative dispute resolution mechanisms.

Another land administration policy element explicitly recognized in the Tigray State land proclamations and regulation, and which is also a source of changes in land title, is the need to provide potential investors (urban dwellers, companies) with the incentive to invest that a secure long-term interest in land provides. The Federal and State governments actively promote inward investment through a bi-modal agricultural policy, and states give out up to 50-year leases for large-scale commercial farms, mostly carved out of former state lands (originally feudal, then Derg State farms) or previously unused lands in the low-lying malarial areas. The Federal and State government policies provide that the government hopes these investor-owned farms will generate rural employment, attracting landless people from the highlands, as well as increasing production and enlarging the economy.

Other key evolutionary facets of land use policy, law, administration and practice included:

- recent distribution of tiny plots of land irrigated under new micro-dams as replacement for cultivated lands flooded by the dams;
- the recent policy decision to distribute small hillside plots, previously held in common for forestry, mixed forestry and grazing, or environmental protection, to landless individuals, often young otherwise-landless people;
- rapid escalation of peri-urban transformations of rural land to urban land and industrial areas; and
- rapid construction of roads, power-lines, dams and other rural land-taking capital improvements.

¹⁵ The 1997 Tigray Land Proclamation limits inheritance of rural land such that, in most cases today, only one child qualifies to inherit (so that land is not further fragmented below, if possible, 0.25 hectare) and that child is the one without any other source of income and/or who stayed with the parents to help them farm.

¹⁶ Exceptions to this rule, currently highly criticized by rural communities and being considered for state legislative change, protect the rights of some ex-fighters and early urban migrants to maintain rural land even though they live in urban areas.

¹⁷ The assumption seems to be that anyone able to stay away from their village for two years has another viable source of income and their land should be made available to others. In cases where this is demonstrably not the case (i.e., Ethiopians detained in Eritrea during the war), the rule has not been applied. There is a correlation between this 2 year loss-through-absence provision and the limitation on leasing rural land that limits small holder lease periods to 2 years for "traditional technology" and 10 years for "modern technology" (unfortunately, the two quoted terms have never been defined).

¹⁸ Returnees are members of the community who left either "voluntarily" (including fleeing famine and war, usually returning from the Sudan) or involuntarily (including those who were forcibly relocated by the Derg to other areas of Ethiopia). Many communities give returnees preferential access to land before young people, so that there are more landless young people.

¹⁹ Hybrid because the people elected locally to serve, voluntarily and without pay (until July 2005, when they were voted small reimbursements), as social court judges are much like the kinds of people who serve as mediators in the traditional dispute resolution forums and, as traditionally, they encourage parties to settle disputes amicably before eventually exercising their authority to decide the case; but the social court operates with a clear set of rules of procedure and a simplified version of the same law applied in higher courts, and there is an appeal to the court.

4. METHODOLOGY

4.1 Field Work

The research protocol was designed both to document the official policies, rules, forms and procedures relevant to the ecology of land registration in Tigray State, and to utilize empirical field investigation focused on what is happening in practice, on the ground, all with particular attention to the rights of disadvantaged groups. Given this focus, and the complexity of institutions and social relations at the local level, after a review of the literature the four country teams and IIED decided to employ an approach that was largely qualitative, employing a core of experienced researchers in each team with the skills necessary to listen, probe and understand a range of views on sensitive issues.

Methods were chosen that would allow the researchers to disaggregate those interviewed along the lines of wealth, gender, age, ethnicity and periods of residence or in-migration, wherever relevant. Key informants and focus groups defined by these factors were identified and interviewed at different levels of social and political organization in order to understand the institutions, organizations and processes involved in land registration, and their effects on people.

A semi-structured interview outline²⁰ was developed and field tested by each country team and followed in the field both in individual interviews and focus groups. Direct personal observation by the research team of the land, land use, the registration forms, how they are stored, and other physical facts, also played a role.

More detailed interviews were conducted with the most knowledgeable individuals, e.g., those who had participated in the process of land distribution, land registration, dispute resolution arising from land issues, land transfers, and other salient transactions, as well as with those who felt they had been particularly well or badly served by land registration and members of the focal groups. In discussions of area-specific issues additional categories of people were also interviewed, i.e., where there are commercial investors, detailed interviews were conducted with them.

As can be seen from the interview outline and the individual and group identification factors, the emphasis has been on understanding both the system and processes of inclusion and exclusion at the local level. For many of the research interviews, the research team included a Tigrynia-speaking woman economist, as well as a foreign woman researcher, in order to facilitate interaction with poor rural women who are often not accustomed to interacting with men in the public sphere.

Qualitative techniques used also included wealth ranking to select the groups to be interviewed and social and/or organizational mapping to identify which, if any, are more relevant in land registration and how they are viewed by different groups. Individuals in different categories were identified using a combination of methods, including key informant identification, random sampling (people met on walked transects), and referrals by early interviewees.

Focus groups were defined by age (i.e., elders and youths – of both genders, married and unmarried); gender, including a variety of women – currently married, divorced, widowed; wealth, especially the poorest but also the most successful; village residence status, i.e., returnees and migrants, rural or urban; membership in the elected councils (*baitos*, *tabia* and *woreda*); and elected leaders of “mass associations”, i.e., the women’s youth’s and farmers’ associations.

At most field sites the research protocol was implemented at least twice during the three year study period. Information collected was then analysed by comparing information from the different sites, and discussed collectively within the multidisciplinary team, with the advisory committee, and annually with the other country teams.

²⁰ Attached as Annex 1.

4.2 Field Sites

Based on available resources and preliminary field work, a maximum of nine sites (with at least one in the far west, a significant resource cost due to the difficulties of travel) were deemed feasible. The field sites were then selected in a three step process. First, past research in Tigray was reviewed to identify significant variables within the State, e.g., local government²¹; climate, elevation, soils, and farming systems; historical responses to land issues.

Second, within groups of sites representing the range of each variable thought to be significant, sites were identified that would allow investigation of specific issues important to the focus of the research (e.g., peri-urban transformation, newly developed irrigated land, newly distributed hill-side plots, areas with high religious diversity, areas with different types of agriculture, areas newly opened to settlement, large-scale commercial leasing).

Table 1: List of studied sites²² by Zone, Woreda and tabia.

No.	Zone	Woreda	Tabia	Rationale
1	Mekelle	Mekelle/Quiha	Ela'la	A peri-urban area with rural to urban, and rural to industrial site transitions; typical highland area, but with better market and labour access; mentioned in Bauer's study (1968).
2	Central	Ahferom	Mishig	One of the earliest TPLF land distribution areas; food insecure; highland; very remote.
3	Eastern	Atsbi-Wenberta	Felegeweyny & Haik-Meshal	Food insecure; highland area with poor soils; innovative agricultural practices, including hillside subdivisions and innovative terracing.
4	Southern	Seharti Samre	Adi-Aka'ala	Source of very poor rural migrants to Addis Ababa (being examined in another study); highland area; medium food security.
5	Southern	Hintalo Wejerat	Hawatsu	New micro-dam irrigated land distribution area, at Gum Selassa; highland area; near small town.
6	Southern	Ofa	Higumberda	Muslim kushet among Christian; highland area with large grazing and forested land areas.
7	Southern	Raya - Chercher	Mehoni & Worabaye	Large-investors; lowland area with unused land; agriculturally different, with irrigated orchards; affected by Raya Valley irrigation project; Muslim kushet adjacent to Higumberda.
8	Afar State (not Tigray)	Aba'ala	Hidmo	Border area between settled and pastoral land uses; extreme lowland; Muslim area; in Afar State, which has had no official land registration.
9	Western	Kafta Humera	Adi-goshu, Deguagm kushet	Recently opened to highland settlers – totally new village; lowland; larger land holdings.
10	Western	Kafta Humera	Adi-goshu, Mayweiny kushet	Resettlement area – with prior settled farmers; lowland.

²¹ The hierarchy of government institutions for Tigray State, slightly different in nomenclature from other Ethiopian States, is as follows: the Federal government; the State (Tigray State has a population of about 4 million); Administrative Zone (there are four – changed to six by the division of the Western Zone into two after most of the research was conducted – large, predominantly rural zones and one special urban zone around the capital city, Mekelle; not an elected level of government, and in Tigray much diminished by recent devolution of authority to the *woreda*, but still important at the time of the initial land registration); *woreda* (like a District or County, about 100,000 people, with an elected council that is composed of members from each *tabia*); and *tabia* (a group of clusters of houses, each of which might be thought of as a "village", except that, typically, none has a market, with a total population of about 5,000). Within the *tabia* there are smaller recognized groups that are not part of the official government structure (i.e., *kushet* – the clusters of houses, *gott* – like a parish, and onwards down to groups of 30 houses, each with a responsible leader, *Aboselasa, Father-of-thirty*). The word *baito* originally meant court but has come to mean council and there are councils at every level from *tabia* to the Federal House of Peoples' Representatives.

²² See map attached as Annex 2.

Finally, these sites were examined to verify that they were reasonably distributed and included sites that were likely to be representative of important variables, e.g., that there was at least one site in each of the five Zones of the Tigray State, different agricultural areas, and different socially-important areas.

Initially, nine sites were selected, including one in the neighbouring State of Afar (where no formal land registration has yet taken place since the Derg). Eventually, in western lowland settlement areas, an unanticipated but significant difference between areas was found, e.g., some areas had never before been settled, while others had, and a tenth site was selected to allow exploration of this difference.

In addition to the special investigations each site allowed, noted below in the rationale, the investigations at each site also covered all of the general research questions and themes, indicated above, utilizing the same protocol and semi-structured interview outline. The final selection of sites and rationales are in Table 1.

4.3 Practical Value of the Research Findings

From the start, the research was designed to make it practical and useful in discussions with local, national and international policy makers exploring the operations of recent innovations and new structures for handling land administration and registering land rights. The first step towards this end was the early creation of a local advisory committee, composed of people who are knowledgeable, genuinely interested in the research program, and actively involved in the policy makers' debates on land issues both as policy makers and advisors. The advisory committee provided useful inputs and advice to the researchers and a bridge to the community of policy makers, but did not have decision making power over the direction of the research or financial resources and could not block the progress of the research.

As a result, as findings from the research emerged, they have been reflected in the TPLF meetings at different levels and the Tigray State Parliament; used to initiate establishment of a participatory monitoring system²³; and used to elicit feedback from policy makers at local and national levels. The research, in turn, has benefited from the feedback provided through these processes. Experience and results from the research have also been presented internationally, e.g., at the Land In Africa Conference in London (Land In Africa Conference 2004).

²³ A means for local actors to monitor the performance and impacts of the registration program. The set-up should be such that it will be cheap and sustainable, and therefore can be maintained locally after the end of this research program. The design and implementation of such a system is currently under discussion.

5. RESULTS: REGISTRATION OF LAND IN TIGRAY STATE

5.1 The General Process Described

The choice of *tabia*-level implementation of land registration in Tigray built on strategies adopted during the seventeen year period of Revolutionary Struggle when the TPLF, in response to demands during negotiations with the rural population, first focused on building effective local government at the *tabia* level, using state and *woreda* level resources to supplement that local government. The long period of strengthening local government from that early beginning under the TPLF meant that by the time land registration began, local governments in Tigray were relatively effective. Thus, the design of the land registration system was undertaken by the Bureau of Agriculture at the state capital in consultation with other Bureaus and supervised during implementation by the *woreda* Agriculture Bureau office, but it was implemented by the *tabia* local government and citizens.

At the state Agriculture Bureau office, forms were designed and printed. Agricultural Bureau Development Agents, already assigned to work with each *tabia*, were trained in the purposes and procedures of registration and in the use of the forms. In addition, a much larger number of high school graduates were trained at the Agbe Youth Civil Service Training Center²⁴ in central Tigray as “land registration technicians”. The training was about six months in length and taught the trainees how to work with small-holder farmers to measure fields and fill in the forms correctly.

The Development Agents and Agbe technicians, with supporting supervision from the *woreda* Agriculture Bureau office, provided information on the new land law and the registration process to the rural people in mass meetings organized by the local council in every *tabia*, the standard means of communication where no other means exists²⁵. The mass meeting communications system is highly developed so that information can be disseminated and collected, in a sort of mass dialogue, very quickly.

Registration and certification of most²⁶ cultivated land under the new system was then completed, remarkably efficiently, in every village in Tigray between 1996 and 1998. The registration process does not appear to have at all changed the holdings and rights to interests in land in effect at the beginning of that process. This is reportedly because the registration of cultivated land was preceded by seven or eight years of strongly worded and clear public policy statements, supported by practice, that there would not be any further land re-distributions in the foreseeable future²⁷. As a result, people report that at the time of registration the rural population had come to accept the then existing land distribution²⁸.

²⁴ The training centre was originally established to attract and train out-of-work high school graduates in skills such as masonry work for rural road construction and household health trainers. Before being allowed into the training, trainees were required to commit to work for room and board on socially beneficial public works projects for one year.

²⁵ Studies by the Tigray Health Bureau, and others, have shown that until very recently only a very small percentage of rural people own radios or can read. In addition, at the time of this research, more than half the entire population (of which roughly 15% is urban) lived more than one hour walk from any sort of road and most rural people had no local access to electricity, a protected water source, telephone, or even a local market.

²⁶ Because this was not a quantitative study with a randomly selected representative sample, the number of exceptions is not known with much specificity. Estimates in the qualitative terms in the text reflect the terms in which the information was reported. With respect to this number, the new State Authority generally uses the figure of 80% completed, though recognizing variation between sites: in many communities all lands then held were completed, while, for example, it is locally reported that only about half of the land holders in the Samre study area.

²⁷ Before the end of redistributions in about 1989, some communities in Tigray suffered eight or ten sequential land redistributions in an effort to keep everyone on an equal basis. This apparently seemed like a clean and neat system compared to the complexities of the past. But the clearly detrimental effect of this course on investment, not to mention the ever shrinking land sizes resulting from optimistically unbounded population growth on a very finite amount of land, made the illusion untenable by the time the Derg fled Tigray. At a stroke, in announcing the new policy of no foreseeable further land redistributions, the government changed the land tenure system from one of equal shares to one of inheritance and market forces. In the last years of the Imperial period (the late 1960s), this was a choice that every village in Tigray could and did make for itself from time to time, in order to either attract needed manpower (e.g., after population loss due to epidemic) or repulse encroachers. (Bauer, 1972.)

²⁸ Landlessness resulting from population growth and anti-land fragmentation rules was not as severe at the time of the registration process as when this research was conducted subsequently.

Therefore, the rural people accepted that existing landholdings were simply studied and registered as they were found. There were very few disputes, or at least there was not any memorably significant increase as a result of the registration process in the number of commonly occurring disputes²⁹.

In most cases (but not all) the Agbe “technicians” working together with the local Agricultural Development Agent and community members (usually the older men who had been involved in the last land distribution, as well as the elected *tabia baito* chairperson), performed an on-the-ground study of current land holdings, walking the land as a group, and recorded the land details on a pre-printed form, Form 1, known as the Application Form. In almost all cases (but not all) the findings of the study were then reviewed publicly in detail with the all the landholders in the community, usually in a mass meeting. In some cases (e.g., Hintalo) farmers helped or even filled out the study forms themselves.

Based on the study forms, for each household (people regularly eating together) the single name of the head of household, male wherever present or female, was recorded at the top of the page, together with the several plots of cultivated land held by the household (whether brought to it through marriage or given in the last distribution or a more recent distribution, e.g., irrigated land). The information was recorded in Tigrynia (the local language), by hand, in ink, on a pre-printed page (Form 2, the Registration Form) permanently fixed in a record book, at an office in the *tabia* (usually the Agricultural Development Agent’s office but sometimes the *tabia* chairpersons’ office, depending on the quality of the office).

Below the name of the family head, the page listed all parcels of land held by the household, and indicated for each parcel its approximate size (in *tsimdi*, a local unit of measure that is the amount of land that can be ploughed in one day and averages about 0.25 hectares), the type of land (generally *rekik* (poor), *maekelay* (medium), and *requid* (fertile) quality), and identified the parcel by the local area name (usually the name of a small neighbourhood within the *tabia* or a geographical landmark) and the names of four neighbouring land holders on the north, south, east and west sides. In addition, the family size at the time of registration was registered³⁰.

Then, based on the record book pages, certificates (Form 3, the Certificate) were prepared at the *tabia* and delivered to the landholder (i.e., household head, male if present). The certificate is nearly identical in form and content to the registration book page and is also written at the *tabia* in ink on a pre-printed form in the local language³¹.

5.2 In Terms of the Ecology of Land Registration

In terms of the ecology of land registration (see Section 3, above), the process of land registration found in the field throughout Tigray appears to have been telescoped in the effort to create a local, cheap and practical system that could be implemented quickly with available semi-skilled resources. In some sense, the recent history – the expunging of past rights to complex interests in land and the creation of a new set of simpler, local, uniform usufructory rights granted by the state – seems to have imbued the land tenure conceptual environment with the impression of simplicity, and that illusion of simplicity affected the way the system operated.

There was, after all, no mystery about the creation of the existing rights to interests in land or what those interests and rights were. Little effort was required to find the evidence of rights to interests in land – the traditional local witnesses. And the system of registration of title was itself seen as the system in which that verbal evidence would be preserved in writing.

Thus, as the more detailed discussion of issues below will elucidate, the focus was on registering current title *now*. Apparently because the foundations for those legal conclusions could be ignored, in practice the process of keeping the ever-changing conclusions about title up to date was ignored. The system became, instead, something like a snap shot, a record of title at the time, carefully placed on a shelf and left there. By the time of the research,

²⁹ Given the choice of technology for describing land boundaries, which see, disputes limited to border encroachments could be ignored.

³⁰ At the time of the last land redistributions in Tigray, family size and make-up were determinants of land holdings.

³¹ A photograph of a Certificate is attached as Annex 3.

almost none of the many transformations that had occurred subsequently, in the intervening four years, were reflected in the registration of title. The registrations were, as a result, in these many cases, out of date, unreliable, and untrustworthy.

As for assurance for those who relied on the registration records, there is no formal system of insurance or compensation. After all, both the allocation and registration systems are nearly completely local; there are few rural land holders who do not reside where their land is. Information, even if not entered in the registration records, is easily available. In many cases, as in the case of women marrying out of their village and others noted below, local government was able to address unforeseen problems through administrative action, providing a sort of assurance system. It is this last finding that has required couching the overall research results as: a simple cheap local registration system can work, even with major oversimplifications, if it occurs within an existing system of effective local governance³².

Finally, with regard to enforcement and protection of the registered rights to interests in land, adequate local dispute resolution systems appear to be in place, but the choice of such a simple technology for identifying a piece of land has caused significant limitations in their use.

5.3 The Telling Details of Practice

How land registration works in practice depends on the detailed technical aspects, costs, information, language, level of decentralization; how these practices are really utilized on the ground; key institutions which intervene at different levels and their coordination; and key problems and their resolution. Some initial considerations about the details follow.

“The” Registration System? The term “registration” may seem simple enough but it is much broader than appears. There are actually many distinct systems of registration of land in Tigray other than the type called registration and certification of rural cultivated land and just described, above. Other types of land and interests in land have not been conceived of as appropriate for the cultivated land registration and certification system. They are either unregistered or are registered in parallel systems.

For example, the boundaries of rural common property, such as pasture and forest, are not registered in the cultivated land registration system, but are almost always described in writing, together with a description of those entitled to use them (e.g., members of a *kushet* or *tabia* or some other group), and the rules for using the resource agreed by the people (e.g., that only oxen may graze a certain pasture, or that a hillside tree plantation will be managed by closing it to all use except cutting of grass by a guard paid in kind). The document containing this information is kept with the *tabia* or *woreda baito*, as appropriate, and referred to as a *serit* (law). For all practical purposes this is a separate land registration system.

Other examples of land registered in separate registration systems include household plots given to youth coming of age and not getting cultivated land, which are registered in yet a different system and not certified³³; and leases of land by the government to private agricultural investors, which are registered in another completely separate system involving the *woreda* and the State Agriculture Bureau.

Thus, though the holders of all types of interests in all the land in every rural *tabia* are thought to be well known locally, and this information is often registered in one system or another, only cultivated land (both irrigated and rain-fed) has been registered and certified using the official rural land registration formbooks and certificates.

Of perhaps greatest consequence in Tigray currently, urban land is registered in yet another entirely different land

³² What is a system of effective local government? This is a good but complicated question, unfortunately far beyond the limitations of this study. The term is used here simply to mean a system of local government that effectively solves most problems that arise in the community in a way the community accepts, and as such, the term has the weakness of being somewhat tautological.

³³ Other lands are not registered at all. For example, in communities that distribute pasture (amazingly marked out in tiny squares with corner stones) or hillside afforested areas to individuals for cultivation, these plots were not included in any registration system; e.g., at Womberta. However, as mentioned in Section 2.2, above, the latter are now to be registered in the rural cultivated land registration books by the new Land Authority.

registration system. When rural land becomes urban land it must be switched from one system to the other, with severe consequences, discussed further, below.

Though this research focused on the registration and certification process for rural cultivated land, it is difficult to miss how the existence of more than one registration system causes problems at the boundaries. Examples of unknown overlapping claims, as when investors rent land, and of the problems caused when land moves from one system to another, as in urbanization, are given in more detail in the discussions below.

Land Description Technical Issues: Several inter-related technical choices were made in the design of the cultivated land registration and certification system. The principal ones were the choice to make registration a very local task, conducted in the local language, with only minimally trained technicians providing assistance (Agbe Training Center graduates) and supervision (Agricultural Development Agents). These choices also probably effectively dictated the method of describing land by neighbours' names rather than some type of physical survey. And this technical choice, in turn, lead to significant limitations with significant consequences.

Principally, the effective use of the land certificates in disputes is limited to a small number of title disputes³⁴, usually heard in the *woreda* court. In the much more common border disputes, usually heard in the social courts (lay *tabia* courts), the certificates provide no evidence of borders that is useful in resolving the dispute.

This technological limitation is reported as the source of the primary distinction between what value men and women place on their land certificates. Men generally do not fear title disputes³⁵ and, though they make statements about the value of certificates, in most cases they do not give much functional value to their certificates. Women, however, consider that their title may be threatened and speak of the certificates as valuable because they protect them.

Updating: Most *tabias* appear to have run out of certificate forms near the end of the initial registration or shortly thereafter, and, until recently, perhaps influenced by the absence of printed forms even after they requested them from the State Agriculture Bureau, most *tabias* conceived of the registration process as only a one-time event, a kind of snap-shot. The result of this nexus of practice shortfall and conceptualisation is that most transformations of rights to interests in land that occurred after the initial registration and certification process (of particular importance are distributions to women through divorce or inheritance, and those by the *tabia* to returnees) have not been registered, and neither the registration books nor the certificates have been amended or annotated to show changes in title, though these changes are well known locally. Therefore these new landholders are not registered and do not have their own certificates. Women, and even men (mostly returnees) in this category, often (though not always) express significantly more concern and uncertainty about their status than do people with up-to-date registration and certificates.

In some cases, as in Ela'la *tabia*, a rural area under severe urbanization pressure from nearby Mekelle, a reconceptualisation, of sorts, of the registration process has occurred. There, where it is in its interest, government has made sure that *its* "takings" of land parcels (during the urbanization process) are noted on the registration pages. That the reconceptualisation is incomplete is evidenced by the fact that the related certificates have not been similarly amended and inheritance and divorce are still not noted on either registration book pages or certificates.

The renewal process indicated by the new Tigray State proclamation creating the new Authority (EPLAUA) has benefited from these study findings, as well as from the much more important direct communications from *tabia* and *woreda* representatives focusing on registration and certification problems. New forms have been printed, including a Form 4, Application for Change of Record³⁶, and distributed, and renewed registration activities are being programmed.

³⁴ Disputes about land ownership caused by the registration process itself seem to be uncommon in the study sites. Only one case was observed in one site and that arose from a mistake in issuing a certificate: Two identical certificates were issued for the same land and given to two different individuals. The issue was that the two individuals were brothers and they had adjacent plots of land. One certificate specifying the two lands was prepared in two copies and was given to both of them. After one of them died, the other claimed to take the whole land, by showing his certificate. But the wife of the one who died also produced the same certificate. After discovering the problem, the social court of the *tabia* resolved it and the certificates were rewritten. (Note that the social court heard this "title" dispute apparently as a sort of administrative law review rather than as a title dispute, which would have been heard by the *woreda* court.)

³⁵ The one exception to this seems to be where the government itself is taking land and farmers must produce their certificates (or the registration book page for their household) to receive compensation, if any.

However, the forms are the same as before, lumping together all the land of a household, rather than having a form for each piece of land. This makes updating much more cumbersome.

Key Institutions: The key institutions are set forth above in the outline of the registration process and there appear to be only minor variances between sites in the implementation of the cultivated land registration and certification process, with the exception of the resettlement areas, which see below. For example, the location in the *tabia* where the registration books are kept may be either the *baito* office or the office of the Agricultural Development Agent. This was primarily explained by the availability and quality of the offices in order to protect the records.

However, there is some variance between study sites in the role of administrative and judicial dispute resolution. In most cases the jurisdiction over land disputes appears to be determined by law: when traditional mediation (e.g., by elders) fails, disputes over borders are heard by the *tabia* social courts and disputes over title are heard by the *woreda* courts. During the process of registration, administrative attempts were made in the field to resolve any disputes found, but if the parties could not resolve their differences, and it would make a difference to the registration³⁷, then they took the dispute to the appropriate forum.

But more traditional practices regarding making and enforcing contracts for land (i.e., leases, which are not conceptualised as an interest in land that can be registered, see below for further information on informal systems) appear to be more variable. In many places leases are executed in the social court with the judges acting as witnesses and a copy is stored there in case evidence is needed. However, in at least one study site (Worabaye, and others are often mentioned), where that had been the practice, the people had recently changed the process by delivering one of three copies of the lease for safe-keeping in the *tabia baito* chairman's office. The people did not attribute any great meaning to the change, mentioning it only as expedient.

Costs, Language, Place, Transparency, And Security: The only cost for registration and certification of cultivated land in Tigray is Birr 2 (about US \$0.25) for the certificate itself, whether the original or a replacement (if available). The language of the process and forms is the local language, Tigrynia; however it should be noted that a majority of people are still illiterate³⁸. The location of the work is the village. Some of the positive consequences of these choices have been mentioned, e.g., the speed at which the process could be implemented with sparse resources.

Transparency and Knowing The Law: One problem people reported on the land issue was that there was inconsistency in the government proclamations about the inheritance of land. This issue is also sometimes cast as the problem of knowing the law, which is often difficult in Tigray where the actual laws are hard to find, most people are illiterate and without radios, and only hear what the laws are from government workers in local mass meetings. As a result, local transparency may be coloured by higher-level changes. An example: One community was concerned about whether or not a grandson would inherit land, a question that depends, to the community's surprise, on when the grandfather died. Before March 1997, the law stated that a grandson could inherit land. The 1997 land proclamation changed the law so that grandsons could not inherit the land of their grandfathers. But the proclamation was then interpreted in a regulation in April 2002 so that grandsons could inherit the land of the grandfather and grandmother. The sequence has in turn been interpreted so that inheritance depends on what the law was at the time of the death of the grandparent, and the people complain that this is confusing and unjust. Their recommendation is that such sensitive issues should first be well studied and there should be consistent proclamations that may work for a longer period of time.

³⁶ In interviews with Authority staff in February 2005, a Form 4 was displayed. It is an application for changes in the registration and certification system (usually as a result of divorce, death and emigration or immigration.) Authority personnel stated that it is an original form from the first registration period. However, in field work this form was never found, even where changes such as government takings of land were noted in margins on Form 2. In recent interviews with staff at *woreda* and *tabia* offices who were involved in the original registration process and have seen the new form 4, all of them said that they had never seen the form before. That it exists and has been printed in large numbers should help to improve updating.

³⁷ Because of the low technology for describing boundaries, disputes over boundaries usually did not interfere with registration and certification.

³⁸ The state of literacy is hard to determine due to different definitions and the politicisation of the numbers from time to time. An example was provided by a woman in the Samre study site who had not seen her certificate because it was obtained 'for her' by her male sharecropper. After being interviewed she became determined to check that it was in her name but her effectiveness in this task was hindered by her illiteracy.

These design features, making use of cheap high-quality local knowledge, also tend to create transparency.

On the negative side, registration books are not very well guarded or protected from elemental dangers, though no significantly damaged or altered registration books were actually observed. Certificates are preserved by individuals and often suffer damage or loss. Until the recent reprinting of forms by the new Authority, replacement was possible only in the few places with extra forms.

As a result, there appear to be opportunities for fraud, corruption or manipulation. However, the researchers found no evidence of actual malfeasance. The local nature of the system, combined with effective oversight from the *Wereda*, appears to have prevented that at least in the sites studied.

5.4 Interface Between the Formal and the Informal

The preceding describes a formal system, even though its simplicity and its incorporation of traditional methodologies may make it sound informal to those accustomed to more elaborate formal systems. In addition, many other informal practices also coexist with the formal system, though less diverse, perhaps, than in societies that have not been stripped of local institutions as Ethiopia was under its recent heavy socialist ideologies. Some examples:

Less Formal Land Identification: In fact, 'informal' methodologies and practices are at the very core of the formal registration and certification process and use of certificates. Primarily because both prior land allocation and re-distributions, and then land description for registration and certification, have been done locally using traditional methods, the best evidence concerning land, both during the registration and subsequently (e.g., in land border disputes), is still the testimony of the traditional land allocators.

In the traditional land designation process, male farmers, often but not always elders, divided the land into types (usually 3 types, by quality) and equal shares (based on the number of landholders of different age in the entire village) and then allocated shares of each land type to groups of 30 households based on the makeup of the particular households in the group. Land was given at that time to father and mother in equal shares and to children of different ages in fractional shares. Then, within each group of 30 the parcels were allocated to households by lottery – a common fairness and transparency mechanism found the world over in common property management.

From the data so far collected, and other post 1991 studies, the fact that land distribution was overseen by men does not seem to have introduced a bias in favour of men, due to the lottery system, in part, and due to oversight by highly socialized TPLF cadres and a strong Women's Association.

Thereafter, two types of boundaries – and hence of boundary dispute – are recognized: those between members of the group of 30 and those between groups. The best evidence available when such disputes arise differs: for those disputes between groups, evidence must come from the elders who divided the land in the village; for those disputes within the group, evidence may come from those in the group and the elders.

Because of technology limitations, formal registration and certification have done little to change the importance of these traditional informal (e.g., allocators give evidence only as witnesses, not as experts, in the formal administrative or judicial forums in Tigray) allocators. An exception seems to occur in areas like the Samre and Ahferom sites, where the last land redistribution occurred so long ago that the allocators are dead and certificates have

The Effects of Aging Allocators and Absent Certificates: People in the Samre site say that certificates have more and more value here because land was last distributed before 21 years and the people who participated in the process are getting older, witnesses – and their evidence – are lacking. It is well known that in a case where two persons had adjacent lands of different qualities but no certificates (neither had received a certificate because forms ran out), and one of them took the land with the best quality by force, without either witnesses or certificates they were in the court for a long period of time. And because many also migrate from Samre, both seasonally to Humera and to Addis Ababa, people say that certificates provide security in their absence or that they feel they must come back to check their land every few months if they are without a certificate. One person interviewed lives in the woreda capital, Samre town, about 30 kilometres away from his land, and often comes to check his land because he has no certificate. Disputes about land ownership do seem to be higher in this area.

become 'more important'. Of course, as time passes, more and more areas will pass into this condition. It is, thus, important that the increasing "importance" of the certificates alone is not sufficient to overcome their technological limits.

Informal Interests In Land: Another way in which the formal registration and certification system interfaces with informal systems is where certain derivative interests in land are informally created by land holders and land users even though these interests are either not recognized by law or are actually prohibited by law. In Tigray, such rights include illegally long leases, mortgages, and attempts at what might be thought of as sales. Such interests in land can not be registered, and, as a result, they are more difficult to enforce.

1. Leaseholds: Since sale of rural land is unconstitutional in Ethiopia, one pathway by which land might move to more productive³⁹ smallholder farmers – through sales – is closed, interfering to some degree with efforts to increase productivity. By allowing the leasing of land and hiring of labour by smallholders, the EPRDF has, as compared to the Derg, allowed more productive farmers to farm more land more productively. Thus, because of the absence of sales, this lease mechanism has come under scrutiny.

The complex of functional (as opposed to political or ideological – see Lenin's and Marx's responses and the debates on the same issues in Russia in 1919 in Nove's *An Economic History of the U.S.S.R*) logic combined in the current land policies may be analysed as falling into one of three categories: A) the Productivity function (through which allowing leasing is intended to allow land to move to more productive farmers but where prohibiting sales and long leases undermines that goal because though more productive farmers lease land they do not invest in it the same way as they do their own land); B) the Welfare function (a.k.a. "fairness" function, through which land holding is understood to provide a safety net for the poorest farmers reaching only subsistence levels but where even that meagre welfare is undermined by the large percent of the population now without land and the very small size of fragmented holdings); and C) the Anti-Urban Migration function (through which tying up poor rural farmers' only capital in land that they will lose if they leave, together with land and housing policies in urban areas that make it costly to migrate, is understood as a disincentive to migration but where the low percentage of landholding undermines the effectiveness of the function while at the same time causing those who do migrate to do so without capital). Applying this analysis helps explain how extending lease periods and lease enforceability would or would not affect different groups of people.

Leaseholds take two forms in Tigray: Traditional annual sharecropping arrangements, which are legal, and also cash leases whereby one smallholder leases another smallholders' land for cash, which are legal if made for a short period. Both are common and in each area the cost of each is apparently well known. For example, in Worabaye, an area where there is lower population pressure on land, the cash rate is 150 Birr per tsmdi (0.25 hectore) per year, and the common experience is leasing it for 2 years at Birr 300. Sharecropping also takes on "standard" terms on a traditional basis. In prior research in Tigray, pricing power was found to occur not in the traditional terms but in a bidding process for the lease that is conducted through gifts. (Hendrie 1998, Pender 2001).

In theory, registering smallholder leaseholds both increases the effectiveness and lowers transaction costs of enforcement. The smallholder farmers in the study sites recognize these benefits and currently use informal methods of registration of legal cash leases (and sometimes, though apparently less often, also sharecropping arrangements) in the social courts or *tabia baito* chairperson's office. Thus, the issue of enforceability and transaction costs appears to be understood by smallholder farmers and providing better enforcement institutions is valued by them.

Despite the high value given by farmers, it is important to note that the formal land registration system is not adapted for use for this very important practice – no leasehold interests, not even formal ones, are allowed to be registered on Forms 2 or 3.

³⁹ The question of what makes one farmer more productive than another has not been studied much here but, according to the Tigray farmers, probably entails all sorts of characteristics from how early the person gets up to how smart they are to how much capital they have at the starting point. (Interview of a Samre *tabia baito* chairman.) The complexity of the characteristics makes it hard to predict success and the farmers recognize that markets are often much more effective at transferring land to more successful farmers than government coordination, planning, or even training and capitalizing techniques.

The opposite side of the transaction – whether or not the lessor has a land registration certificate – is apparently not yet even a concern in lease transactions, according to successful farmers who lease in land. Almost all (nearly exclusively males) who lease-in land say the certificate of the lessor (most commonly female) is irrelevant. Transactions are, instead, based on trust, they say. The only issue on either side of the land lease is whether they can trust the person on the other side of the transaction and the certificates and registration are not seen as increasing or decreasing that.

It is possible, as some of the following discussion indicates, that this attitude stems from the very local nature of the formal land registration system. Local farmers often seem to feel that they already possess the same knowledge as may be found in the registry, and, after some years without updating, even more accurate information. But it seems from interviews that this attitude may simply reflect the cost, including time, incurred if a lease must be formally enforced. If a lease must be enforced in the social court, then the fact that the person leasing-out the land had a certificate for it might well be useful. But compared to the much larger cost saving of not having to enforce a lease based on trust, the value of the certificate is negligible in this analysis.

However, complicating investigation of leases is the fact that “legal leases” are limited by the Tigray State Land Administration Law: smallholder rural agricultural land leases may not be more than 2 years when “traditional technology” (undefined) is employed or 10 years for “modern technology” (also undefined). (Rural smallholder farmers often mistakenly believe that leases may be ‘2 or 3 years’, and local government administrators also seem to accept this in some of the study sites. The local government attitude appears to be something like “leeway” within administrative discretion, not just ignorance of the legal two year limit, though whether this state of affairs arose as the result of open negotiations or just flexible practice is not clear.)

“Modern technology” seems to mean tractors in the minds of both administrators and farmers. Thus, most rural smallholder land leases are either annual sharecrop arrangements, one- or two- (or three-) year leases, or illegal. Those that are illegal are not only harder to enforce, they are also harder to investigate, though relatively easy to find rumours about.

The importance of investigating leases of different lengths is high because, by all accounts, better farmers do not treat land leased for short periods in completely the same productivity-enhancing ways as they do their “own land”. The opportunity to renew short-term leases does not provide the same security of tenure, and thus the same period for recouping a reasonable return on investment, that ownership or long term leases would because the owner may at any time give the land to another and the investment would be lost, say the farmers, e.g., in Samre. (*See also*, Gebremedhin 2002). Therefore, only a portion of the increased productivity of the better farmers is obtained as a result of allowing leases but limiting them to 2 years.

Farmers immediately recognize the benefit of longer-term leases in terms of investment: “We would even eliminate the weeds,” they say. In answer to hypotheticals – always a difficult research tool – better farmers indicate that 7 to 10 years would be an adequate lease period in which to obtain a fair return on the investment necessary to improve leased land productivity (i.e., treating it as their own.) More information on discount rates used by farmers – another difficult area of research – would be helpful to determine rates of return on investment they anticipate.

As for the interests of the landholder from whom the land is leased (most often single women heads of households, the poorest segment of the population), when better farmers were asked hypothetically whether they think taking a lease payment and going to town would be feasible for these women, they answer two-fold: that the value of such leases is low, due to their short duration, and that the practice is already being done but that many who go to town lose their cash in poor investments. However, it is apparent that, despite the economics and the rules, there are some rural landholders who successfully manage a town life with the lease income from their land. This provides an interesting model – but it is not a case of capitalization à la de Soto. Capitalization allows the asset to be multiplied – the owner keeps the use of the asset and obtains capital, as well. That is the real power of capitalization.

There is another difficulty with investigating the subject of illegal, and thus informal long-term leases: sometimes people refer to such transactions with local words that mean ‘sale’, clearly illegal transactions, even though the formal right to the land is not, and can not be transferred to the new ‘owner’. In fact, thirty-one percent of farmers interviewed throughout Ethiopia (EEPRI 2001) reported the ‘sale’ of land, but the researchers were keen on find-

ing sales, did not provide anything more than linguistic evidence, and it is thus not clear how the transactions actually functioned. Some people in Tigray (e.g., Samre site) say they know of transactions in which five to seven years' of rent has been paid in instalments or paid up-front in a lump sum. They tend to refer to these as sales.

However, the registered owner can always reclaim the land or lease it to another, as has been found in a case in the Samre site, undermining the whole notion of increased security of land tenure. And in this way, registration seems to interact with the set of legal constraints on leases and sales to do just the opposite of what some economic theories suggest; instead of allowing transformation of land into land and capital, it reduces the chance that this will happen.

The findings of this study indicate that such informal 'illegal' long leases are actually uncommon for exactly this reason. Even those who say such leases (or sales) exist recognize the danger inherent in the fact that such illegal transactions cannot be registered in any way and cannot be enforced except through social pressure. The low lease payments for such illegal longer-term leases reflect this low value.

Even when short-term leases are renewed numerous times over a significant number of years, those involved report that rarely has this been accompanied with high levels of investment because of the lack of security for a long enough period to recoup the investment. These and the few long-term leases actually found are reported to be made on strong bonds of trust, often within families.

Thus, in the interface found here between the informal and the formal, the effect of the formal rules has overwhelmed the informal creative efforts of rural farmers and landholders, with the result that the improved EPRDF lease policy appears, at least in the understanding of the farmers, to have had relatively little effect on productivity. Extending the legal period of leases, making them enforceable (and lowering enforcement costs by allowing them to be registered), the farmers say, would increase productivity. Defining "modern technology" to mean the use of a lower, more realistic level of technology, say the use of chemical fertilizer where appropriate, would be one simple way to legalize many longer-term smallholder leases and obtain their long-term investment benefits.

2. Mortgages: A second type of derivative interest in land is "mortgage", but there is a good deal of confusion over the term. In the Ethiopian Civil Code two types of mortgage are described: 1) 'traditional' mortgages – loans guaranteed by land as collateral, where the land stays in the hands of the borrower until default but is then transferred permanently to the lender in lieu of payment (capitalization à la de Soto); and 2) antichresis – where the land is given to the lender to use until the loan is repaid, with the profits from the land considered to be the interest on the loan (not capitalization, merely income). Only the first of these forms, the traditional "mortgage", is conceived as functioning to permanently transfer land extra-familially and without state intervention⁴⁰, and, like all such transfers, is considered to be prohibited by the Federal and State Constitutions.

In practice, antichresis transactions (referred to locally with the word for mortgages but functionally different) are quite common in the study sites in Ofla, Samre and Ahferom *Woredas*. They are even registered using the informal lease registration methods before the social courts and *tabia baito* chairpersons, though never allowed to be registered as interests in land in the land registration forms 2 and 3. Apparently, in a sense, these transactions are just being treated as cash leases and they are considered to be enforceable by local administrators and social courts as such if limited to 2 (or 3) years.

The value of antichresis transactions on the local market are, thus, relatively easy to determine in interviews and are very low, usually less than 100 Birr a year for a plot of land. This appears⁴¹ to be because all the risk in the transaction is carried by the lender, rather than the borrower, the opposite arrangement to a mortgage. The risks are of two types. First, the owner/borrower can return at any time, including while the crop is standing, redeem the loan, and take back the land. Second, if the borrower cannot pay back the loan within two years, the lender then runs the additional risk of being unable to enforce the repayment of the loan amount through other than social pressure, and, in addition, being unable to keep the land for use as payment of interest on the loan.

⁴⁰ An interesting interpretation of the language allows exchanges of equivalent lands for the purpose of making farming more efficient under state land administration proclamations.

⁴¹ Other possible causes, particularly lack of a developed market, are suggested in Barrows and Roth 1990.

Perhaps equally important, farmers (and researchers) who use the word for mortgage to refer to antichresis apparently do not differentiate two separate functions. Antichresis serves only one of these, which is the reason it is considered constitutional. It allows a kind of “capitalization” of the land asset, turning the land asset into cash, though not into both land and cash. But it cannot operate to transfer land permanently to more successful farmers. It is an essential part of the function of mortgages that they force (or allow) unsuccessful farmers to leave the farming business, a very important function in economies where market forces replace central planning or coordination.

Thus, here also, the formal rules of law regarding transfers of land trump the informal transactions of farmers.

Informal Efforts To “Formalize” Rights In Land: Even tax records are conceptualised by rural farmers as a kind of registration and certification. Where certificates have not been issued (for any of many reasons described above, e.g., lack of forms, one-time snap-shot conceptualisation) tax receipts are preserved with exactly the same care as certificates are. In some cases, because the annual tax receipt is more current (because there has been in Tigray no system for updating the formal registration books and certificates) it is in some cases even considered to be better evidence than an older certificate⁴².

Informal Local Adaptations To Protect Rights: Finally, unforeseen problems with the formal rural land registration and certification system have been addressed locally with informal solutions generated within the effective local environment. One example is the common consequences of land rules and conditions on women marrying out of their community. A woman who was old enough during the last land registration received a share of land and that land was registered to her and a certificate issued to her. When she marries, tradition requires that she move to her husband’s village. By then, in the new village it is unlikely that there would be land for her. If the rule based on leaving a village for two years were applied to her, her land in her birth village would return to the *tabia baito* and she would become landless. In order to avoid this result, local *tabia baitos* decided to allow such women to keep their registered land in their birth village until such time as they received land in their marriage village. Even though this practice is technically illegal it has been praised as a legitimate, even inspired, informal adaptation to achieve a desired end, and has now been copied widely in Tigray.

⁴² Adwa (non-site) interviews, anecdotal evidence.

6. SOCIAL IMPACTS – A SERIES OF DISCUSSIONS

6.1 Did Land Registration Increase Security?

In general, no effort was made to quantify differences in investment or production among those with or without certificates, primarily because almost all land holders received certificates prior to the study period, but also because of the limitations of the methodology adopted by all the research teams. Comparison of pre-certification and post certification data within MU's other studies may be possible but is not part of this report.

Also in general, the differences in attitudes towards registration and certificates was strongly divided in most sites between men and women, with women valuing the process more because they fear attacks on their title. There is now some evidence (from the Authority) that their fears are realistic.

However, the peculiar circumstances of two sites, Samre and the western resettlement areas, may provide evidence that men also come to value registration and certification functionally when it serves a purpose. The Samre study site was selected, in part, because it has a highly mobile population. As indicated above (see box), it is the primary source of poor rural migrants to Addis Ababa who are involved in the informal sector, many as beggars, the subject of a separate study⁴³, and there is also often migration to Humera, in western Tigray, where people work as seasonal farm labourers for commercial farms. One possible stimulus for this high degree of migration that is often mentioned by migrants is the added security for land provided by land registration and certification. However, another peculiarity of the area is that only about half of the people received land registration certificates.

As a result of this intersection of characteristics, more and more people here say that certificates provide needed security while they are away, or, alternatively, that if they do not have a certificate for their land they feel they must come back to check their land often, at least every few months. One man who lives in the *Wereda* capital, only about 30 kilometres away from his land, comes often to the study area to check his land because, he says, he has no certificate.

Similarly, in the western resettlement sites, discussed more just below, where circumstances are such that men feel the new land tenure rules are unclear, that their title to new land grants is therefore uncertain, and that they are therefore vulnerable to title challenges from other settlers or the government, men also seem to give a functional value to the registration and certification.

These responses of citizens in areas with particular circumstances may demonstrate the ways the value of certificates as security for land will grow slowly on people over time, particularly as rural areas become less static.

6.2 Concerning Gender and Other Vulnerable Groups

Leaving aside the shortcomings of the cultivated rural land registration system (primarily simple technology and lack of updating), in general registration and certification in Tigray did not cause winners and losers in the sense⁴⁴ meant by the research hypotheses, and the registration system itself does not appear to have been manipulated for the benefit of, or to the exclusion of any group. If a person was excluded from access to land, as, for example, many youths have been, registration and certification did nothing to directly aggravate that, nor did it help the situation.

However, in addition to the generally high level of approval of the system, as a system, voiced by the rural people

⁴³ This makes the site very unusual, since there are strong social strictures against this behaviour in Tigray. However, the origins of the tradition indicate that it is not the place that is unusual but the role of a particular individual (a priest) in its recent history, so that the implications drawn from this site may be generalized.

⁴⁴ In other indirect senses, it did. For example, under new irrigation systems, tiny "irrigated plots" were given as compensation to households whose rain-fed cultivated land had been flooded by a new micro-dam reservoir. In theory, this may have resulted in no change in productivity, or even an increase. However, as a result of over-optimistic calculations by inexperienced engineers, as at the Gum Salasse study site, some of the compensatory plots never received water, so that the household was left with a small fraction of its land – still only rain-fed.

in the study sites, the research also found perceptions of harm voiced – for example, by youths – who saw the system as further evidence that nothing (i.e., another land redistribution) would be done by the government to alleviate their particular situation. Recent opening of lowlands in the west to those willing to resettle from the highlands, has offset this perception somewhat. But the fear highlanders feel about lowland diseases and life tends to colour their valuation of this opportunity.

Thus, there appears to be a balance between appreciation of what is generally seen as a fair and effective system of registration, and other more nuanced perceptions, and that balance has the following contours:

6.2.1 Perceptions By Gender

As noted above, there is a difference between the way men and women think about their certificates. Men do not fear that their title will be challenged and, because the certificates are of little or no functional value in boundary disputes (in which men do often engage), they tend – now – to minimize the value of the certificates. Women, expressing concern about the security of their title, state that the certificates are important.

Of interest here, prior to registration and certification men also spoke of the certificates as important in Tigray⁴⁵, and some still do. But they most often do not act as if they think that way. One conclusion that might be drawn from this change is that the logic of registration and certification is powerful in theory but if the function of certificates depends, as is now clearly understood by men in these study sites, on their evidentiary value and, where this is low, due to technical limitations, the actual value placed on the certification process diminishes. In fact, where the registration and certificates have functional value, as when land is taken by the government and compensation is only paid to the registered holders, *see* peri-urban areas below, certificates are more often spoken of as valuable by men.

6.2.2 Women vs. Men

The foremost practical effect on women related to their land holding is due to the social prohibition against women ploughing their own land with oxen. After great TPLF efforts during the Revolutionary Struggle, a few notorious women did plough in a few villages, but never many. This means they must either have the free assistance of a male relative or a costly relationship with a male sharecropper or lessee. In the latter cases, though they are clearly better off than women without land, they are poorer than men with the same amount of land because they only receive a portion of the production. This is one of the factors leading to single women households being the poorest group of households in Tigray. This situation is, however, not a result of, or aggravated by land registration and certification.

Women and Land Policies: A more complete set of examples of how general land **policies and practices** – not the direct effects of registration, *per se* – may harm women: 1) The primary means of getting land in highland villages, and thus important for future women's land holding, is inheritance. But the right to inherit is limited in Tigray (among other criteria) to those who stay on the farm to help the parents and who are without any other means of support, thus making married women very much less likely to inherit. So far there is no government amelioration of this effect, probably because it is slow to manifest itself. 2) The criteria for getting land from government, if any is available, may also lead to abuse of women. To qualify for land youth must both reach the appropriate age (22 for males, 18 for females) and be married. Most marriages are arranged. In one site (*Worabaye tabia*) many young couples had married in hope of obtaining land but had then divorced and returned to live with their families when land could not be obtained. 3) Many women traditionally marry out of their village of origin into villages where there is no land for them. If they had received land previously, they would then lose their land in their village of origin after two years of absence. In this case, however, a special but widespread administrative practice (not found in any written law; discussed in the text in the previous section) allows them to keep their land until they get new land. 4) In the Afar site, traditionally though Christian women take their land on divorce, Moslem women do not. After government intervention, at this time Moslem women are also said to be taking their land on divorce. (However, Family Law is a matter for State legislation and Afar has not yet legislated, something to be watched). 5) Finally, landlessness also harms women more. Their options for unskilled off-farm labour are much more limited and landlessness often seems to lead women to work as sex workers, according to both men and women interviewed.

⁴⁵ In Amhara State, with its much more recent and disturbing land redistributions, men still do. Field interviews near Bahir Dar, January 2005.

Directly related to land registration and certification there are the problems related to the official registration and certification forms. As mentioned above, due to the nexus of 1) use of a single record for a household, 2) the practice of putting that record in the name of the male head of household, where present, and 3) the lack of an ongoing updating process, women who divorce or, in some cases, are widowed, receive title to their own land but the registration book is not amended and they do not get a new certificate in their name⁴⁶. This holds the potential for abuse.

However, in the study sites no evidence of actual abuse was found, because, the people explained, of the local nature of the system and the efforts made by the state and local governments in Tigray to see that women are protected. This example is similar to the local adaptation concerning women marrying out of their village, described above, but it does not involve a systematic adaptation. Instead, it appears to fall within the insurance element of the ecology of registration, responding to individual cases on an individual basis where there is an error in the records. In this case, rather than compensation for errors due to the lack of updating, administrative authority and local knowledge are simply used to ensure that no one is allowed to take unfair advantage of a defect in the title registration system. Thus, if a person wants to be sure who owns land, they would be advised not to just check the registration book and certificates, but also to ask the local government and the local gossips. The existence of efficient and accessible administrative (and judicial) appeal systems may account for the fact that little evidence was found of failure of such reliance on effective local governance, at least with regard to women.

Another example of what seems to be administrative protection of women comes from the Samre site. In the case of a pending divorce, administrators gave the land certificate to the people who were mediating the divorce (*shimagle*). If somebody wanted to lease the lands of the divorcing people, he or she had to discuss with both the husband and the wife and then with the *shimagle*.

The strength of relying on such *ad hoc* systems of assurance, rather than a more institutionalised system, may, however, not be as great as first appears. It is possible that no evidence of abuse was found in the study sites because of low frequency and a small sample, or because any practice of abuse arose slowly and became noticeable only after the research period, or that the researchers were looking for the wrong behaviour. Whatever the reason, there is some recent evidence, provided by the Authority, that women have begun to be targeted by men, with higher rates of border intrusions and title challenges against women than against men, apparently because women do not have the resources to defend against such attacks as well as men in the available forums⁴⁷.

In addition, in some *woredas* (though not in the study areas) local administrators were reportedly found collaborating with a quasi-private rural bank, to take the land of farmers (though not only women) who failed to pay back loans. Because this is considered unconstitutional, the administrators were punished and the land was returned to the farmers and the rural bank was forced to use other means of recovering its loans. Similarly, though unrelated to land registration, where a *tabia* administration in one study site auctioned land (returned through the usual means) to bidders, this was also determined to be illegal (the Constitution says rural land users shall receive land for free) and the bid fees were returned and the land was distributed again. These examples show the beneficial effects of oversight of local creative solutions by the state government and hold out hope that local abuse of power may be kept in check.

Finally, in the areas newly opened to settlement (discussed in detail below), which is one of the most visible land programs of the current government, the husbands generally go to the new area first and take the allocation of household land (by law, two hectares per household, regardless of household size). The rest of the household, women and children, come later. In discussions, the men appear to conceptualise this land as their own. They say that in cases of divorces, the women will have to return to their villages of origin, and the two hectares of land will belong to the husband. No case has yet arisen but this change in the law (giving two hectares per household regardless of household size) raises a potential problem for government to solve. (One very clever couple, described below, found an alternative approach that solved the problem for them.)

⁴⁶ In a few *tabias* (such as *Worabaye*), where extra certificate forms remain, widows have received new certificates in their own name.

⁴⁷ Interviews with the first director of the new EPLAU Authority (July 2004; February 2005).

In Afar, Strong Similarities: In the Afar State comparative study site there has been, so far, no formal land registration and certification program, though the Afar State is in the process of adopting a new land administration law which provides for registration. In that site, near Abea'ala, there is a single highland Christian village, Hidmo, the Tigrynia word for the traditional highland Tigrayan stone house, and the village is the only place such houses are found in this otherwise lowland, Afar Muslim populated area. This situation arose when, in the 1950's, all of the surrounding area, what is today the Northern Zone of the Afar National Regional State, was part of the Tigray administrative region. At that time, Ras (Lord) Mengesha Seyoum distributed the land for settled agriculture at the foot of the highland escarpment to both highland Tigrayan Christians, encouraging about 500 households to migrate to Hidmo, and to the three Afar Muslim clans, Asengola, Adi-haramoli and Endamehoy. There was another redistribution about thirty years ago and then the distribution was not changed by the Derg or TPLF, except that Ras Mengesha's own large landholding was turned into a government plot. As a result, due to population growth there are some landless individuals today.

However, Afar has a relatively low density population, and today, each household in the study site area holds an average of about five hectares of cultivatable land, an unheard amount in the highlands; even in the western lowland resettlement areas of Tigray only two hectares is allowed. The Christians also lease land from the Afar landholders on a sharecropping system, and the Afar owners work as labourers for the Christians, thereby earning a higher percentage of the crop, a system also found in the highlands. An increasing number of Afar men and women farm their own land. Nevertheless, young men who have not received land can easily obtain access to land. Significantly, there is nothing unusual about the leasehold relationship, despite the fact that people distant from the place tend to talk about the relationship as having exotic elements.

The people who participated in interviews agreed that some of the local cultural and religious practices favour men, and that females are disadvantaged. For example, during inheritance parents usually give animals, land and money to their children, favouring traditional cultural and religious arrangements over the formal government laws and regulations. Women get only half the amount of these things compared to their brothers: if a parent intends to devise 3 hectares of land to a his son and daughter, he gives them in the ratio of 2:1, respectively. The same is true of money and animals. The justification given by both men and women is that there is a high rate of divorce and females usually return to their brother's houses to live; if a proportion of what they should take as an inheritance is kept with their brothers, then they will be safe. During divorce women take land that they brought to the marriage, but if they had no land, then they take no land. Widowhood also contributes to the high proportion of single women-headed households but women usually take their share of household land if they are widowed.

At least two types of land are registered informally/traditionally in Afar communities, ploughed land and grazing land. Since the majority of the Afars are partially (usually seasonally) nomadic and depend on livestock, grazing land is as important as the ploughed land and is equally registered but at the community level. Boundary disputes are common and are usually resolved using traditional religious and cultural forums, usually involving elders of the clan. As in Tigray, the main sources of information (i.e., witnesses) about boundaries are the chairperson of the local government (*kebelle*, the term for *tabia* outside Tigray) and people who participated in the land distribution during the period of land distribution. Some of these knowledgeable persons are aging or have died.

A group of elders responsible for conflict resolution is called "Maca-bon" or "Adli-mero". "Maco" means "disciplined" and "Abon" means "Implementers"; hence, Maca-bon means disciplined people who implement the rules of justice. "Adli" means "people of truth" and "Mero" means "Collection"; hence "Adli-mero" means "collection of the people who always deal with the truth". Such people are elected by the community and women have never been members of such a committee.

Land disputes most often arise between individual cultivated land users, the user of ploughed land adjacent to collective grazing lands, and with the neighbouring region (Tigray) due to overlapping uses of grazing lands and some boundary issues. All are brought to, and usually solved by the Adli-meros. The Adli-meros even quite easily solve disputes that lead to the death of individuals. But when there is a conflict between two different kebelles, usually the villages cannot solve it using the traditional method, and they then go to the government administration for a solution in order to avoid further violence.

6.2.3 Age

In areas where the last land distribution was early (as in Samre), landholders, and the witnesses on whom they rely in disputes, aged more before the registration and certification process. They appear to rely more on their certificates than landholders in areas where land was last distributed later, who aged less before registration and certification. However there was no evidence that older or younger people benefited more or less, if they had land, from the Tigray land registration and certification process. But for historical reasons, explained above, older people were much more likely to have land than younger people.

6.2.4 Other Vulnerable Groups

There is no evidence that vulnerable groups are losing out in ways directly related to registration and certification. Youth, the poor, the aged, women, religious groups, and other focal groups are treated by government in the same way in all the study sites as other groups. That is, if they had land at the time of registration, it was registered and certified in the same way as that of others. For example, Muslims and Christians appear to be treated exactly the same in the 3 sites where large proportions of each have been present.

It should be noted, however, that these groups are clearly treated very differently by the market. Not surprisingly, since those leasing land out are looking for the highest and most reliable return, it is easier for older male farmers with successful track records to lease land than for younger farmers with no history. This market factor has aggravated the problem of access to land for the young in high-population pressure areas, that is in most of highland Tigray.

That said, with the exception of the landless (predominantly the youths), the poor are not poor, say the rural respondents, including the poor, due to a greater lack of land than anyone else. They are poor at this stage in Tigray's historical evolution due to their inability to use their land without sharecropping or leasing (e.g., women who are culturally prohibited from cultivating), or because they lack capital (e.g., people without oxen, the operating capital), or because they are not as productive with the assets they have (as, for example, those who migrate from Samre to beg are characterized.)

Thus, the variances in land administration found from place to place in the study appear to be primarily due to differences in the resources of the area (e.g., Worabaye orchards, Gum Selassie and Ela'la irrigation), historical circumstances (e.g., land available to returnees usually lower in quality, smaller in size), and current transitions (e.g., Ela'la rural to urban). There does not appear to be any indication that the powerful or wealthy, or any other group, are able to manipulate the rural land registration system under normal circumstances, so far.

6.3 Peri-Urban Takings

Ethiopia is under-urbanized, even by African standards. In the mid 1980s, only about 10% of the population lived in urban areas, and even these counts are high because hundreds of communities with 2,000 to 5,000 people were counted as urban even though they were actually rural villages without any urban or administrative functions. Thus, the level of urbanization would be even lower if one used strict urban structural criteria.

Mekelle, the Tigray State capital, is one of the oldest cities of Ethiopia but was only established during the second half of the nineteenth century, when it was the capital of Ethiopia while Yohannes the 4th was the emperor. A municipal government for the city was only established in 1942. The first master plan of the city was designed by an Italian architect in about 1960. The current total area of the city is estimated to be about 53 square kilometres, by far the largest in Tigray, and the altitude is 2000 - 2200 meters above sea level.

Today, urbanization has accelerated and the current rapid pace in Tigray, without parallel economic development, has meant a growing imbalance between the urban population and available social services and economic opportunities. The population of Mekelle increased from 62,662 in 1984 to 96,938 in 1994 and then to 170,000 in 2004, growing at a rate of 4.8% per year. According to a 1994 Central Statistical Authority (CSA) report, more than 65% of the people in Mekelle were then involved in the informal sector; there were 8800 micro- and small-scale

²⁴ This section is based on Guèye, Ouédraogo and Toulmin, 2002, and on the draft "EU Land Policy Guidelines" prepared by Camilla Toulmin and Philippe Lavigne Delville with the EU Task Force on Land Tenure, March 2003.

enterprises; 43% of the people were living below the absolute poverty line; and the unemployment rate was about 21 percent. Around 45,000 people in the city are food insecure. The most vulnerable groups of the society are women, elders and children.

To give some idea of the housing problem, there were 600,000 families in Addis Ababa in 1994 out of which 320,000 families (53.33%) were homeless (CSA 1995). The problem of housing is more or less the same in the other large urban centres. The main reason for this is that people do not have land on which to build their own homes. Additionally, land is needed for industrial and other large scale developments. To solve the problem, the administrators of the urban areas take land at the periphery from farmers and rent it to urban dwellers and investors.

From the perspective of this research, the primary land questions in peri-urban areas are: When the area is transformed from rural to urban, what happens to the livelihood of the individual farmers? What is the role of land registration and certification in such a situation? What are the possible sources of disputes in such areas, and how are they resolved?

One of the study sites is Ela'la *tabia* in Enderta *woreda* on the northeast edge of Mekelle, selected because many smallholder farms in the area have been taken by the government for other uses or transferred to urban governance, and the area is the source of an increasing number of land-based conflicts. In particular, farmers evicted from all but a fraction of their land (and forced to pay rent on the remaining fraction) when it is re-zoned under urban rules, complain that they are insufficiently compensated, and, at the same time, some of their anticipatory defensive land transactions are considered controversial and challenged.

Rural cultivated land in the Mekelle peri-urban area was registered and certified by 1998 in the same manner as in other areas. Many of the current issues do not directly involve issues related to registration and certification. Nevertheless, there are some registration issues embedded in the overall increase in conflicts. To understand these registration issues it is necessary to understand the rural-to-urban transition process. There are two different procedures. One involves the government taking farm land on the outskirts of the urban area and giving it to other users, such as investors, though not incorporating it into an urban government. The other involves expanding an urban municipal government so that farm land is incorporated into the urban area and, in the process, taking the farm land from its users and compensating them, in whole or in part, with a small plot of urban land for which they must pay rent.

The procedures identified by citizens as problematic are related to determining the amount of compensation to be given and to the amount of compensation actually received. Complicating the research, the procedures used varied greatly. The government appears to place great weight on the Constitutional provisions providing that the government holds all land in trust for the people and that compensation is to be paid only for improvements. The Constitutional provision that guarantees the protection of rural landholders against eviction and the portions of the Civil Code and more recent proclamations on compensation appear on some occasions to be followed less fastidiously. Several axes of comparison are evident.

The term "improvements" is quite open to interpretation. One strict interpretation limits improvements to physical structures, so that, for example, if no building is taken, as when a farm is taken and only a small plot under and around the house is left to the owner, for which rent is now owed to the municipality, then no compensation is deemed owed for farm land taken. More liberal interpretations of improvements, or of the guarantee against eviction without compensation, take into consideration the productivity of the land, which is, of course, in part due to the farmers' past work to improve or protect productivity. This approach leads to determination of compensation based on some number of years of future production. Thus, the compensation might be calculated as the appropriate number⁴⁸ of years, times an appropriate number of quintals of teff per *tsimdi*, times the number of *tsimdi*, times the current price of teff. This can seem quite generous. Both extremes, and others in between, were found to have been used in adjacent areas in the study area.

⁴⁸ The number of years in the formula is itself often determined based on the amount of land taken: according to one formula, if the whole land is taken, compensation is given for seven years; half of the land, five years; one-fourth, 3 years. In one rural area, it was said that the Rural Roads Authority had decided that if less than half of the land was taken no compensation was required.

The Logic of the Compensation Laws: In interviews with all of the types of people involved, there often seemed to be a lack of appreciation for the intersection of the illegality of the sale of rural land and the fact that only the government has the power to take land. As a result, there was a good deal of confusion about the actual process among both government and private parties. There seemed to be a lack of awareness that the correct process must entail the government taking land; the government determining just compensation for the farmers and delivering that compensation to the previous land holders; and then the government reallocating the land to government institutions (e.g., ARI) or private or quasi-private enterprises and charging the new users a lease fee, the only fee allowed by law.

In some cases, the process was described in ways that made the transaction sound like a business bought (or took) the land from the farmers, or the business determined the compensation for the taking, neither of which is legally possible (unless “the business” is one of a few types of government enterprise). Some of this confusion probably arose because some of the companies are “TPLF EFFORT” companies and their status in the eyes of many people is equivalent to that of government agencies. There also seems to be a corresponding lack of standardization in methodologies, and, as a result, great variability. Thus, sometimes investors negotiate with the *woreda* officials, sometimes with the *tabia*, and sometimes directly with individual land owners – the people who hold the certificate.

One issue arises when investors negotiate with the *woreda* administration for land and give money for compensation to the *woreda* administrators. For example, people reported that Medroc has “already put 270,000 Birr into the bank account of the *woreda* (Endirta) but that only some of it was given to the farmers” – as if the transaction were a sale, with the *woreda* acting as agent, and all of the payment must be given to the farmers.

An additional complication arises because the people whose land is to be taken are not well informed when the transaction occurs at the *woreda* level; what is happening is not as transparent as similar transactions at the *tabia* level would be. This is made worse during urbanization when the old rural *tabia* is shifted into the urban *woreda* and the people loose touch with their elected representatives.

The extent to which farmers were involved in the process of determining compensation was highly correlated with the theory of compensation employed, so that those who were paid based on productivity were much more involved because their information was needed, while those who were not compensated were often not involved at all until they were ordered off the land.

Another comparison of extremes is between compensation paid for land taken by the government to be given to private industrial developments⁴⁹ and land taken for use by a federal government institute, the Agricultural Research Institute (ARI). The farmers were often highly compensated when their land was taken for use by most industries, though not in all cases. But those who lost their land to use by the ARI were not compensated at all. It should be noted, however, that priority was given to them for employment opportunities at the IAR. (Municipalities sometimes also add short-term employment as a labourer when rural farm land is incorporated into urban areas.) Despite attitudes towards cash compensation, discussed below, it is perhaps not surprising that employment was not considered adequate compensation. The dispossessed subsequently initiated a lawsuit and, now many years after the takings, the dispute continues.

These variances in the methods for determining compensation, combined with the uncertainty about the extent of takings (i.e., the quite foreseeable but unknown extent of future urban land use boundary expansions), create a great deal of uncertainty and disquiet. Though the growing urban economy does offer many benefits to those living nearby, in the form of education, unskilled and skilled (e.g., stone masons) work, and proximity to markets and other services, these are not seen as adequate compensation for land taken.

A related problem is that even when quite well compensated with cash, most small-holder rural farmers are unaccustomed to having large amounts of cash and making investments. Many complained that they had either spent the money wastefully or made bad investments, losing the money in one way or the other. In either case there

⁴⁹ The “private” include Mesebo Cement Factory, Ethio-Rental House, and Sur Construction Company (all share companies whose shares are held by the Endowment Fund For The Rehabilitation of Tigray, organized by the TPLF), Medroc Construction (owned by a privately held holding company), EELPA (a government owned corporation).

was a tendency to blame the taker of their land for putting them in this situation. Many ended up as daily labourers owning only a traditional house on a tiny plot on the outskirts of the city.

Thus, when land is transformed from rural to urban in Tigray, two predominant outcomes are observed. When cash compensation is given it is most often squandered. This leads the recipients to become poorer than before and the people report that this is worse for females than the males due to the low availability of unskilled work for females. Alternatively, when no compensation is given, the poor lose their rural means of subsistence and have no other except urban daily labour. Most reported that the transformation of the peri-urban area makes rural people poorer than before, with particularly negative impacts on the vulnerable.

Yet another related problem, and this more directly related to land registration, occurs specifically when rural land becomes urban. As the municipal boundary shifts, the registration of land shifts from the rural system to the urban system. But, in addition, the locus of government shifts from the local rural *tabia* and *woreda*, which the people know and which knows them – and proved essential in protecting them from unforeseen rural problems. Thus, just as a huge challenge appears in the lives of these rural land holders, the very institutions that have been designed to protect them and have indeed done just that, are removed and replaced with entirely new *kebelles*, *woredas*, and the municipal government. The people have no idea to whom to turn.

In the El'ala study site, takings of land occurred both before and after registration. When it occurs after registration, only those registered as the holder could receive whatever compensation was paid. As time passed, and records were not updated, the number of people ultimately affected by this rule depended on how effective the local government was in making the typical local knowledge/good governance/title assurance kinds of adjustments (described above) necessary to protect individuals from errors in the registration system, particularly in keeping it up-to-date. Where urbanization also involved a change in local government bodies, then this function was interrupted and more people were appear to have been negatively affected.

Furthermore, peri-urban registration and certification disputes have increased rapidly as land values have increased. The increases arise in two ways: by compensation becoming available based on past use, or because of the increased value of future urban uses. The latter, in theory, should only be reaped by the municipality when it leases newly urbanized land to urban users. But rural landholders more and more often attempt, and often succeed, to reap some of the foreseeable increases in value by a variety of inventive schemes – e.g., selling a house on the land as a way of owning the land – more fully described just below.

The increases in value attract ancillary speculative and downright fraudulent claims, now worth the costs of bringing them to court. This is one of the greatest current sources of *woreda* court legal disputes and slows down the courts⁵⁰. These cases involve claimants either long thought (either rightly or wrongly) to have relinquished any claim to inheritance, or absolutely fraudulent dealings where less than all the known owners of a plot have made transactions or all the owners have sold the same improvement on land to more than one buyer.

After rural land is taken, the prior owners typically still retain their certificates, demonstrating once again how incomplete the conceptualisation of the registration and certification process is among government civil servants. This may lead to a conflict with those organizations that have received the land.

The ways farmers dream up to try to capture future value are intriguing. When they foresee that the value of their land is becoming higher due to urban growth, and that they themselves are likely to end up with little of that value if they wait until the municipality incorporates the land into its urban area, some try to “sell” rural land near but still outside the municipal boundary. There are plenty of interested buyers, but technically rural land cannot be sold legally. Instead, the farmers contract with urban buyers, the buyers pay cash and the farmer sells a “house”, usually the merest trace of a foundation. The foundation usually appears during the night (lending them the name “moon houses” – *Chereka bet* in Amharinya). So, technically, what the urban people are buying is a house, not rural land.

The process is apparent and everyone involved understands that the buyer is trying to buy some amount of the land, or at least the right in the future to rent the land from the government under the rules of urban land rental.

⁵⁰ Interviews with Tigray Supreme Court President, February 2005.

Though the land is still in the rural land system, the transaction is documented as if it involved the sale of an urban house. However, for land close to the urban boundary, the amount of money given to the owner of the land is often quite different from what is written on the paper.

As in other cases, despite the “transfer”, the registration and certificate for the entire piece of rural land still shows the farmer as the owner. In fact, this is one instance where, to be on the safe side, those who are buying the house do often check the certificate of ownership, to make sure it is in the name of the person to whom they are giving the money – another example of increased land value increasing the perception of the value of the certificate. But since the transfer of a house cannot be registered on the registration book or certificate, and the farmer continues to hold the certificate, and the land on the certificate and the registration book is much larger than an urban house plot rented from the municipality can be, there are obviously many problems with the transfer. After spending the money they received from the ‘sale’ of the piece of land (often unwisely), the farmers sometimes even try to use the unaltered certificate to prove there was no transaction.

Thus, enforcing these transactions, and protecting the transactions from those who would take a share whether entitled to it or not, can be very problematic. It is reportedly the uncertainty and confusion surrounding these illegal and unregistered transactions, in part, that has made it seem potentially profitable to engage in increasingly common fraudulent transactions and legal contests. Nevertheless, both the buyers and sellers seem willing to take the risks because of their calculation of potential returns on these transactions.

Investors are constantly investing in such rural land close to the urban boundary, usually trying to start small-scale business or build houses on it, and trying their best to create “informal circumstances” that will allow them to show that some amount of land is theirs when it comes within the municipal boundary. In interviews such investors indicate that they expect that there will be new ways of registration and certification; they have seen many changes with regard to such regulations and, though no one is sure what the next set of rules and regulations may be, they seem willing to take the risk that their investment will pay off. They are, they say, unwilling to wait for the slow process by which the municipality makes land available.

From the government’s perspective, the municipality appears to think little of either the previous rural owner or the new claimant. When the land becomes urban, it will become municipal government land, leased to urban dwellers for an annual rental payment. At best the prior farming family will end up with a tiny house plot somewhere in the municipality, for which they must pay rent to the municipality. But people within the municipality say it is apparently contemplating the introduction of new regulations for peri-urban areas, a new form of regulation not yet known.

So far, the transfer of land from the rural *tabias* to the present urban *kebelles* is very poorly documented. The two (old and new) administrative units are under two different zones and there seems to be little if any communication between them. This aggravates the transformation process.

Thus, registration in the peri-urban areas is not serving the purpose for which it is designed – creating confidence in title. Many transactions which will later be argued to be valid are going unrecorded. Registered rural lands are moving into the urban registration system without regard to their status in the rural registry. And transformations are not being registered and certificates are not being amended, causing potential conflicts, undermining confidence in the system, and providing just the sort of situation in which fraud is likely to flourish and dispute resolution forums, like the courts, do not function well and also are undermined.

6.4 Resettlement

As detailed above and in the box, here, there has not been any significant distribution of cultivated rural land in Tigray (other than through inheritance or of land returning to the *baito* or of tiny hillside plots) to young men and women coming of land-holding age for about fifteen years. Demands for land from young people have mounted and become loud, causing a renewed interest by the government in land distribution (though not *redistribution*). For example, in one of the rare highland locations with significant⁵¹ amounts of unused land, the local govern-

⁵¹ There is now some evidence that a larger number of *tabias* actually have some small amount of unused land, usually set aside in the past for unforeseen future needs but never used. These lands are to be distributed now.

ment in the Worabaye study site is planning to distribute uncultivated (scrub-covered) land in the *tabia* to young people without land. Some of the impetus for renewing the registration and certification process stems from these planned rural land distributions.

But the most massive response to the youths' demands for land is a huge voluntary resettlement and land distribution process now underway in the western reaches of Tigray, and in similar areas in most Regional States in Ethiopia. How land registration and certification is being handled in the Tigray areas is one of the study focuses. The study sites therefore include two new voluntary resettlement areas, at Mayweiny and Deguagm *kushets*, Adigoshu *tabia*, Qafta-Humera *woreda*, in the Western Zone of Tigray. Resettlement in these sites is now possible primarily because the previously unused lowlands now have better malaria control.

The initial policy to open the lands to settlement welcomed anyone from any part of Tigray State as long as they were willing to move permanently and didn't have land anywhere else. This criteria was adapted for those who do have land elsewhere, but may be willing to give it up permanently, by allowing them to take land in the settlement areas while letting others use their old land for up to two years without terminating their right to return. Some settlers now say that, in light of the vast influx of new land claimants, they expect that the situation is likely to change, probably becoming more restricted.

The Qafta-Humera study sites were selected primarily because the *woreda* is one of the areas selected by the Tigray State government for voluntary resettlement of people from very food insecure areas of Tigray. About 6000 new households have already settled in the *woreda* and about 10,000 more households are expected to arrive within the coming two years. Adigoshu *tabia* is one of the five centres selected for such a resettlement program in the *woreda*. The study sites are two *kushets*:

- Mayweiny – a place in which there were already about 150 households living and to which about 900 new households have recently migrated from the central zone of Tigray, and
- Deguagm – a place in which all the people are new migrants from the central highlands of Tigray.

The process of settlement follows a system derived from highland land distribution. First, the *woreda* representatives ensure that the previous settlers, where present, have two hectares of land each and, after estimating the remaining land size, they open the land to newcomers and ask the State to inform people from the other parts of Tigray of the availability of land and the rules for migration.

Males (husbands – if married) then move to the resettlement centres. Almost all settlers are between 25 and 30 years old and came of land-holding age without ever receiving land. Thus, it is no wonder that most of the settlers who have actually begun farming consider their new home to be a kind of paradise. Prior to visiting the area, however, many young people in the highland study sites expressed fear about moving to these lowland settlement areas. They think it will be too hot and dry, that tropical diseases like malaria are rampant, and that the food of the lowlands is not good for people from the highlands. They say they are afraid of dying, yet the rate at which they are taking up the land appears to be very high.

When settlers arrive, land is given first in blocks for about 50 household heads and then the group, as in the highlands, distributes the land among its members, first measuring it off using measuring ropes and then allocating it by lottery. The measurements are rough, the parcels are selected to contain the best land, and there is often excess land between and within the blocks, though not always by accident.

Unlike other places in Tigray, where larger households with more children received more land in the last land redistributions, in the settlement areas the policy is different. Here the government has promised that the amount of land given per household will be two hectares, regardless of the number of people in the household. This is more land than most households have in highland areas, unless they lease in additional land. In fact, some of the settlers report feeling that the two hectares of land is too much for them to farm with their limited resources, but they also acknowledged that some farmers are more productive and already recognize the possibility of leasing out their excess land to them. Certainly, none has offered to relinquish any of their land. Some settlers, however, have not yet secured the full two hectares promised by the Tigray State, and they say they will continue the difficult task of clearing land of trees until they occupy the full measure.

During the distribution period, two persons in the group are responsible for measuring and allocating land to households, and two others observe the process as witnesses. The boundaries of each plot of land are marked using trees, stones and the like, some of which are fixed and some of which are movable, in the way they know from the highlands.

As land has been allocated to the settlers, the transactions have been registered but not in the official rural cultivated land registration books. All new settlers interviewed agreed that they did not expect to get an official certificate for their land any time soon. They were very concerned about this and most are pushing the government to give them certificates as soon as possible. They are familiar with registration and the certificates from their highland experience. On the other hand, the settlers at Deguagm, where too little land is available, are now arguing for land redistribution before registration and certification.

One explanation for informal registration is the very real mobility of the migrants. Temporary migration has always been a common coping strategy used by the rural poor in Tigray. Traditionally Tigrayans have temporarily migrated to all parts of Ethiopia, neighbouring countries, and even further, in order to survive or to find income producing activities. They work as urban daily and longer-term low-level labour (e.g., working in teahouses in Eritrea), seasonal agricultural labour (e.g., in western lowlands like Humera and incense harvesting in Badime), trading (e.g., cattle from Mehoni to Asmera, salt from Dallol to Mekelle, coffee from Jimma to Addis Ababa), and begging (particularly those from Samre in Addis Ababa). In addition, longer-term migration to escape the effects of war, famine, and political instability has been forced upon the people of Tigray quite often. Permanent migration, other than when returning from a forced migration (e.g., from refugee camps in the Sudan to the western lowlands instead of returning to their villages of origin in the highlands) or migration to larger urban areas, like Addis Ababa, through education, is less common.

But it is exactly this hesitancy of the settlement administrators to use the official forms which most fundamentally reflects their conceptualisation of the registration and certification system as a one-time, final record rather than a continually updated record of changing users of land.

Though the informal records are supposed to be stored in the *tabia*, as in the highlands, those interviewed reported that the *tabia* is too large and the records would be too far away, so the records are being stored in the *kushet* instead. This gives a good impression of how low the population pressure is so far, since population determines *tabia* boundaries. When the population grows⁵² it is expected that the *kushets* will become *tabias*.

In other respects, the settlers are also using the knowledge they bring from their highland homes. They have already elected their own *baito* chairman and appear to be establishing the same standard model community as they have known in the highlands. So far there have not been any disputes over land but the citizens foresee the possibility and the need for dispute resolution mechanisms like those they have known in the places from which they have come.

In the settlement areas there appear to be three main potential sources of conflict:

- Conflict between the migrants and non-migrants over use of common resources, such as pasture, and over boundaries between areas allocated to different groups. This competition extends even to churches and other commonly used areas and institutions.
- Unequal distribution of the land between *kushets* and between blocks of households due to lack of systematic measurements and surveys. Land was allocated to each *kushet* of 500 or 600 households using only a rough estimation of the size of the blocks of land. This lack of accurate measurement and survey has led to disputes over boundaries between villages and some villages have excess land while in other areas, such as Deguagm, there is a deficit.
- Discord due to the unusual equal distribution of land between households regardless of household size. The proclamation establishing the settlement program provides that land will be given two hectares per household.

⁵² Asked if they would welcome other people in their resettlement area, the new settlers agreed it was everyone's right as long as they have the right papers, which they call "yizoral", an Amharinya word. A "yizoral" is a piece of paper bearing the seal and signature of the settler's previous *woreda* or *tabia* and appears to serve as a kind of license to move from one area to another. Obtaining the "yizoral" means satisfying the authorities in the home village that the person desiring to become a settler meets the government's criteria.

Thus, households with ten members and one member each received two hectares. People recognized that this discouraged large families, a government priority, but also remarked that households depend on their lands for sustenance, suggesting that a combination of both approaches might be used⁵³.

Though related disputes of all three types exist everywhere in Tigray, each of these sources of dispute has elements that are unique to the settlement areas. Given the relative effectiveness of local governments elsewhere in Tigray to defuse such disputes, or provide relatively efficient dispute resolution forums, it is not unreasonable to expect that the local government, administrators and other stakeholders would establish mechanisms to minimize them here. So far that does not seem to be the case, the settlers report. This seems to be because the links between the people and the new local governments here, so strong in the highlands of Tigray, are still weak here.

Trying to address the need for better land measurements, after many settlers had already arrived, the *woreda* administration trained about 40 individuals (grade 10 complete) as land registration technicians, similar to the original Agbe technicians. However, the technicians in this case were given only a three-day course: two days of which were about the need for registration and the objectives and legality of the resettlement program. The third day was on how to measure land properly using primarily a 100 meter rope; no other tool was given to them. What's more, the practical training was given in an area near Humera where fields are laid out in rectilinear patterns on already cleared flat terrain, quite different from the hilly wooded geography in the settlement areas where plots chosen by the settlers tend not to be rectilinear.

In practice, ***which land to measure*** became the big issue when two of these technicians arrived in Deguagm and began discussing with the people how they would proceed to measure and then register the land of each settler. The two technicians met with ten representatives of the *kushet* to decide. This issue arises because the new settlers are disconcertingly highly mobile. Some of them had already returned permanently to their places of origin, while others appeared to have returned only seasonally, that is, temporarily. Often it is not possible to determine which are which – especially during the months of January and February when many people travel to their places of origin for traditional ceremonies such as weddings – and people agreed that it would be unreasonable to restrict settlers' movements or place limitations on the time of year or the length of time they might be away. This difficulty in distinguishing the permanent settlers from seasonal migrants, and the corollary of some people potentially holding scarce land in two places, is taken as a threat to the settled land users and to the system.

The practical issue discussed was, therefore, whether to register the land of those not present, who may have left only temporarily. There were three alternative solutions discussed:

- to measure and register every plot of land, whether or not the land has been allocated, and thus without regard to whether the owner is present; or
- to measure and register every selected plot, whether or not the owner is present; or
- to measure and register only the land of those present.

The decision was to measure and register, though still informally, only the land of those individuals present during the measurement and registration period. While this local decision making serves a purpose, it is certainly possible to question whether this is the right result on a policy basis. But this study can not provide the necessary evidence because another complication arose when the technicians actually began to measure land.

The technicians found most of the plots, hacked out of the hilly forests by individuals, were irregular in shape and very difficult to measure with the rope and skills they had been provided with. The technicians then decided they could not proceed with measuring the land and they quit. Thus the problems related to lack of measurement, recognized by the local government as serious potential sources of disputes, persist and whether the consequences of the decision to measure only the occupied plots can not be evaluated based on actual data.

With regard to formal registration, the continuing conceptualisation of the land registration process as a “one-time” record is creating both short-term and longer-term problems. Instead of seeing the registration system as a

⁵³ In one case, a man and woman from the central zone planned to marry and move to the settlement areas, but they were clever enough to move first and then marry. In this way each of them received two hectares of land and, once married, had four hectares for two people.

record of constantly changing rights to interests in land – in which it would be perfectly appropriate to register land to a newcomer who might abandon it so that the land would then be given to another and the registration updated – the administrators persist in conceptualising the registry as a “perfect record”, so that they are afraid of using the forms until everything is “finalized”. In doing so, they delay registration and certification, creating the sort of uncertainty the system is designed to counteract, and they lose information.

6.5 Large Agricultural Investors

Agricultural investors⁵⁴ in Raya Azebo *Woreda* have received large pieces of rural land on long-term leases in return for lease payments to the State and their commitment to utilize “modern technology”. But this land is not registered in the rural cultivated land registration and certification system, it is registered in a separate system. Nevertheless, the study included a modest assessment of some of the characteristics of this separate system.

The *woreda* administration keeps a table showing the names of such investors and their leased land holdings from which investors to be interviewed were selected. However, many of the investors listed had already ‘failed and left their land’, according to the administrators, raising issues about how representative the respondents are. (Failure is said by the administrators to have been caused by drought and poor investor farming; the investors, as discussed in the text, say the cause is primarily administration behaviour.) The sample of investors interviewed is likely to be biased because it does not include any of the investors who has already left their land. Further detailed study of such large-scale agricultural investors would help to clarify the issues raised by the findings of this research.

According to the first Tigray land administration proclamation, which echoes generally accepted economic theory, the justification the government has given for leasing land to such investors for periods of up to fifty years, even while youth have no land in the same area, is to increase investment in production (investors having access to more capital), increase productivity, and create wage jobs. Local people are, however, quick to claim that the investors do not create enough wage jobs to equal the number of smallholders who might farm full time on the same land in small parcels. Whether this is true probably depends on the type of farming methods used and what is considered to amount to a ‘job’.

In order to attract investors and convince them to invest their capital the government allows long term leases by the State that will be secure and guarantee the investors an adequate pay-back period in which to recoup their investments with adequate return on their capital. In this sense the logic is, at least in part, the same as that by which the State decided there should be no further land redistributions of smallholder lands. In the case of smallholders there is also the issue of preventing further fragmentation of land.

In addition to the *woreda* administrators, two investors were interviewed at the *woreda* office in Mehoni and at their land near Mehoni, and a third was interviewed at his home in Alamata and on his land in the same *woreda*, further to the southeast. The investors and the *woreda* administrators agreed that the investors had each dealt first with a *tabia baito*, in some cases having been referred to the *tabia* by the *woreda*, and sometimes going directly to the *tabia* on their own initiative, having identified unused land in which they were interested. Together the investor and *tabia* representatives identified what they believed was uncleared “unused” land and prepared the lease.

The two Mehoni area investors took their land in 1995 and the one in Alamata in 1997. As a result, the circumstances of the two investors and the one investor differ and are reported separately.

The first two investors agreed to 20-year leases for 40 hectares each, even though the proclamation governing their leases allowed a longer period and they wanted a longer period. The leases were written, signed, and approved by the *tabia*, the *woreda*, the zone and finally by the Tigray State Agriculture Bureau. However, shortly after the leases were approved, the investors each received a letter from the *woreda* saying their lease had been unilaterally “changed” by the government to a ten-year lease and would, in addition, have to be renewed annually. Tracing this change up the ladder of government, the two investors were finally told at the State Bureau that they could renew the lease every five years.

⁵⁴ Though it is probably helpful to think of smallholders as investors, as well, the term investor is used here to distinguish smallholders from larger agricultural investors.

The two investors had pledged other assets (small hotels in the town of Mehoni and cars, in both cases) and taken loans from banks for large amounts (more than 300,000 Birr, about US \$35,000) in order to buy tractors and pay local labourers to clear the land. The land is now pristine, without a tree stump, clearly demonstrating the level of investment.

After clearing his plot, one of the two investors was challenged by a neighbouring *tabia* which claimed the land, though located in the leasing *tabia*, was used by its citizens for grazing. When the competing claims were raised through administrative appeal to the Zone, the Zone agreed with the second *tabia* and the newly and expensively cleared land was taken away from the investor; eventually another uncleared piece of land was given to him and he spent even more money to clear it to the pristine shape observed during the study.

This is a poignant example of how different systems of registration of different types of interests in land intersect and cause problems at the boundaries, and why sophisticated systems of title registration provide insurance or compensation for mistakes in the system.

Both of the two first investors have by now lost their tractors and collateral due to high costs, delays, drought, and low returns. They say they invested based on the twenty-year lease and now are afraid they may lose the land before they can make a return on their investment. However, it should be noted that their estimation of potential returns must still be quite high because they have persisted, and had planted their land yet again at the time of the interviews, with the hope of the one bumper crop that will make it all worth while.

They could not explain how they differed from the many other investors (the majority) who had already given up and left their leased land. One difference appears to be that they are local to the area and many of those who have left were not, which suggests that having fewer opportunities may be one reason they remain.

By contrast, by the time the third investor signed his agreement in 1997, the lease was from the start clearly written as a year-to-year lease of 40 hectares of uncleared land south of the village of Chercher. This short-term lease had a clear effect on the investor's behaviour, the investor said. But in addition, as soon as he began clearing the land government officials from the neighbouring Alamata *woreda* claimed he was cultivating the wrong land and created even more uncertainty by requiring that he stop clearing the land, resurvey, and map the land. He turned out to have been cultivating the right land after all of that, but the power of the government to act arbitrarily was not lost on the investor.

By his own testimony, in light of the uncertainty he faced in his lease terms and in government officials' behaviour, this third investor made very different investment choices and, as a result, he is generally cited as being very successful by local people, including other investors, but not by government officials who feel that he has not invested enough and 'does not farm modern enough'. He borrowed money from his children in America instead of from the bank; did not buy a tractor but instead uses 16 oxen to cultivate with traditional ploughs; and hires only a very small semi-permanent crew, and that not from the local population, and hires a larger local workforce only as absolutely required by peak labour requirements, such as harvesting. He cleared the land by cutting down only the largest trees and simply ploughing through the remaining scrub, leaving his fields looking like the Wild West. Thus, his level of investment is demonstrably less, and, though his productivity is also lower, his operation is profitable. Local job creation and job quality may both be lower.

The experience of these investors in their interactions with the government does not demonstrate anything like the security and longevity one would expect the government to provide in its efforts to increase investment, increase productivity and create jobs. Instead, and surprisingly, the government's behaviour resulted in leases that became unilaterally shorter and shorter over time, despite what the investors took to be either firm individual promises or parliamentary intentions on which they relied to determine the payback period for their investments. And instead of trying to reassure investors that they supported them, the government seems to have done a number of things to make the investors believe the government was very much not on their side. Thus, according to the investors, the government created uncertainty instead of investor confidence, exactly the opposite of the results desired and needed. Compounding this state of affairs, young landless smallholder farmers in the area are now clamouring for the investors' land to be taken back altogether and distributed to them instead. This means the strategy of providing wage-paying farm labour jobs to youth instead of small pieces of land will have to be seriously reconsidered.

In the confusion over whether land is unused or not, it is apparent that separate registration systems aggravate the situation and do not provide the assurance the investors sought.

6.6 Common Property and Privatisation

As noted above, common pool resources are often 'registered' but not in the cultivated land registration books and certificates. Also as noted above, when such common property has been privatised, as has become more and more common in Tigray in recent years⁵⁵, the plots have been registered but not in the formal registration books and without issuance of certificates. However, under the new Tigray Land Administration Authority, one of the first initiatives in the renewal of the registration and certification process is to register and certify these omitted privatised plots.

In rural areas, however, there is considerable evidence from the study that the separate registration of common lands is at least one cause of a significant number of conflicts relating to encroachments into common property resources, such as grazing land and forested or closed areas. Whether it is the investor clearing leased land that others believe is their grazing land, or individual small-holder farmers ploughing into it, the continuing separate registration means that there is a lack of knowledge, as well as differences in land description technology, that prevent less disruptive protection and enforcement of common property rights.

⁵⁵ The trend towards privatisation of hillside areas closed for natural rejuvenation stemmed from a single village near Zalanbessa in which the people undertook this strategy on their own, against the government's Socialist model, and demonstrated that it resulted in better management and higher productivity. Results in the areas where it is being copied are being monitored carefully.

7. CONCLUSIONS

The research is based on testing a set of interlinked hypotheses. With regard to these, the research results support the following conclusions:

Land registration is not inherently anti-poor in its impacts: This hypothesis is supported by the results of this study of the Tigray rural cultivated land registration and certification process. A process that is local, simple, cheap, done in the language of the people, and, thus, transparent, seems to be, in this case, not anti-poor. Therefore it must be true that land registration is not inherently anti-poor. Even serious misconceptions and significant possible opportunities for malfeasance, due to technical and design choices, seem to be prevented in most cases by the effective local government and state oversight in place in most of Tigray.

The distributional consequences of land registration will depend on the design of the process and governance of the institutions responsible for its management: This hypothesis, too, is supported by the research findings in Tigray. In Tigray the distributional consequences do appear to depend on both the design of the process and effective local governance with state oversight. That is not to say that there are not other factors at work. Among other factors, the prior egalitarian land distribution served as a foundation and the prior choice to build the effective local governments that administered the process and the state oversight procedures that corrected missteps, provided a basis for effective governance. In such an environment, the distributional consequences of the land registration system itself appear to be quite neutral with regard to all suspect groups.

However, that local government is important for such a system, has consequences. During transitions – such as urbanization and resettlement, when the connections between local government and the people are broken or weakened; or such as the introduction of new large-scale credit programs, when local government may be tempted into collusion with a sister political credit organization – the opportunities for failure of the system or for mischief that effective local government has otherwise cured, may produce ill effects. It is important to note that in Tigray state level oversight of local government has also been needed, and has been able to cure many of these ills.

Land registration procedures can be elaborated which systematically address the risk of bias against poorer, more marginal groups, by considering location, registration fees, language used, recognition of secondary rights, and so on: Tigray may provide a basis for such an elaboration, but because of the limitations of the conceptualization and implementation of its system, it is not possible to determine the effect of all these elements. Thus, the lack of an updating mechanism, one that relies on firm institutional origins of rights to interests in land; the misconceptualisation of secondary interests in land – such as leases – as not fit to be registered; the significant consequences of the technological limitations chosen for local use in Tigray, particularly border descriptions and recording formats; and the presence of parallel and conflicting registration systems, limit the conclusions that may be drawn from studying this system.

8. RECOMMENDATIONS

Based on all of the foregoing, certain continuity, and certain changes, can be recommended.

- The existing system is a good model for a developing economy but needs certain improvements. In general, it needs to be reconceived, and its personnel retrained to see it as a system designed to create long-term certainty and reliability and investment, no matter what the size or technology choices of the rural land user.
- Foremost of the needed changes is a system by which the registration and certificates of title are kept up-to-date. The obverse of that is always using the system, even when changes are certain to occur, as in the settlement areas.
- Such an updating system must be based on a reliable system that causes court judgments of inheritance and divorce, and other title transforming transactions and decisions, both public and private, to be the basis of constant updating and correction of the registration book pages and certificates.
 - Changing the forms so that each plot of land is registered on a separate page, instead of severally for each household on one page, would make this process easier.
- To the extent that *ad hoc* administrative cures for unforeseen problems have been important to the success of the system, these should be institutionalised and spread systematically through changes in laws and regulations and forms, and through training of personnel.
 - Making the laws and regulations and forms easily available, perhaps in regularly updated collections in public libraries, to anyone who needs or wishes to study them, would increase transparency.
- The traditional technology for identifying pieces of land should be re-evaluated, on a cost-benefit basis, to determine how descriptions can be economically made certain enough to serve as the basis for boundary dispute resolution.
 - There is a lot of misinformation about this topic and a careful analysis of exactly what benefit different technological investments will bring is essential.
 - It may be beneficial and necessary to use different technology in different places, so that more costly technology may be used where land values justify it – e.g., in peri-urban and investor-leased areas.
- The kinds of rights to be registered should be expanded, so that economically important interests, such as leases, are also constantly registered. This means that the registration system must be kept up-to-date daily and that there must be trained, reliable, supervised and overseen staff to keep the registrations and certificates up-to-date, and that review and appeal of their actions must be available.
 - It may be necessary to clearly specify the burdens of individuals to make sure their rights are recorded, as well as the consequences to individuals for not doing so. Many of the prior Civil Code provisions about this were repealed by the Derg.
- Finally, the many different systems of registration of rights to interests in land should be merged so that the friction and fractures now found at the borders of urban and rural, common and private, small-holder and investor lands do not arise and do not create the incentives for fraud that now exist.

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ANNEX I – PROTOCOL

LAND REGISTRATION RESEARCH SEMI-STRUCTURED INTERVIEW PROTOCOL

SEQUENCE OF INTERVIEWS

1. Woreda Administrator or the designated person – to inform and obtain site information
2. Tabia Baito Chairperson – to inform and obtain names of key informants, request groups for focus groups
3. Wealth ranking interviews to find
 - a. Poorer
 - b. Middle
 - c. Richer
4. Key informants – to find other key informants and to conduct individual interviews
 - a. Include all wealth groups but increase sample from poor
 - b. Include people from special groups by:
 - i. Religion
 - ii. Small holder vs. Large investor
 - iii. Rural/Urban
 - iv. Other locally important group characteristics
5. Key Informants – found along the way, randomly
6. Key Informant specialists – Social Court judges
7. Focus Group Interviews – Record both individual statements and "consensus"
 - a. Women
 - b. Youth
 - c. Elderly
 - d. Fighters
8. Tabia Baito Chairperson – to ask the following questions
9. Woreda Administrator – to ask the following questions
10. State level people – to ask the following questions

QUESTIONS

General Questions

Details of interview: Location – Woreda, Tabia, kushet, date, time

Names of interviewers

Personal information about interviewee, if possible:

Age, Sex, Wealth ranking, Address, Political position (if any), Religion (if important)

Other key indicators – rural, urban, large or small-holder, fighter, resettled, migrating land user, good farmer/less productive farmer

Detailed Questions

1. How is land being registered?

- A. What institutions are involved?
- B. At what level?
- C. What land is being registered?
 - i. Cultivated
 - ii. Irrigated
 - iii. House Lots
 - iv. Pasture
 - v. Tree Plantations
 - vi. Common Property – In Common
 1. Closed Areas
 2. Hillsides
 3. Pasture
 4. Afforested Areas

vii. Common Property – After Being Privatised

1. Closed Areas
2. Hillsides
3. Pasture
4. Afforested areas

2. Are there rules and procedures for registering the land?

- a. Does the person know the rules and procedures? [Do not inform them.]
- b. What are the rules and procedures?
- c. Who drew up the rules and procedures?
- d. What variation in land administration practice is found between villages?

3. Why are people registering their land?

- a. Who is seeking to register their land rights?
- b. Are some groups more eager than others?

4. How have boundaries been decided?

- a. When were they decided?
- b. Were there agreements about boundaries before registration?
- c. Was the distribution before registration fair?
 - i. If not, why not?
- d. How is the land demarcated now...
 - i. On the ground?
 - ii. On the certificate?
- e. What technology is used to demarcate and describe the land?
 - i. Paper, maps, aerial photos, GPS, neighbours' names, ...?
- f. What land did the person have before the registration and after?
 - i. Was there any change?
 1. In quantity?
 2. In quality?

5. Where are registration certificates stored?

- a. How many copies are there? Where is each kept?
- b. Is there a special form? How can we tell a special form from a forgery?
- c. In what language are they written?
 - i. Is local terminology used to describe the arrangements that people have agreed?
- d. How accessible are they to the general public?
- e. How safe are they?
- f. How are lost forms replaced?
- g. What weight does a registration certificate have as evidence?
- h. Is oral evidence also needed? **[ASK SOCIAL COURT JUDGES]**

6. Are there disputes over land?

- a. Were there disputes before registration?
 - i. Was any type of land more often disputed?
 - ii. How were they resolved?
 - iii. Does the person know the rules and procedures? **[Do not inform them.]**
- b. Are there disputes at the time of registration?
 - i. Is any type of land more often disputed?
 - ii. How are the disputes resolved?
 - iii. Does the person know the rules and procedures? **[Do not inform them.]**
- c. Do people raise disputes to take advantage of the registration process?
 - i. Are the rules at the time of registration advantageous to some people more than others? **[Ask SOCIAL COURT JUDGES]**
- d. Were there informal methods of dispute resolution (Alternative Dispute Resolution Methods)?
 - i. In the past?
 - ii. After Registration?
- e. What political and legislative framework governs dispute resolution? [May call for researchers' conclusions.]
- f. How is accountability beyond the Tabia assured?

7. Are there winners and losers in this process?

- a. Did some people get...
 - i. different land
 - ii. more land or less land
 - iii. better land or worse
 ...as a result of the registration?
- b. Who lost?
- c. Who benefited?
- d. What happens to the claims of those who lost?
 - i. Were these people poorer, women, youth, minorities (religious, rural in an urbanizing area...)?
 - ii. What means do they have to make their voices heard, locally and at higher levels?
 - iii. Do they know how to make their voices heard?
 - iv. Do they actually protect themselves against unjustified claims on their assets?
- e. In a more general sense (i.e., Society as the winner), did the best farmers hold, invest in and work the land...
 - i. before registration?
 - ii. after registration?
 - iii. at any time?
- f. If not, is registration making it easier to harder for better farmers to farm more land?
- g. What might be a solution to maximize the productivity of the land?
- h. What would happen to vulnerable groups (e.g., women, youth, elderly) if productivity were the only objective?

8. Are there secondary rights to land?

- a. What are they?
 - i. Short leases, share-cropping?
 - ii. Longer leases?
 1. How long?
 2. How long would be advantageous?
 - iii. Mortgages (land as collateral for loan)?
 - iv. Illegal Sales – e.g., so that the title (registered) does not change, i.e., instalment sales (annual payment for fixed number of years with title to transfer later), very long leases (annual payment for unspecified number of years with no mention of title changing)?
- b. Are these registered?
 - i. Formally?
 - ii. If not formally, how informally?
 1. What documents or other means are used?
- c. Are they enforceable?
 - i. Formally?
 - ii. If not formally, how informally?
 - iii. Would enforceability be advantageous?
- d. Hypothetically:
 - i. If you could lease your land and move to town with the income, would you?
 1. What would you do with the income?
 - ii. If you could sell your land what would you do?
 1. Would you move to town?
 2. If so, what would you do to earn a living?

9. How do formal processes of rights registration interact with informal?

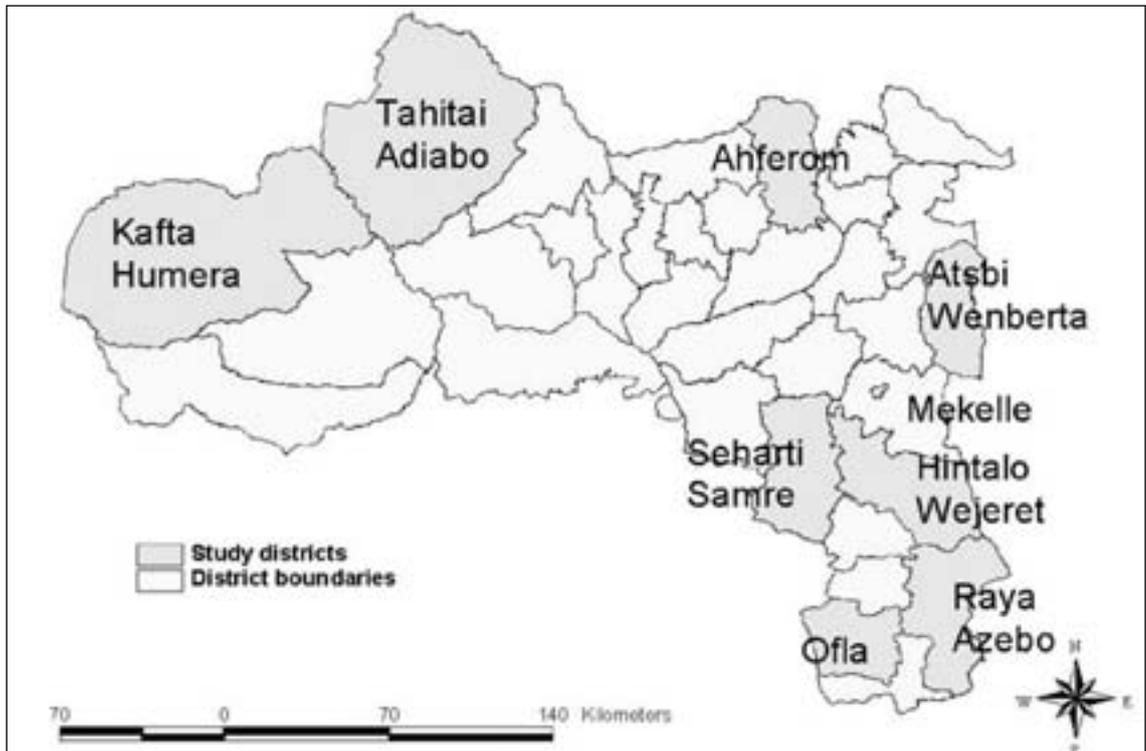
- a. Before registration?
- b. After registration?
- c. Is there a change?

10. Have special precautions been taken?

- a. To ensure equitable access to the registration process?
 - i. such as cost, language used, place of registration?
- b. Has this made a difference in terms of access in practice?
- c. Are there sufficient safeguards to prevent
 - i. fraud
 - ii. manipulation
 - iii. Lost certificates

ANNEX 2

Mekelle University Land Registration Study Sites in Tigray



Location of Tigray in Ethiopia



Securing Land Rights in Africa: Land Registration in Tigray, Northern Ethiopia assesses the strengths and weaknesses of a simple, inexpensive, village-based land registration system put in place between 1996 and 1998 in one of the poorest States, Tigray, of one of the world's poorest countries, Ethiopia. The system worked well and fairly in large part due to those characteristics; but this success also depended on effective local governments which were able to prevent inequities from unforeseen shortcomings. At the same time, those same shortcomings are analysed and also serve as lessons: that the choice of a land description technology has consequences in use; that title is a legal conclusion that must be constantly updated to be reliable; that registering all the land of a household together under the name of the household head may lead to unnecessary recording problems and inequities when transactions, such as divorce, occur; and that intersections between registration systems (e.g., urban/rural, individual/community, small-holder/investor, cultivated/forested) may create problems.

This report forms part of a series of seven papers based on a research programme entitled "Securing Land Rights in Africa: Can land registration serve the poor?" led by IIED and funded by the Central Research Department of the UK's Department for International Development.

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