1994

Land contracts and traditional tenure

Sandra F. Joireman
University of Richmond, sjoirema@richmond.edu

Land contracts and traditional tenure

Sandra Fullerton Joireman[*]

Land policy and land use in Ethiopia have been controversial issues since the reign of Haile Sellassie. During the Imperial era, the conflict over land policy surrounded *gult,* tenancy arrangements in the South, and land reform. After the revolution, and the subsequent and equally revolutionary land reform, the key issue in land policy became redistribution of land and the diminunization of land holdings. Now in the post-Dergue era, the Ethiopian government has yet another opportunity to make a large scale reform of land use and land policy in Ethiopia. The future tenure system must address the recurrent themes in Ethiopian land conflicts of security and access to land.

The goal of this project is to identify the current day policy implications of a traditional tenure system, *rist* or *risti*, with particular reference to the types of contractual agreements that existed under that system. In order to achieve this, the paper will begin with a reference to the importance of understanding the traditional systems of land tenure. Then, a brief description of the data set and available information will be given, followed by the preliminary results of the data and a description of the kinds of contractual arrangements found under the traditional system. This will be followed by a discussion of the policy implications.

Why study traditional forms of land tenure?

There are several reasons why an understanding of the *rist* and *risti* systems of land tenure is helpful in developing future policy options with regard to land holding regimes. The first and most obvious reason is that the *rist* system in many areas of the country was the main form of land holding before the revolution and, as such, it informs the experience of the peasantry, many of whom recall it well. It must be remembered that the revolution in Ethiopia was only 20 years ago. If a man begins farming at 18 this means that every man 38 and above, the respected and the elders of the community, will have had some experience of the traditional tenure arrangements. Interviews done in *rist* areas support this fact. Therefore, it behooves us to examine the traditional forms of tenure as they compose part of the option, set of land tenure systems, and effect the expectations and demands of the peasantry.

[*] ***From: Institute of Development Research, Addis Ababa University and UCLA***

Secondly, looking at the traditional tenure system over a period of years allows us to examine how tenure institutions adjust to changes in environmental factors such as population increase, drought and the development of a market. If we observe in the traditional tenure system a change over time in the contractual arrangements that are involved, the system's of allocation of land, or the type of inheritance arrangements allowed, it will be indicative of the fact that the changing environment demands different adaptive responses by the tenure system. This demonstrates the needed flexibility of tenure arrangements to allow the land system to adapt to change. If there are variations in fundamental institutional arrangements over time in response to changing environmental factors, any land policies which develop should emulate those changes and thereby allow the tenure system to legally adapt to the changing environmental factors which affect the farmers. The importance of implementing a system which allows this kind of flexibility cannot be overemphasized, particularly in a country like Ethiopia where agriculture composes approximately 80% of all economic activity.

Anthropological studies of *rist* tenure systems

The *rist* or *risti* systems of land holding can be found throughout the highland plateau of Ethiopia in the regions of Northern Shoa, Gojjam, parts of Wollo and parts of Tigray. There can be significant variations from region to region in exactly how the *rist* or *risti* system operates. Several anthropological studies have been conducted which either center on the traditional form of land tenure called *rist* or *risti,* or at least give reference to it. The most important of these is Allan Hoben's 1973 book, *Land Tenure among the Amhara of Ethiopia*[1], a study of the Dega Damot area of Gojjam which gives an in depth description of the *rist* system.

Hoben finds that in the *rist* system of Dega Damot land was held by the hereditary right of the Amhara people. At the same time, he notes that almost half the fields in his study were acquired from people who were not parents of those who held the fields. Hoben[2] also found that there was a considerable amount of litigation over *rist* land rights in the government and local courts. He sees the decision as to which court was chosen as a strategic move on the part of the litigants. He finds in his study that powerful people were more likely to gain access to land because they "...can influence judges, and sustain the costs of litigation". Several other studies, such as those of Bauer[3], Messing[4], and Weissleder[5] have been done of the *rist* and *risti* tenure systems in Ethiopia in

Tigray, Gondar and Shoa respectively. These studies are also anthropological in nature and, like Hoben's, concentrate on small geographical areas.

The studies all come to at least a few similar conclusions with regard to the *rist* system. First of all, they agree that the *rist* or *risti* inheritance based systems can vary from region to region. For instance, whereas in Dega Damot a person's *rist* land means all of the land that he has a potential claim on, in Ankober a similar term refers to a specific plot. The studies all agree that in *rist* and *risti* tenure systems land is generally not sold. In his study of Ankober, a woreda within Tegulet and Bulga Awraja, Weissleder saw a variety of contractual arrangements and also noted that though a person might say they can sell their *rist* land, in reality they may not have had full right to do so without permission from someone else[6]. One cannot draw exact conclusions from any of these studies, or from the others that exist regarding the traditional tenure systems. It is not the intent of this paper to suggest that all *rist* and *risti* systems are identical to that found in Tegulet and Bulga. However, adaptability in one area of *rist* holding is indicative of adaptive arrangements in others.

Tegulet and Bulga Awraja

Tegulet and Bulga Awraja is an area that was not entirely *rist* tenure before the revolution. It was a mixed tenure system composed of *rist* land and a large amount of property rental *gebbar* land, or land which is privately farmed and usually rented from large land owners or owned by the orthodox church (*samon* land). Additionally, there was limited rental from large landowners, some of whom were members of the royal family. The *rist* lands were found in the old area of Tegulet which was the woredas of Moret and Werana in the Imperial administration. As a mixed system of tenure there are some drawbacks to studying it instead of an area such as Menz which was entirely *rist*.

First, as stated above, this awraja cannot be thought to be representative of traditional tenure systems as a whole, or even of all *rist* systems, but merely indicative of the possible arrangements which might develop within a certain system. Secondly, any results that are demonstrated may be due, in part, to the interaction of the separate systems of land tenure. For instance, we might find more instances of land rentals among Amharas in Tegulet and Bulga because people with *rist* lands are able to rent from neighbors or nearby woredas where the dominant form of tenure is tenancy or *gebbar* land.

At the same time this mingling of tenures can be seen as advantageous because it allows us to contrast tenure arrangements in such close proximity that the geographical endowments will be similar as well as climactic variation.

Additionally, it allows us to view not only what is happening within each tenure system, but also what occurs when the two or three are adjacent to each other. Since this is often what happened, it is not necessarily problematic but perhaps representative of certain areas.

The data in the court cases shows that Amharas made up approximately 85% of the actors and Oromos approximately 15%. These are rough approximations of the ethnic composition of the area based on the numbers of each ethnic group participating in judicial actions.

Data collection and methodology

The data set consists of awraja court records from the years 1934, 1937, 1960, 1961 and 1966 Ethiopian Calendar. The record sets are not complete for any of the years except 1934 and the 1934 records do not include decisions or where the cases originated so they are only of limited use. All records from these years were collected regardless of their subject matter. The only cases excluded were those filed separately regarding proof of lineage. It should be noted that the research was begun with the intent of collecting data from the years 1939, 1949, 1959 and 1966, yet most of these records were either lost or no longer on the premises of the awraja court. Because of the limited availability of the data a standard random sampling was not conducted.

It should be noted that due to the jurisdictional limitations of the courts, most of the land cases heard in the awraja courts involved large parcels of land. Before the revolution the awraja court was empowered to hear cases concerning immovable property worth 1000 birr or more. However, the awraja courts also heard appeals from the woreda courts which could hear any case for immovable property that did not exceed 1,000 birr. Woreda cases in the sample ranged from 5 birr all the way to the upper threshold of 1,000 birr. Approximately half of the cases in the data set are woreda cases on appeal to the awraja courts.

As stated, the data set collected is not a series of consecutive years but rather, an attempt to get a sample over time. Therefore, what emerged was a sample consisting of the following years and cases: 36 cases from 1937, the first year full case records are available, 64 cases from 1960 and 1961, which are combined, and 147 cases from 1966, the last year before the revolution. It will be noted when the cases are weighted and when they are simply reported in percentages for that year. It must be remembered that a case from 1937 will have greater weight in influencing its yearly percentages than a case from 1966 if they are not subjected to a weighting procedure.

Data was collected on the nature of the case, the decision, the value of the property, the date and location of the origin of the suit, the parties involved and a set of characteristics associated with each party. In addition to the court records collected, interviews were conducted with lawyers who had practiced litigation under the traditional system and with those elderly residents who were able to remember the *rist* system well or the other systems of land tenure in the surrounding area. These interviews were used to corroborate empirical evidence gathered from the court records and to clear up confusion with regard to specific legal terminology and existing local contractual arrangements.

Preliminary findings

Frequency of land cases

Preliminary findings with regard to land cases demonstrate that over all the years, cases over land make up 76% of all cases examined. The specific breakdown by year of the percentage of cases in each year that have to do with land is as follows:

Table 1: Land Cases as a Percentage of Total Cases Each Year

Year E.C*	Year G.C.	Number of Land Cases	Percent of Total
1937	1944/45	29/36	80.6
1960	1967/68	49/64	76.6
1966	1974/75	110/144	74.8

Note: The Ethiopian Calendar is seven or eight years behind the Gregorian calendar depending on the time of year.

It should be noted that the data for the year 1934 show a similarly large percentage of land cases. Additionally, the 1934 data indicate that in one year a single individual might be involved in up to six court cases over land in a single year. This is particularly interesting in that it seems to correspond with the information that Hoben found in Dega Damot that a powerful individual might make substantial efforts to gain extra land through litigation.

Hoben and others who have studied the *rist* system have indicated the extreme number of land cases in the court system as a way of asserting influence or as a type of cultural tradition. This may well be the case, but the expenditure of

time and money on the reallocation of land rights also has other effects. Significant amounts of litigation over land rights lead to a net welfare loss to the society through a decrease in the amount of production that can take place and by effecting the security of holdings. The net capacity of the society to produce and sustain extra people is reduced when land is left fallow and work hours are absorbed in the pursuit of litigation. This is particularly true if land remains unproductive or unrented during the period the land is under dispute[7]. In Ethiopian cases over land, the court would often order a stay of execution to prevent anyone from using a particular plot of land while it was the subject of a dispute[8]. If the land cases were short this would not be such a significant issue, but they were often not. The average duration of land cases in Tegulet and Bulga Awraja was one year in 1937, but by 1960 and 1961 the average was over two years. It is impossible to get an average for cases begun in 1966 because of the nationalization of land. These estimates tend to be low since many of the cases did not have end dates on them so they were simply considered as being completed in the year that they were brought. Evidence from land cases brought before the high court in Addis Ababa indicates that land cases can go on for six years or longer if they are appealed. J-Ph. Platteau, in an article on Land Rights in Sub-Saharan Africa[9], identifies rising disputes over ownership and increasing costs of litigation, as well as a demand for more specific and secure property rights, as one of the indicators of induced or spontaneous change in a system of property rights. He also notes the problem of efficiency losses in the rural economy as a result of a high degree of litigation over land.

Given all of this information from the court records and from the experience of other countries in Africa, we can begin to view the emergence of extensive litigation over land rights as something more than tradition, as a factor indicative of a system of land tenure in transition. The transition is from a traditional, communal society where the need to delineate land rights was not as crucial to a more complex society, better integrated into the market and the money economy where the existence of communal property was still supported, but there was a demand for more flexibility of contracts and specification of rights.

Variety of contractual agreements

The land cases examined ranged in their nature from disputes over land sales to the payment of rents and the ubiquitous cases on inheritance. Toward the end of the period studied there also appeared a significant number of cases over money and lending agreements, which demonstrates a growing cash economy. However, early on, the cases that developed were almost entirely disputing land

allocation, land usurpation and the fruits of a certain plot of land. These cases give evidence of a wide variety of contractual agreements that existed in the *rist* tenure system and the surrounding areas. The two most interesting types of contracts found were land sales that existed in the *rist* system and particular types of land rentals which took place only in *rist* areas. These will each be considered in turn.

First of all, contrary to most perceptions of the traditional tenure system, data collected indicate that the *rist* tenure system, at least in Tegulet and Bulga, did allow for the possibility of land sales. Weissleder notes this fact in his dissertation research on Ankober[10], though Allan Hoben does not find the same evidence of sales in the Dega Damot area of Gojjam.

There may be several reasons for this divergence of findings. First of all, the area under consideration in this particular study was an entire awraja over a period of approximately 30 years. This is a far larger area than that considered in most anthropological studies which concentrate on small areas. Secondly, land sales outside of the lineage simply were not that common in the *rist* system; therefore, a longer time horizon and a larger sample may be needed in order to discover their existence.

According to the records examined in Tegulet and Bulga, and a number of old peasants who were interviewed, a *rist* holder did have the right to sell his land, but with certain restrictions. In the Moret and Werana area[11], which was predominantly *rist*, those who found themselves no longer able to farm their traditional land and wanted to sell it would first try to sell their land to their family members. If they were able to sell land to their family members it was not often brought before the court; therefore, we have no official record of this type of sale, only the oral testimony of those who recall the process. That, by no means implies that these types of land sales within a lineage did not occur, as there is evidence of peasants going on to the second step of selling their land to outsiders.

In order to sell land to outsiders, a *rist* holder had to get a document signed by the members of his lineage stating that they were unable to buy the land from the holder and that he or she could sell it outside the lineage. It is contestations of this document which appear in the court records as evidence of land sale. Specifically, cases over land ownership arise where the defendant will claim to have bought the land and the plaintiff will say that he or she is not a blood relative and therefore has no right to the land. If the person bringing the suit for the land did not sign the paper and can prove his or her lineage[12], they can easily win the case. The threat of another relative surfacing to contest a land sale makes the purchase of *rist* land a risky endeavor. To further add to the risk, laws of

proscription, or a statute of limitation on the amount of time after a sale when it can be contested, are invalid regarding inherited land[13]. Yet, again, this does not mean that no sales occurred, it simply means that they were risky and because of this fact other compensatory measures were most likely taken such as selling the land at a lower price than its true worth as freehold property.

As stated above there are really two layers of contractual agreements at which a land sale may occur. The first being the land sale within the family or lineage, which would be obscured from any official records, and the second, land sale to an outsider. This second sale can be empirically substantiated if it is contested at any point within the formal legal system. In fact this is what happened in several cases of our data set. In the entire sample that was examined 9.3% of the cases involved some sort of land sale, or a reference to a land sale entered into the dispute. The distribution by woreda is as follows[14]:

In the combined *rist* areas of Moret and Werana, land sales were evident in 11.8% of the cases. This can be compared with the whole awraja sale rate of 9.3%. As noted, this may be explained by the fact that the largest town in the awraja, Debre Berhan, was located in Werana. However, when we compare this rate with that of Sidama Awraja, where a similar study was conducted, we find that Sidama had only 4.5% of the cases demonstrating evidence of land sales. This is particularly interesting in that sales were not restricted in any way in Sidama, but they were in the Northern *rist* areas.

The second significant type of land contract that was found in the awraja were rental contracts. These consisted of two types. One, which was share rental along the lines of what has traditionally been reported in studies of Ethiopian land tenure: *ekul* and *irbo arash* contracts mainly taking place on church or *samon* land. The other contractual arrangement is something called *Yequm Wurse*, or "bequeathment before death" that, according to interviews, existed only among the Amharas holding traditional, inherited land.

Table 2: Land Sales in Tegulet and Bulga Awraja

	Year			
Woreda	**1944/45**	**1967/68**	**1974/75**	**Total**
All Woredas	7 (19.4)	4 (6.3)	12 (8.2)	23 (9.3)
Ankober	1 (50.0)	0 (0.0)	2 (15.4)	3 (15.0)
Asagirt	1 (50.0)	0 (0.0)	1 (33.3)	2 (25.0)
Basso	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Golela	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Kesem	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Kimbibit	1 (14.3)	1 (12.5)	3 (12.5)	5 (12.8)
Moret	0 (0.0)	1 (5.6)	2 (8.3)	8 (18.2)
Werana	4 (66.7)	2 (14.3)	2 (8.3)	8 (18.2)
Unknown	0 (0.0)	0 (0.0)	3 (9.7)	3 (8.3)

Note: 1. Percentages are given in parentheses.
2. The large number of cases in Werana woreda is due to the fact that Debre Berhan town, the largest in the Awraja, was located within that woreda.

Irbo arash was a contractual agreement wherein the tenant pays a tithe or tax and after that splits the harvest with the landlord giving the landlord 1/4 of the crop and keeping 3/4 for himself. *Ekul* is similar to *irbo* in that a tithe is taken from the crop, but after that the harvest is divided on a fifty-fifty basis. It is unknown in the Tegulet and Bulga Awraja just what inputs were required by which people. However, we do know that in other areas such as Arsi, in an *ekul arash* contract the share cropper was given the seed, oxen, and implements from the landowner[15]. With the other dominant types of share holding which required a lesser proportion of the crop to go to the land owner the contributions by the landowner were also significantly lower. These types of share holding agreements could take place among Oromos or Amharas, but it is not possible to determine if they existed on *rist* land. However, it is quite certain that the following type of share holding agreement *Yequm Wurse*, did exist and only on the rist land.

Yequm Wurse, or bequeathment before death, was a practice by which traditional, inherited, *rist* land was passed on to a person's heirs before a person actually died. According to informants this practice strictly followed the genealogical line. Consequently, the land would not be rented out to any non-relation. If persons holding *rist* land found themselves somehow incapacitated, or unable to farm their land for other reasons they might resort to this arrangement to sustain themselves. In practice, the land was given to one's heirs and then those heirs were required to pay a specified rent to the actual owner of the land until that person's death. The rent was most often a type of share contract. This type of contractual agreement was strictly held up by the courts, though there is no direct mention of it in codified law. A substantial number of cases appear in which a plaintiff brings a defendant to court for failure to pay the specified rent or share percentage. Because the contracts were most often share cropping arrangements, they appear as cases over the "fruits of the land" or, the share of the harvest.

Yequm Wurse is particularly meaningful in that it allows *rist* holders an alternative to land sales or farming the land themselves. The percentages of total cases over the fruits of the land shows a significant fluctuation over time. In 1937 the percentage of cases over fruits of the land is 8% for the awraja. It is also 8% for the years 1960 and 1961. However, by the time of the revolution it jumps to 14% of all cases.

In Moret and Werana woredas, the *rist* areas in the study, the composition of cases was slightly different than in non-*rist* areas. There were the greatest percentage of Amhara verses Amhara cases and the largest total number of cases over land. During the earliest years of the sample in Moret and Werana woredas there were very few instances of anything other than inheritance cases. By 1960 we begin to see the emergence of cases over fruits of land and usurpation. By the end of the sample time, both Moret and Werana had land cases over trespass, rental agreements, sales, usurpation and boundaries and substantially less frequent disputes over inheritance.

This change in the nature of disputes over time seems to indicate that the area was experiencing a significant transition from what we typically think of as the traditional *rist* system where all land allocation occurred on the basis of inheritance, to a system that we might think of as a more modern *rist* system, one that incorporated a wider range of land contracts and land use patterns. The specific causes of this institutional change are beyond the scope of this paper, but conjecture would point to the development of a cash economy, which is substantiated in the data, as well as an increase in population.

Different contractual arrangements over land in the *rist* areas demonstrate several things. First, there was a substantial degree of flexibility which existed in the *rist* tenure system in terms of what sort of arrangements regarding the use of land could be made. These contractual arrangements seem to expand over time to include share contracts and rentals as well as inheritance and, in the rare instance, sale. Secondly, peasants were making contractual arrangements that were not sanctioned by law. There is a restriction in the old penal code, that is cited below, on entering into contracts over *rist* land without the formal approval of a judge who can certify that the transaction actually took place.

> Any man who sells his inherited land, alters it, gives it away or hands it over to another person without having the transaction written down by the judge who has authority in that district shall pay a fine from 100 to 2000 dollars; and their agreement is invalid and null[16].

Table 3: Nature of Disputes in Tegulet and Bulga Awraja

		Moret			Werana			Non-Rist		
Nature of Dispute		1944	1967	1974	1944	1967	1974	1944	1967	1974
Land	Inheritance	2	4	3	9	3	1	16	10	13
	Boundary	0	1	0	0	1	0	0	0	0
	Rent	0	1	1	2	1	1	2	2	5
	Usurpation	7	6	2	2	4	6	11	9	19
	Trespass	0	0	1	0	0	1	0	0	4
	Sale	0	1	0	0	0	0	0	0	2
	Ownership	0	0	0	0	1	0	7	7	4
	Fruits	0	3	2	0	1	2	7	5	7
	Other	0	1	0	0	1	0	0	1	1
Money	Loan	0	0	0	0	0	1	2	0	6
	Theft	0	0	0	0	0	0	0	0	2
	Rent	0	0	0	0	0	0	0	0	2
	Other	0	0	0	0	0	0	0	0	2
Contractual Dispute		0	3	1	0	1	1	0	2	4
Taxes		0	0	1	0	0	1	0	0	1
Divorce		0	1	0	0	3	0	2	2	2
Theft	Property	0	0	0	0	0	0	2	0	0
Other		0	1	1	0	1	1	9	7	3

Note: Cases have been subjected to a weighting procedure by year to compensate for the different sample sizes.

Verification of contract was never mentioned by the peasants that we interviewed, though that does not mean that it never took place. However, it is quite reasonable to assume that peasants did not confirm every bequeathment

before a judge and that they saw no need to confirm this particular arrangement of *Yequm Wurse* because it was identical to simply passing ones land on to one's heirs. The fact that this contractual arrangement is not identified in any legal code, criminal or civil, is indicative of the fact that legal rights often did not conform to the practical rights exercised by the peasants in the countryside. The 1960 Civil Code further identified the fact that no land sales would be allowed. Article 1493 forbids a community from alienating its land in any way without specific permission from the Ministry of Interior. There are more than likely additional examples for non-*rist* areas of a lack of correspondence between *de jure* and *de facto* property rights. Yet, we can see from the data that not only did illegal land contracts occur, they were also brought before the courts for clarification.

Classification of property rights

Property rights regimes, or systems of land holding, can be classified into categories based on the rights given and obligations required under each system. The categories used here are borrowed from Daniel Bromley[17], but they are representative of similar categorizations of rights that exist in other places. Bromley divides categories of property rights into four: state property regimes, private property regimes, common property regimes, and non property regimes. Each of these regimes is categorized by a certain stream of rights and obligations.

A state property regime is, obviously, one in which the state controls all access and use rights. Individuals under this system have a duty to observe these rights. The extent of state control depends on the circumstances. In some cases the state may prohibit inheritance and usufruct rights to land passed back to the state upon the death of the person farming the land. In all cases the state controls the contractual agreements which control access to land. The farmer, however, still has the right to choose which crops to grow and may have the right to improve land through investments such as trees.

Private property regimes are those in which individuals own land, to which they hold title. These individuals have the right to buy and sell land, rent land, bequeath land to whom they choose, select their crops and farming methods and invest in their land. They have a duty to use the land in a socially acceptable fashion and not disobey any laws. The particular characteristic of this regime is that an individual, or single owner, decides what should be done with the land.

Common property regimes are those in which an individual is not free to determine what should be done with the land. Instead those decisions are made

by a group of people who are co-owners of the land. In the case of the *rist* system, these decisions are made by a lineage. In a common property regime an individual may have the right to choose the crops that they plant, but most other decisions revert back to the group of co-owners. Admission to a common property regime is usually restricted by membership in a certain group such as a clan, lineage or ethnic group

The last property regime is that of non-property. This refers to an area of land in which there is no defined group of owners, and anyone can take advantage of the resources on the land. This has also been referred to as an open-access regime since admission is not restricted in any way.

Each of these property regimes is characterized by a particular stream of rights. In Tegulet and Bulga Awraja we can identify the particular stream of rights available to the rist holders. However, it must be made clear that the *de facto* rights held by the rist holders did not correspond entirely with the *de jure* rights. A certain amount of slippage is apparent between rights declared by law in the rist system and rights practiced in fact. The court records and interviews demonstrate the following bundle of rights available to rist holders in Tegulet and Bulga:

- The right to choose crops
- The right to plant trees and invest
- The right to rent land
- The right to enter into long-term contractual arrangements
- The right to bequeath land to children
- The right to exclude certain parties from inheritance
- The right to sell land with the permission of the lineage

Clearly, some of these rights seem more characteristic of a private property system than of a communal property regime. Yet, the restrictions on sale make the *rist* system fit more into the communal regime than private. Therefore, it is incorrect to characterize the *rist* tenure system as private or freehold tenure. Eventhough peasants may have referred to their land as their personal property, they were not free to dispose of it as they saw fit without permission from the lineage or an outside legal authority depending on the region.

The code makes it clear that an individual was not free to make decisions regarding investment, bequeathment and sale on his/her own. Instead, according to the law, any decision of this type had to be specifically noted by the legal establishment in order to insure its validity, or approved by the Ministry of Interior, and this must be after approval from the lineage has been given. The necessity of legal acknowledgement is clear from the court records that exist, as people were often found suing each other in the courts over inheritance and bequeathment or land sale. Additionally, there was no statute of limitation or

right of proscription regarding *rist* land. A person could at any time contest a sale, bequeathment or boundary regardless of when it was made.

Policy implications

Research on the traditional land tenure system in Ethiopia yields several interesting conclusions with regard to instituting a land tenure policy for the state of Ethiopia. The first and least interesting of which is the simple fact that the traditional form of land tenure displayed all of those rights associated with a communal system and, as time progressed, entered a period of transition in which a demand for more control over property resources, as demonstrated by the increasing number of share contracts. The state system of land rights imposed by the Dergue by no means approximated the range of choices available to farmers under the traditional system, nor would any other property rights regime that took more rights away from the farmers than they had under the traditional system. When implementing a system of property rights, it is more important to look at the actual stream of rights available to a farmer than to its particular appellation as communal, state, or private property.

Additionally, it must be remembered that the *rist* tenure system, and traditional tenure systems in general, was characterized by multiple contractual arrangements with regard to land allocation and a flexibility of choices with regard to land use. The traditional view of the rist holder in Northern Shoa with a plot of land that has been in his family for years and which he would die before selling, is simply a glorification of the peasantry. Certainly peasants are attached to their land, no one would dispute that fact, but even in *rist* areas there were land sales and these sales were sanctioned by the lineage. When would a lineage choose to sanction a sale of their traditional land? It would almost certainly be in a situation of severe need, when no one could take it upon themselves to either buy the land from the person selling it, or support that person until they were on firmer footing. This indicates the fact that the traditional tenure system was flexible when necessity demanded it. This is consistent with assessments of other traditional tenure systems in Africa.

Likewise, the *rist* system supported other contractual arrangements that allowed land rentals to take place when a person was physically incapacitated, or otherwise unable to farm for himself. Too often, the understanding which peasants have of their land and the economic environment in which they operate is underestimated. What we see in an investigation of the *rist* system is that the peasants seemed to be making very careful assessments of their need and forming the appropriate contracts in response to that need. They were behaving in a way consistent with the economic and demographic pressures which they faced.

The flexibility of the *rist* tenure system is indicative of what future policy options should aim to attain. In the *rist* traditional tenure systems there were a variety of contractual arrangements that allowed peasants to hold on to their land when they were no longer able to farm due to some contingency. They were also able to sell their land in cases of extreme need with the permission of the lineage. This was advantageous in two ways. First, it allowed those who could not farm a way of sustaining themselves through income from rents or sales. Secondly, it allowed for farmers or families who were doing well or in need of more land to acquire it through rental or purchase.

A flexible contractual environment allows peasants to cope with uncertainty and change. It also allows them to adapt in the face of population pressure, climatic changes and drought, and demographic changes such as urbanization. A policy which rigidly allocates a certain piece of land to an individual and allows that person no choice in what to do with the land does not provide a contractual environment which is conducive to adaptation. This is particularly important in Ethiopia, where population is increasing at such a rate that in some areas of the country periodic land reallocation to those coming of age, as happened during the Dergue government, is a recipe for agricultural deterioration.

Finally, and perhaps most telling is the fact that no matter what the government's decision is with regard to land policy, peasants will develop flexible contractual arrangements. The question is whether they will do it legally or illegally. Even in the *rist* system we see a slippage between what the legal requirements were, and what contractual arrangements took place. This is particularly interesting because the legal codes referring to the *rist* system were not made to change it, but simply to codify its conventions[18]. Therefore we can see between the point of codification and the cases that reach the court before the revolution, that there has been a certain degree of change and transition in the way the *rist* system operated. The difference between *de jure* and *de facto* rights may not concern the government to a great degree, but if there is a substantial difference between the two in the future we will see again the encumbering of the court system with land cases and the ensuing welfare loss that accompanies it. It would be a far better strategy for the government to seek to develop a contractual environment for the peasantry that gives them the land rights which they demand. Then the state can allocate, sustain and adjudicate land rights and contracts in a manner that promotes the well being of the farmer.

Notes

1. The complete citation is Hoben, Allan, 1993. *Land Tenure Among the Amhara of Ethiopia: The Dynamics of Cognatic Descent,* Chicago: University of Chicago Press.

2. Hoben, Allan, 1973, p.24.

3. Bauer, Dan Franz, 1972. "Land, Leadership and Legitimacy among the Inderta Tigray of Ethiopia," University of Rochester, Rochester, New York, Ph.D. Dissertation.

4. Messing, Simon David, 1957. "The Highland-Plateau Amhara of Ethiopia," University of Pennsylvania, Ph.D. Dissertation.

5. Weissleder, Wolfgang, 1965. "The Political Ecology of Amhara Domination," University of Chicago, Ph.D. Dissertation.

6. Weissleder, Wolfgang, 1965. pp.124-132

7. Platteau, J-Ph., 1992. "Formalization and Privatization of Land Rights in Sub-Saharan Africa: A Critique of Current Orthodoxies and Structural Adjustment Programs," Occasional Paper, DEP No. 34 Development Economics Research Programme, Suntory-Toyota International Centre for Economics and Related Disciplines, London School of Economics, January.

8. Information on the nature of disputes and method of their resolution throughout the country was gathered through interviews with former members of the Ministry of Land Reform Administration.

9. Platteau, J-Ph., January 1992.

10. Weissleder, Wolfgang, 1965. It should be again noted that Weissleder found land sales could occur, but did not identify the same process as discovered in the court records from Tegulet and Bulga Awraja.

11. Moret and Werana compose the area of what used to be called Tegulet, leading to the name Tegulet and Bulga.

12. There are special records available in the Tegulet and Bulga Awraja records that deal specifically with the proof of lineage. These cases are filed separately as they often compose a case in and of themselves with the calling of witnesses and the submission of documents that must be judged valid or invalid.

13. The laws applying to *rist* land in the Ethiopian Civil Code of 1960, especially Art. 1493 sub. 1, referred to the land as an agricultural community which had the right to establish its own customary tenure. However, the establishment of codified laws by these communities, which was to take place under the auspices of the Ministry of Interior, never formally occurred.

14. The information on the tenure arrangements by woreda comes from Stitz, Volker, *Studien zur Kulturgeographie Zentralathiopiens*, Bonn: Ferd. Dhummlers Verlag, 1974.

15. Cohen, John, 1973. "A Study of Land, Elites, Power and Value in Chilalo".

16. Ethiopian Penal Code of 1930, Fourth Chapter, Article 458.

17. Bromley, Daniel W., 1991. *Environment and Economy: Property Rights and Public Policy*, Oxford: Blackwell Press.

18. David, Rene, "Expose des motifs et commentaire des documents Code Civil 59 et Code Civil 51 relatifs au domaine public, a l'expropriation et a l'exploitation collective des biens." Document Code Civil 63 (1957 unpublished) in Bililign Mandefro, "Agricultural Communities and the Civil Code: A Commentary," Bachelor of Law Thesis, 1965.