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Land Market in Ethiopia: Towards Reform Potentials, Challenges and Opportunities

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Abstract:

Since military Derg regime, state used to own land in Ethiopia. The present government, the Federal Democratic Republic of Ethiopia, eliminated the possibility of flexible application of land policy by inserting it in its Constitution and requiring its amendment by the agreement of all State Councils and two-third majority vote in a nationwide referendum. In the same Constitution the government promised to provide farmland to those who need to engage in agricultural activity free of charge, but now it turns into a mere wish. Farmers are given use right with bundles of restrictions. One of a restriction is land rental markets that narrowed the land access opportunities of farmers. Even the landholder's land size was highly diminishing from time to time that make majority of farmers to hold a plot size below the minimum legal limit and many rural youths landless. As a result, the landless classes are trying to get land through informal market forces that are beyond the legal fences. The roles of these markets are: - providing land accessible to those who are more productive, but who own no or little land; allowing the exchange of land as the off-farm economy develops; and facilitating the use of land as collateral to access credit market.

Hence, this study examines the current land markets in Ethiopia towards reform potentials, challenges, and opportunities. Since the nature and the source of the problem is the policy and the law itself, this study is intended to explore and analyze the current rural land market policy and laws of Ethiopia and suggest the feasible land market policy based on the existing land market potentials, challenges and opportunities. To attain the intended objectives of the study the writer employed a doctrinal legal research method by which primary national land policy and laws as well as international soft laws/declarations were analyzed. In addition, different books, academic legal journals, conference presentations, and related secondary source of materials on rural land rental markets are deeply referred.

The study reveals that although land shortage is the prevailing problem in Ethiopia, there are landholders who lack labor, capital and time to cultivate their lands on one side and landless rural community who need to engage in agricultural activities on the other side. But, because of legal restrictions, they are engaging in informal land markets. However, the government has a key role in facilitating and functioning of efficiency-enhancing land markets.

Accordingly, the writer recommends a policy option that can elevate or remove the current legal restrictions on land rental markets like maximum time limit, land size, traditional technology, residency, collateralization, etc. and harmonize it with the existing practices of the society by making land rental market policy flexible in Ethiopia.

Keywords: Land rental market, land policy reform, potential, challenge, opportunity, land in formal market, supply side, demand side, Ethiopia

1. Introduction

The increasing number of Africans living in poverty has recently focused the attention of governments, international donors, and researchers toward “pro-poor” land policies. The slow progress in land titling in African countries has also encouraged the exploration of land market transactions and caused major multilateral agencies like the World Bank to rethink the role land markets can play in agricultural growth and poverty reduction (Hosaena and Stein, 2016).

Land markets are the mechanisms by which rights in land are voluntarily traded or transferred through transactions such as sale, rent, lease, mortgage, loan, pledge, sharecropping, and etc. enabling those with resources to invest to gain access to land and helping to increase the efficiency and productivity of land use (Palmer et al, 2009). Land markets exist when and wherever it is possible to exchange rights in land for agreed amount of money or services rendered (Peter et al, 2006). That means land markets transfer only rights in land from seller to buyer, renter to rentee, less or to lessee, etc. because unlike other commodities that can be bought and sold its transactions may be take place formally or informally. On the formal land market, land right transfer is done in respect with national laws and regulations governing land rights transfer while through informal (unstructured) channels the transfer is done out of legally allowed ways (Twarabamenye and Nyandwi, 2012). In order to benefit from the land market, there must be a clear land policy and enforceable land laws. In a country that follows public ownership of land with strict restrictions on land market, access to land is more difficult (Deininger, 2008).

Abrogating the 1955 Constitution that permits the right to possess land privately, the land reform in 1975 and the subsequent Constitutions (1987, 1995) of Ethiopia bestowed the right of land ownership to the state (Daniel B., 2015). The Ethiopian people Revolutionary Democratic Front (EPRDF) that came to power in 1991 has brought not much change in land policy, rather inherited the land policy of its predecessor (Abebe et al, 2012). Even though the EPRDF government adopted a free market economic policy, it maintained public ownership of all rural and urban land and the legal ban on land sale remain intact as a form of social protection to avoid welfare risks that a free market in land may entail (Daniel B., 2015).

Thus, the Federal Democratic Republic of Ethiopia (FDRE) government in the 1995 Constitution proclaimed that, 'land is a common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of exchange' (Article 40(3) of the FDRE Constitution, 1995). After two years of this Constitution the first federal rural land administration and use framework proclamation number 89/1997 was enacted to implement the Constitution, but it was repealed and replaced by the current rural land administration and use proclamation number 456/2005. As per this proclamation (henceforth stated as Proc No. 456/2005), the federal government via providing a general framework provisions bestowed the regional states to enact their own rural land administration and use proclamations (Article 17(1 and 2) of Proc No. 456/2005). So, presently all regional states have enacted their own regional rural land laws. According to Article 40(4) of the FDRE Constitution and all regional states Constitutions including rural land laws the Ethiopian government promised free grant of rural land to those who attain majority age and need to engage in agricultural activities. But currently there are growing numbers of landless and small size farmland households with no access to government allocated land and hence who use rental markets as the only option to access rural land (Asrat, 2013).

These laws set the terms and sizes of land that could transfer by rental markets. For instance, Article 8(1(a), Article 10(1), Article 6(1 and 3) and Article 20(1(d)) of the SNNPRS, Oromia, Tigray and Benishangul Gumuz regional states rural land administration and use proclamations permits transfer of land rights by rental contract up to five, three, three and two years respectively. Similarly, the same provisions of those regional states rural land proclamations restrict the holder of rural land from renting out more than half of their allotted land for farmers or investors. As a result, farmers are often growing only short-cycle crops (perennial crops) in rented lands (Tesfaye, 2004). Unlike other regional states rural land laws, the Amhara regional state amended rural land Proc No. 252/2017 under Article 15(1 and 9) permits rental contract up to 30 years as far as it does not displace the holder from the land.

Hence, there are different studies that conducted on land rental markets in Ethiopia. They are not clearly identified the existing land market potentials, challenges and opportunities in policy and laws perspectives but focused on the extent and importance of land rental markets. For instance, the study findings on the theme indicates 15-30 percent of land households in different parts of the country transact land through land rental markets. Hence, good land law that encourages land market brings significant benefits to the society including tenure security, social cohesion, stability and willingness to invest in future (Tesfaye, 2004). In land rental markets rights in land transact for a limited period, but it facilitates access to land for efficient producers. It can increase potential income for rural households and pave the way for rural youths to access agricultural land. It can create an opportunity for jobless urban dwellers to migrate to rural areas where work is available (Hosaena and Stein, 2016).

Currently in Ethiopia, the land policy and restrictions in land laws are the nature and sources of land rental market problems. These resulted majority of productive rural farmers, spatially young householders landless and unable to ensure their food security. As a result, informal land rental markets are the day-to-day business of the society in Ethiopia to meet the growing demand for land and correct imbalances in factor proportions at farm level (Daniel B., 2015).

Therefore, the objective of this study is to explore and analyze the current rural land market policy and laws of Ethiopia and suggest the land market policy that could incorporate the existing practices and enable landless farmers to access land based on the existing market potentials, challenges and opportunities. The feasible recommendations would be drawn by investigating different empirical studies previously conducted and writers own critical assessment of the area. To attain the intended objectives the writer employed a doctrinal legal research method by which primary national policy and laws as well as international laws and declarations were analyzed. In addition, different books, legal journals, conference presentations, and related secondary sources on rural land rental markets are referred.

In an effort to achieve the objectives of this study, first the theoretical background of land rental market was briefly described by reviewing different legal regimes including UN land voluntary guideline and European Union (EU) land declaration and the issues surrounding the current land market reforms and policy shall be explored. Second, the contemporary land market laws of Ethiopia. The land market laws and practices in different parts of the country that were scholastically studied by different researchers were pointed out as the potentials to reform the existing land market policy. Third, the exiting challenges to realize the market and the opportunities to overcome those challenges were investigated. The final part includes conclusion and scholastic recommendations based on the findings of the study.

2. Theoretical Backgrounds of Land Rental Markets

The emergence of land rental markets closely related to the evolution of property rights over land. An efficient land market underpins the capacity of banks and other financial institutions to lend money and landholders to invest on it. Less economically developed societies have, for various political and cultural reasons fail to create an efficient land market system. As a result, such societies tend to be under-capitalized (Robert et al, 2007). The development and maintenance of land markets involves the interaction of complex political, economic, social and cultural issues, legal frameworks and policies.

Hernando De Soto, in his attempt to unravel what he calls the "mystery of capital" conclude that even in areas of great poverty there is great potential wealth. The poor cannot convert what he describes as "dead capital" into its real

asset value, which is possibly worth trillions of dollars. He suggests that many poor people who do not live in the rich Western economies are every bit as intelligent, innately skilled and hardworking as those in successful economies, but remain poor because of what he describes as the "Bell Jar Effect". This occurs where those inside become rich because they are able to exploit property, but those outside are excluded by invisible barriers such as access to expert lawyers and the ability to navigate the red tape of their property systems (*De Soto, 2000*). The poor have no access to formal land markets and little or no access to credit.

Hence, land markets to work efficiently and economically in poor countries, there must be a political will and empowerment of all people to take part in it. This may necessitate some state intervention in the market processes. It should create ownership /holding/ title and use rights in a manner that allows land and its associated assets to be used in the economic ways (*Peter et al, 2006*). If land rights are secured, land markets can increase the incentive for people to invest and for financial institutions to lend; since land can be used as collateral as well as being the basis for production. An efficient and effective land market can improve the performance of a nations' economy and increase prosperity, because all economic development depends on land (*Peter et al, 2006*).

Different writers and international documents appreciate the role of land rental markets to the development of the nation as well as individuals and they have different views on how rights in land should be accessed and governed. Some argue that governments should own the land and determine who should access it, while others agree that the operation of free market force is the best way to achieve the optimum form of land use, if the state enacts the regulatory framework legislations (*Robert, et al, 2007*). As a result, there are three major analytical perspectives that act as alternatives to state land ownership approach that seek to resolve the land questions. These are the *privatization perspective*, *revisionist perspective* and *associative ownership paths* (*Muradu, 2014*).

The *privatization discourse* which centers on economic rationality of land tenure rules arguing that individuals should have complete authority over their land in the sense of trinity of property rights (*usus, fructus and abusus*). This facilitates transfer of land from less able users to more able ones through the instrumentality of the market and thereby bringing about economic growth with its trickledown effect to the poor (*Bridget, 2010*). In this system the role of the government is that of a night watchman confined in particular to introducing a system of land cadastre and individual tilting, and enforces property rights through the enactment of laws and establishment of appropriate institutions (*Muradu, 2014*).

The *revisionist view* seeks to retain the current people's ownership of land provided that, land use rights are allowed to be transferred freely and detail and clear legal rules that curb undue discretionary power of state authorities over land administration are issued and implemented. According to the scholars of this view, the problems of the existing land tenure system of Ethiopia relate to a defective legal regime, i.e., ambiguity, vagueness and incompleteness of laws overlapping jurisdictions over land administration authorities and lack of proper enforcement of existing land laws (*Getnet, 2009*).

The *associative (devolutionary) ownership* advocates argue that, the best way to secure land tenure system is restraining the power of state authorities over land and giving the use rights of land to each member of respective communities by retaining the ownership in the hands of each concerned community. The state authorities should intervene only for the interests of efficiency and social justice. The local communities own their land while members get secure use rights as well as community supervised land transfers to outsiders including the state (*Muradu, 2014*).

These three land tenure perspectives in common attacks people's ownership of land for all ethos that they think has withdrawn land from the market place and attaches non-effective landholders with their land restricting them from searching other jobs. It restricts the landless potential farmers from accessing land. Thus, to benefit their citizens from land markets, there must be a clear land policy and enforceable land laws to a given state (*Peter et al, 2006*).

2.1. Land Rental Market Declarations and Voluntary Guidelines

The European Union land declaration states that, land transactions transfer rights to land between users who is distorted by imperfect information or lacks financial services to access land and invest on it, which helps to increase the efficiency and productivity of land use (*Paragraph 5.5(5.5.1) of EU Land Policy Guidelines, 2004*). Moreover, it states land rental markets gives adequate guarantee of security for the transacting parties, provide flexible means whereby users can increase or decrease land holdings according to changing needs, without permanently reassigning underlying rights. Rental markets facilitate land access for the poor, as cash needs are lower, and offer a means of temporary or partial withdrawal from farming without loss of land as a capital asset. Procedures for legal validation by local authorities of written contracts by farmers can help in securing land rental agreements, as attempted in Bangladesh (*Para. 5.5(5.5.2) of EU Guidelines, 2004*). Therefore, clarifying the rules (example, level of fees, length of contracts), giving access to credit and advice to the poor contributes to encourage the emergence of effective rental markets.

The Food and Agricultural Organization (FAO) Voluntary Guidelines also affirms that, where appropriate states should recognize and facilitate fair and transparent sale and lease markets as a means of transfer of rights of use and ownership of land (*Section 11.1 of FAO Voluntary Guidelines, 2012*). It requires transactions of tenure rights of land to comply with national regulation of land use, and not jeopardize core development goals. Moreover, it needs the States to facilitate the operations of efficient and transparent markets to promote participation under equal conditions and opportunities for mutually beneficial transfers of tenure rights, which lessen conflict and instability (*Section 11.2 of the Guidelines*). Furthermore, it requires the states to establish policies, laws and regulatory systems and agencies to ensure transparent and efficient market operations, to provide non-discriminatory access and prevent uncompetitive practices. States should simplify administrative procedures in order to avoid discouragement of market participation by the poor and the most vulnerable (*Section 11.3 of the Guidelines*). They should establish appropriate and reliable system that

reduces the costs and risks of transactions and when facilitating market operations of tenure transactions protect the tenure rights of small-scale producers (*Section 11.5 and 11.8 of the Guidelines*).

The framework and guidelines on land governance in Africa also seek to offer a basis for commitment by African member states to the formulation and operation of sound land policies as a basis for sustainable development that includes assuring social stability, maintaining economic growth and alleviating poverty. It promotes consensus for shared principles as the basis for securing access to land for all users, enhancing agricultural productivity, and sustaining livelihoods (*Land Policy Guidelines in Africa, 2010*). States have resolved to ensure that their land laws provide for equitable access to land among all land users including the youth and other landless and vulnerable groups such as displaced persons. Thus, the declaration urge member states to review their land sectors with a view to developing comprehensive policies that take into account their peculiar needs; build adequate human, financial and technical capacities to support land policy development and execution.

2.2. Land Market Reforms and Policy of Ethiopia

Land reform as legislation intended and likely to redistribute ownership claims on or rights to land to benefit the poor by raising their absolute and relative status, power, and/or income compared with likely situations without the legislation. The future of land reform must focus on the accessibility of land for efficient use either by stimulating land market or negotiating for it (*Lipton, 2009*). The growing debate on policy options for future of land reform has instead focused on the question of how to get land either through stimulating the supply of land on land market or directly acquiring specific land through negotiation (*Daniel B., 2015*). Hence, the aims of most of these reforms have been to promote productivity in agriculture and thereby reduce poverty, access to land and generate rapid economic growth.

As per the 1975 World Bank land policy paper, there are three basic principles that should be considered in informing any land policy. Because it believed that: owner operated family farms were efficient and desirable; there should be freely operating land markets to permit land transfers to more efficient and productive users; and there was a need for a more equitable distribution of assets (*Deininger and Binswanger, 1999*). Food and Agriculture Organization (FAO) land policy provides "overall guidance on land tenure: the allocation of rights in land; the delimitation and recording of boundaries of parcels; registration of rights; transfer of rights through sale, lease, loan, gift or inheritance; the adjudication of disputes regarding rights and boundaries; and disseminating information about the ownership, value and use of land" (*FAO, 2002*). Hence, land policies should be made in order to make land more accessible asset for those who till or want to till it, invest in it, whose livelihood dependent on it rather than to direct it in the hands of those who can buy it with their money, derive rental income and speculate on it.

The grand land reform that announced at the wake of the 1974 Ethiopian revolution had completely altered the land use system of the nation based on 'social equity thesis', which stresses only in remedying the inequitable historical land misuse and on redistributive land reform as the only way to bring social equality. Finally, this resulted majority of farmers to be hoarded in a small plot of land (*Daniel B., 2015*). And the subsequent land policy that underlined in the FDRE Constitution expressed public ownership of lands by effectively eliminating the land policy reform as a variable instrument that could be used to address the changing circumstances that affect the rural economy, by requiring the full agreement of state councils and a two-thirds majority vote in a nationwide referendum. This lacks articulation, even though it is influenced by three prevailing thoughts from the government side; i.e., first, the fear that opening land markets provide inroads for involuntary dispossession of land from "poor and vulnerable" peasants and increased concentration of land in the hands of riches. Second, there is a "safety net" type of argument that reinforces the justification for control of land by the state assuming that a provision of a minimum guaranteed land is necessary to ensure food security of farmers. The third perspective is centered on search for market-based land tenure system recognizing importance of land as a key economic input (*Tesfaye, 2001*).

But this restricts free transfer of land rights and it is not reframed according the FAO, European Union and African Union standards of land reform policy that are directed at bringing about poverty alleviation, equality and rental markets among others. Furthermore, the current land policy of Ethiopia does not incorporate the following four important functions land markets may play (*Rahmato, 2004*). These are:

- It helps to ensure that land moves from those, who, due to a variety of constraints, cannot use it productively, to those who can use it efficiently;
- It aids to meet the needs of the landless farmers by creating an opportunity to get access to land through the land market;
- It provides an opportunity for enterprising or well-endowed farmers to enlarge their farm operations; and
- It offers a reliable source of income to poor households, women-headed households, or households constrained by lack of labor (due to age, health or other factors) and of oxen who would otherwise be in dire straits.

3. Contemporary Land Rental Laws of Ethiopia

Currently land is a public property in Ethiopia. The government has administered it since the 1975 radical land reform, which brought to an end the exploitative type of relationship that existed between tenants and landowners (*Samuel, 2006*). Peasants became own operators with use rights, but with no rights to sale, exchange, succession, mortgage, antichresis, lease or otherwise transfer of the land to another (*Article 5 of the Proc No. 31/1975, 1975*). This proclamation with the motto of *land-to-the-tiller* by the then socialist regime of 'Derg' led to an abolishment of any freehold system of land in the country. In an attempt to maintain egalitarian land distribution, this confiscatory land reform included frequent practice of land allocation and redistribution as its main agenda. Households were not free to transfer, exchange, or sell

their holding and some households ended up with more land than they could utilize efficiently through owner cultivation, while others had less (*Hosaena and Stein, 2016*).

In an attempt to solve such productivity bottlenecks, the ban on the land rental market partly lifted in 1990 just a year before the downfall of the socialist regime; because of peasants believe that land must "move" to those who are likely to make use of it more productive (*Daniel B., 2015*). As a result, there were numerous forms of land transfers though it differs from one locality to another that includes land rentals, sharecropping, joint use, short-term contracts, and mortgages, all undertaken clandestinely (*Hosaena and Stein, 2016*).

Access to land is an important issue for the majority of Ethiopian people who depends on agricultural production for their income and subsistence. However, the change of government in 1991 has brought not much change in terms of land policy. The Ethiopian People Revolutionary Democratic Front (EPRDF) led government that overthrew the Military government (*Derg*) in 1991 has inherited the land policy of its predecessor (*Daniel B., 2011*). The insertion of land policy in the FDRE Constitution indicates that land has become a political issue and it shuts the door for the possibilities of any important land market (*Brightman, 2018; Daniel B., 2015*). Worst of all, it eliminated all meaningful debates about efficient utilization of land issue. By this, it discouraged the qualified farmers to not access to land through market forces, although in some conditions it allows short-term land transfers with different encumbered conditions (*Daniel B., 2015*).

Even though the present system seems somewhat better in some rental conditions than its predecessor (1975 proclamation), still transfer practices are complex. The most common form of transfer mechanism is sharecropping, which itself is not clearly addressed in all regional states rural land laws. Land cannot be sold, mortgaged or otherwise exchanged since these forms of transfers are constitutionally restricted. There are some evidences that farmers are secretly engaging in such transfers, including sales in different parts of the country (*Stein and Keijiro, 2014 and Daniel B., 2015*).

The rural land laws that derived from the FDRE Constitution restrict the holders from transferring their plots for longer periods by rental contract. It permits for a short-fixed period among farmers, most of the time it does not exceed more than two or three crops seasons. For instance, Article 8(1(a)) of the South Nations, Nationalities and Peoples regional state rural land administration and use Proc No. 110/2007, permits the landholder to rent his/her landholding for a maximum of five years, if the rentee is a farmer who apply traditional farming, and it does not allow a holder to rent out his/her entire holding. Similarly Article 10(1-3) of the Oromia regional state rural land administration and use Proc No. 130/2007 and Article 6(1 and 3(b)) of Tigray regional state rural land administration and use Proc No. 136/2007, restricts farmers to rent their holding for a maximum of three years, if the rentee is a farmer who apply traditional farming and allows a holder to rent out up to half of his/her holding. Article 20(1(d)) of Benishangul Gumuz regional states rural land administration and use Proc No. 85/2010 also allow farmers to rent their land for a maximum of two years, if the rentee is a farmer who apply traditional farming. These discourage the rentee improving their land. But, the amended rural land administration and use determination Proc No. 252/2017 of Amhara regional state, allow farmers to rent their land for a maximum of thirty (30) years for permanent fruit plants or preferred tree types, and ten years concerning annual crops as far as it does not displace himself as per Article 15(1 & 9). This relaxes farmer's rental rights. From this one can understand that the rental markets must respect the time limits, minimum holding size fixed by the regional rural land laws and it must not displace the renter.

The federal and regional rural land laws also provide for the registration of all the three types of land available in the rural area, namely, private holding, communal holding, and government land. They oblige the holder to get holding certificate from the concerned body of their locality. The certificate must include the size of the land, land use, fertility status of the land, current holder's identity, boundaries of the plots, the right and obligations of the holders (*Article 8(1) of the federal rural land Proc No 456/2005*).

The aforementioned legal restrictions oblige farmers to operate small farm sizes that could not make a sustainable use of modern farm technologies. It also forces subsistence farmers to tie to their land (as they are allowed to rent only half of their holding) to sustain their livelihoods, rather than contemplating alternative, non-farm and migration choices. It limits free operation of rental markets and because of this informal land transactions are highly increasing both in terms of the number of market participants and size of land that informally supplies to these market (*Solomon F., 2015*). However, the process and act of land transfer among land users is often non-transparent, because of lack of clear rules and regulations to secure the transaction systems. As a result, the landholders fear the consequences and rent their land informally usually among relatives and/or neighbors (*Daniel B., 2015*).

Although the FDRE Constitution guarantee free access of rural land to anyone who needs to engage in agricultural activities, after land distribution and re-distribution during Derg time the natural limitation of land size plus the legal bottlenecks practically makes the farmers who attained majority age landless. This placed the large size of rural farmers in a disadvantaged position (*Solomon B. et al, 2006*). Consequently, rural landless young groups come to see themselves as the "have-nots" and resent their parents whom they see as the "haves". This generational cleavage is creating conflict and tension among households and communities (*Samuel, 2006*). On the other hand, the restrictions arrested all farmers together and discouraged social differentiations and because of this now, the opportunities for the emergence of vigorous and entrepreneurial farmers are very limited. The country's arable land and land that can be cultivated using the technology accessible to the producer is highly limited. Hence, landlessness is a dynamic problem in Ethiopia (*Zemen, 2013*).

3.1. The Land Market Potentials to Realize the Reform

In Ethiopia, there are land renters and land seekers who participate in the rental markets on supply and demand sides. Although land shortage is the prevailing problem there are landholders who lack labor, capital and time to cultivate their lands on one side and landless rural community who need to engage in agricultural activities on the other side.

Because of legal restrictions, they engage in informal markets to increase their production and thereby improve their welfare status (*Zemen, 2013*). Therefore, the following sub sections deal with the factors that drive landholders and landseekers to participate in rental markets.

3.1.1. Pushing Factors to Supply Land to Rental Markets

- There are elderly-headed households, women-headed households, disadvantaged groups, ultra-poor, and absentee landholders. Many of them lack oxen for plowing and other necessary inputs for planting (*Daniel B., 2015*). In Ethiopia traditional farming system is heavily labor based for plowing, planting, weeding, harvesting, threshing, and soil and water conservation activities. These activities are commonly happening to be difficult for women and other vulnerable groups. To increase the products from their land, agricultural inputs like fertilizer are very important, but they are highly expensive. To tackle these and like problems they rent out their lands (*Zemen, 2013*).
- In addition, there are farmers who have land and labor but no-oxen or money to buy or hire oxen. They make different arrangements, i.e., either they borrow oxen from relatives or neighbors, or borrow money or hire oxen, or rent out land to a farmer who own oxen and share crops, or work on an oxen-owner field for a fixed number of days in exchange for oxen. All these transactions involve inter-linked arrangements that commonly used, except the last one that is not common for a female-landholder (*Hosaena and Stein, 2016 and Kaatje et al, 2010*).
- Besides, there are occasions that farmers have land and adult labor but only one ox. Common practice arrangement in this situation is pairing one's ox with a fellow farmer with one ox and uses the pair of oxen on their respective fields. In some, but rare cases, one-ox owner may borrow from a relative or neighbor (*Tesfaye, 2001*).
- Furthermore, there are landholders who need to collateralize their landholding certificate to borrow money from financial institutions and engage in other activities, although it has no legal base (*Article 8(4) of Proc No. 456/2005*). These farmers need to rent out their holding and engage in non-farming activities. Since the transaction helps to appropriate capital and labor on the land and avoid lands from staying fallow, it helps the poor to have improved access to financial services and prevent any distress sale and migration (*Zemen, 2013*). Even if, this is strictly restricted by the FDRE Constitution and all regional states rural land laws, Article 19 of the amended Amhara regional state rural land administration and use proclamation permitted mortgaging of rural land use right. The region enacted this law because of informal practices of Micro Financial Institutions (MFIs) in the region using landholding certificates of farmers as collateral to provide capital for agricultural inputs without legal backing in Ethiopian legal system. This happens to be a showcase complementing the idea how much the legal instruments are not reflecting the need of the users and the level of the need for more improved use rights (*Zemen, 2013*). Moreover, the government provides packaged agricultural inputs (fertilizers and improved seeds) to farmers to improve their agricultural products in debt. After year's accumulation, the debt become beyond their capacity and they are unable to pay it. Hence, to pay the debts farmers borrow money from the haves by attaching or informal renting their land for a longer period (*Daniel B., 2015*).
- High price of informal rental markets also encourages landholders who have sufficient land but not interested to engage in agricultural activity, to supply their land to the markets to use the opportunity and to get some benefit from it than left it idle.
- There are also absentee landholders who prefer to work on other activities and rent out their land to others (*Zemen, 2013*).

3.1.2. Pushing Factors to Demand Land from Rental Markets

- In rural areas, an increasing number of population and low rate of urbanization decreases landholding size per a holder from time to time with high number of youngsters who depend of their parents and wait to inherit or access land through sub-division of parents' holdings. However, the average landholding size of their parents getting lesser and lesser, and some studies reveal majority of farmers hold less than half hectare of land that cannot legally divide even between legal heirs. This makes the productive groups to be wasteful and leads to move to urban areas to search non-farming economic activities to get livelihood for themselves and support their dependents (*Zemen, 2013*). Because of this, the rural youths who need to engage in agricultural activities seriously need to participate in rental market to access land.
- The number of land-constrained farmers whose purpose is to increase their agricultural land size need to take the opportunities and rent the land to consolidate their small plots and operate agricultural activity and produce agricultural products for household consumption and markets are highly escalating from time to time (*Hosaena and Stein, 2016; Solomon F., 2015 and Robert et al, 2007*).
- Even though, the government Constitutionally guaranteed the free access of rural lands for all who attain majority age and need to engage in agricultural activities, nowadays it is not implementing, because of shortage of state or communal land on one hand and alarmingly increasing number of newly forming landless households on the other hand. As a result, farmers are participating in informal rental markets to get land. For example, in most rural cash crop producing areas, irrigable land and peri-urban land areas informal land dealings are common (*Murado, 2014 and Daniel B., 2015*). These practices among farmers show their high demand of land in different parts of the country.

3.1.3. Informal Land Rental Market Practices

Land in Ethiopia equally distributed among farmers in the aftermath of the 1975 land reform. More than 90 percent of farm households have accessed to land, albeit declining in size and quality (*Tesfaye, 2004*). But, the legal limitations like rental period, size of the land, registration and other requirements in rural land laws make access to rural land a difficult task to those who need to engage in agricultural activities. Furthermore, inadequacies of administratively based land distribution system to meet the growing demand for farmlands increase farmers' engagement in informal land rental markets (*Solomon F., 2015*). Because landlessness is now one of the root causes of rural poverty and it results social crises and political unrest (*Frank and Yaw, 2017*). As a result, informal land markets are alarmingly increasing in all rural areas that reveal the existence of high land market potential, which can be realized by the land reform in Ethiopia.

4. Expected Challenges and Opportunities of the Reform

4.1. Challenges of the Reform

- First and for most the insertion of land matters as a policy under the FDRE Constitution make the land policy inflexible. As a result, it is not an easy task to amend the land policy once it included in the supreme law of the land (*Article 40(3-8) of the Constitution*). So, the landholders are unable to sell or mortgage their lands to get some credit from financial institutions thereby handicapping them not to look for alternative economic means or continually invest on their land and improve the quality thereof. Such restrictions are the major problems that hold back active farmers from expanding their small plot of land and diminish his/her holding from time to time (*Daniel B., 2015*).
- This rigid policy restricts alternative economic activities that can easily seek for initial capital (to venture on entrepreneurship) that would have been available by mortgaging their land. It makes the land to have no useful market value and hence a property worthy of no protection. The view that the state will prevent excessive concentration of land amongst the rich and prevent the dispossession of the poor by imposing restrictions on the transfer of land has been challenged (*Nega and Adnewet al, 2017*). It hinders the productivity of farmers by making land, which is the most vital factor of production insecure and out of market operation system. There are many barriers the policy inherently entails that are opposite to the four important land market functions that stated by Dessalegn Rahmato, 2004. These restrictions cannot facilitate transfer of rights over land and authorize collateralization of land rights. It discourages smallholders on marginal land from out-migrating and ties them to inefficient land use, which leads to fragmentation of landholdings, overpopulation in rural areas and land degradation (*Zemen, 2013*). The fairness concerns of governments, if genuine can be met through appropriate policy instruments even in state ownership, such as the specification of farm-size ceilings without inhibiting land market or extending land rental market, because unnecessary restrictions deny efficient farmer from accessing to farmland and make the available lands under utilized by non-efficient farmers (*Daniel B., 2011*).
- Increasing of rental prices in the market is the other challenge, especially for rural youths who do not have sufficient money to rent. Sometimes renters ask money as a precondition to rent and if the rentee is unable to pay it as a bribe before contractual payment of rent, landholders not agree to rent their land (*Solomon F., 2015*). As a result, land rental agreement mainly took place between local people who know each other, and this leads them to engage in oral agreement. Finally, most of the time the landholders change their idea and terminate the existing rental contract when they get another renter who can pay more money than the first rentee. In this condition, landholders force the first rentee either to renegotiate and pay additional money or leave the land. At this time because of lack of profitability, most of the time the first rentee force to terminate the contract and the land holder rent the land for the new one (*Daniel B., 2015*).
- Landlessness and inequality in farmland size among rural youth that result from large family size of each household with no change in farmland size (*Solomon F., 2015*).
- Farmer's disagreement to rent their land because of the existing land policy that created large number of family joint holder of small sized land, which requires unanimous agreement among the members to rent. However, getting their full consent is not an easy task. It is more difficult in high land areas, because interested parties with in a family raise conflict because of lack of any other options (*Daniel B., 2015*).
- Deeply rooted customary land tenure systems in rural areas, since they lack regularized and systematized amendment procedures, it would be difficult to shape their land tenure system towards the direction of improving statutory laws and implementation of legally guaranteed land markets, thereby helping to achieve the objectives of raising smallholder productivity and tackling poverty. There are no regularized customary practices amendment procedures that are necessary for the adaptation of statutory laws and customs and traditions are underpinning non-formal customary land tenure systems that are often specific to particular communities, numerous and diverse. Its negotiability, flexibility and dynamism can be used in a way that is quite contrary to helping promote smallholder's tenure security, transfer of rights in landholdings and collateralization of land rights (*Solomon F., 2015*). Since non-formal policy, legal and institutional provisions are not often based on written rules, but dependent on the knowledge of the traditional leaders of particular communities, their negotiability, flexibility, and dynamism can open way for manipulation. In addition, customary practices discriminate against women and other "vulnerable" groups, such as children, the elderly, the disabled, the low social groups and the "minority" members or "non-members" of the community as a result hinders land markets (*Zemen, 2013*).
- Lack of legal backing to collateralize land use rights to access credit is also another challenge that affects the small-scale farmers' participation in agricultural land rental markets; because the credit enables them to easily get

agricultural inputs (*Zemen, 2013*). However, now the legal guarantee and practices of mortgaging land use right in Amhara regional state is a good example for the rest eight regional states and the federal government to amend and relax the rights of farmers.

- Undeveloped rental market practices, lack of resources to rent land, inadequate access to market information, etc. are the other challenges (*Filmer et al, 2017*).
- On the state side, even though the state guaranteed the free access of rural lands for all who need to engage in agricultural activities as per Article 40(4) of FDRE Constitution, the government does not implement it, because of legal restrictions that requires residency as a pre-condition and time limits. Thus, the ability of state to accommodate continuous demand for land is diminishing, as evident from the growing number of farmers with no land, especially among the young farm households. As a result, farmers are participating in informal rental markets to access land to increase their production and income thereby improving their welfare status (*Murado, 2014 and Daniel B., 2015*). However, based on the practical knowledge of this Article writer as a junior judge from October 2011 up to August 2017, the reasons for informal market participation are varied. For instance, farmers who are short in oxen rent out land in exchange for farmers who are constrained to get access to credit rent to arrange the credit. Those farmers who have capital but having minimum holding size needs to rent the land and the unproductive landholders need to rent out their holding and need to engage in other jobs.

4.2. Opportunities to Overcome the Challenges of the Reform

Different studies in Ethiopia divulge that, land rental markets create favorable opportunities for participants in the market by making market legally secured and alternatively accessible. It enables farmers to pool resources, equalizing factor proportions, reducing land redistribution, etc. (*Hosaena and Stein, 2016; Robert et al, 2007, and Dessalegn, 2004*). It also allows households to engage in non-farm activities, migration, investment, specialization, and intergenerational land transfer, thereby improving the productivity and earnings of the participants. Households with low agricultural skills and interests are likely to be able to obtain better incomes from off-farm activities than engaging in farming activities and thus will be at an advantage if they rent out their holdings for others who can better cultivate it (*Deininger, 2003; Joseph, 2017*). However, the existing land policy and land laws of Ethiopia limits free transfer of land use rights from ineffective holder to potential user. Therefore, the following points are stated as some of significant opportunities that can help to overcome the challenges and realize the market policy reform in Ethiopia: -

- In highly populated highland rural parts, there are alarmingly increasing number of agricultural population and low rate of urbanization. As a result, landholding size per a holder is diminishing from time to time with high number of youngsters who wait to inherit or access land through sub-division of their parents' holding. The data from FDRE Central Statistics Agency disclose that the portion of rural people having half and less than half a hectare is over 31% and the people who had less than 0.1 hectare are 9% in 2010/11. There is high pressure on land, especially in densely populated high land parts (holding 80% of countries total population in 40% of total land), providing an alternative way of acquiring land and reducing non-proportional land access and agricultural productions (*Daniel, 2015*). Studies that conducted in Southern regional state, Wolaita Zone, Damot Gale District; in Amhara regional state, Semen Shoa Zone, Menze Gera District; and in Oromia regional state, Eastern Shoa Zone, Dugda District of Ethiopia reveals that, because of highly diminishing rate of land, farmers holding size is below half hectare, although it is not legal (*Zemen, 2013 and Daniel, 2015*). With this diminishing size of holdings, it is difficult to ignore the importance of looking options to improve holding size and increasing alternative livelihoods of rural communities.
- The current rental markets are highly fragmented and rental rates are mainly influenced by local demand and supply conditions. As a result, there is high deference in the market value of land in different parts of country (*Daniel B., 2015*). Thus, the reform may pave the way to bring consistency in rental prices in different parts of the country.
- There are a number of farmers whose holding size is small and unable to produce surplus products to house consumption and market. To increase their land size by consolidating their neighbors land and produce surplus products for market currently they are engaging in informal rental market. So, the reform may better benefit and encourage them.
- There are inefficient landholders who attached with their land by law and need ways to search and engage in other activities in or outside their locality. The reform may pave the way to detach unproductive farmer from their land and engage in productive activities.
- There is a mismatch in land and labor markets and it needs fair trading of land and labor to equalize their ratio across farms/plots (*Zemen, 2013*).
- Current rural land laws have many legal restrictions, like short fixed contractual term, in which farmers rarely exceed more than two crop seasons. Because of this, most of the time farmers are growing only short-cycle crops and perennial crops are not common (*Tesfate, 2004*).
- Farmer's high engagement in informal land dealings for long-terms in different parts of the country (*Daniel B., 2015; Murado, 2014, and Solomon F., 2015*).
- The existing laws restricts credit access that does not avoid distressed type of land sales in Ethiopia, since farmers are frequently engaging in misery type of land transactions for lack of credit access (*Solomon F., 2015*). Therefore, this is another opportunity to realize there form and make farmers to escape from distress sales and transfer the land in a fair market value without any pushing factors behind.

- Moreover, there are high portion of uncultivated arable lands in lowland parts of Ethiopia, which constitutes 60% of the country total land (*Daniel B., 2015*). If the government realizes the reform, it is another opportunity that can create job opportunities for landless rural youth and enable the potential investors.

5. Conclusion and Recommendations

5.1. Conclusion

Absence of well-organized land market limits capital investment in agricultural activities. The FDRE government has adopted public ownership of land with bundles of restrictions as indicated under its Constitution. This makes the land policy of Ethiopia highly rigid. The policy gives emphasize to the government-based land allocation, though it is not seen as such practically. Although the government argues that the restrictions in transfer of land right safeguards the farmers from evictions and displacements because of distress sales of land, those restrictions on land policy limits the development of rental markets and mobility of labor. The policy has failed to take in to account the existence of different landholders in the country. As some landholders lack labor, ox and capital to cultivate their land, like the old aged groups, women headed households, minors, most absentee landholders, who need to rent out their land in one side and the capable landless young's who eagerly need to engage in agricultural activities on the other side. Although the restrictions are the laws, it does not hoard farmers from looking outside legal fences. This is apparently witnessed by prevalence of informal rental markets which are exponentially increasing from time to time. And now controlling and administering it become beyond the government control.

The legal restrictions, increasing number of rural populations, high price of rental contracts, weak institutional arrangement, high fragmentation of lands, and lack of credit access are among the current market reform challenges that make the rental markets not viable.

However, there are opportunities that can help to overcome those challenges and enable the government to realize the rental market; like high number of landless rural youths; educated groups who need to invest in agricultural activities; high rate of informal dealings; elderly, women and disadvantaged groups who are unable to use their holdings effectively. This may benefit both inefficient landholders who cannot effectively use their land as well as landless and small size landholders who keenly need to engage in it by creating a wide market opportunity. Moreover, if the market supplements credit access, it can avoid distressed sales. It might help to appropriate capital and labor on the land, avoid lands from staying fallow and prevent any distressed migrations, which the Ethiopian government argues, because of unrestricted land transactions. Finally, it may possibly promote movement of people rather than conditioning use right to effective residence on the land and attaching farmers with their land in rural areas.

5.2. Recommendations

Based on the findings of this study, the writer forward the following recommendations: -

- What can be sure is that as daunting as the current situation is, the future for the rural population of Ethiopia could be catastrophic unless the situation urgently addressed. The rural landholders are already encroached the constitutional provisions by their practices. Credit institutions' growing interest and practice to use land as collateral, which can be a signal for the need to make changes in the legal frameworks. The farmers' de facto involvement in informal land rental market despite restrictions by law also shows a need of a suitable land market law that guarantees them. Therefore, what the writer propose is a hybrid land policy (state-private-customary) that within the framework of the current policy of state land ownership introduces state, private, and communal landholdings which is independent document /not part of FDRE Constitution/. It combines the advantages of state land ownership policy that the government enforces, private ownership policy that opponents frequently advocates, and customary land rental systems that rural society commonly uses without discriminating any group. This policy by taking in to consideration the looming crisis of the existing legal restrictions should either free or relax the land market and make it more flexible with the dynamic social needs of the rural community.
- Following this new land policy reform rural land laws that expand the options of farmers to participate in the rental market and encourage their productivity should be enacted by federal government and all regional states taking the amended Amhara regional state rural land law as a model. This should relax the rental period and permit free mobility of farmers. It also encourage those who need to engage in agricultural activities, to increase the volume of trade and decline transaction costs; reduce pressure on land as the markets provide an alternative way to acquire land and reduce non-proportionality of production at farm level; and create opportunities for farmers to engage in other activities outside their locality and enable them to maximize their incomes.
- Landholders are unable to produce surplus products due to lack of credit markets. Hence, it is necessary for the government to intervene on it by policy reform that entitle the landholders to collateralize their holdings to secure loans and buy a new technology that enables them to improve their products and widen their job opportunities. The amended rural land law of Amhara regional state is best reference. Because in current land policy, the ultimate owner of land is the state and the farmers have only useright over their allotments. Therefore, access to institutional credit is not open to them and it locked them in their land. The reform should also include mortgaging of farming lands for fixed periods, which also incorporated in Amhara regional state amended rural land law, however the FDRE Constitution itself restricted it.
- The concerned body should enact rural landlaws following policy reform that remove or relax existing limitations like setting of upper rental periods, restriction of renting total land, right to collateralize, registration of contracts

and other bulky conditions. And to secure rental contracts, the government should establish strongly organized registration and certification process and effectively monitors its implementation.

6. References

- i. Abdo, M. (2014). State policy and law in relation to land alienation in Ethiopia. England: Warwick.
- ii. Adal, Y. (2004). Some Queries about the Debate on Land Tenure in Ethiopia. Addis Ababa University: Institute of Development Research.
- iii. Adnew, B., et al (2002). Current Land Policy Issues in Ethiopia. Addis Ababa: Ethiopian Economic Policy Research Institute.
- iv. Alemu, G. (2009). The Challenges of Land Tenure Reform to Structural Transformation of the Economy. Norway, Lessons from Country Experiences, in Proceedings of the 16th International Conference of Ethiopian Studies, 3, 763-764.
- v. Behailu, D. (2011). Land Use Legislation in Ethiopia: A Human Rights and Environment Based Analysis. Jimma University Law Journal (JULJ), 3(2), 1-32.
- vi. Behailu, D. (2015). Transfer of Land Rights in Ethiopia: Towards a Sustainable Policy Framework. Netherlands: Eleven International Publishing.
- vii. Bekure, S., et al (2006). Removing Limitations of Current Ethiopian Rural Land Policy and Land Administration. Paper Presented at the Workshop on Land, Policies & Legal Empowerment of the Poor; The World Bank, Washington D.C.
- viii. Beyene, A. D., et al (2012). Contract Duration under Incomplete Land Ownership Rights, Empirical Evidence from Rural Ethiopia. Addis Ababa: Environment for Development Discussion Paper Series.
- ix. Dale, P., et al (2006). Land Market and the Modern Economy. UK London: Royal Institution of Chartered Surveyors (RICS).
- x. David, P., et al (2009). Towards Improved Land Governance. FAO, Land Tenure Working Paper.
- xi. De Soto, H. (2000). "The Mystery of Capital", Why Capitalism Triumphs in the West and Fails Everywhere Else. New York: Black Swan Press, Basic Books.
- xii. Emmanuel, T. & Emmanuel, N. (2012). Understanding Informal Urban Land Market Functioning in Peri-urban Areas of Secondary Towns of Rwanda: Case Study of Tumba Sector, Butare Town. Rwanda Journal, Life and Natural Sciences: 25(D), 34-51.
- xiii. Fikre, S. (2015). The Challenges of Land Law Reform, Smallholder Agricultural Productivity and Poverty in Ethiopia. Germany, Warwick University.
- xiv. Frank, F. K. B. & Yaw, A. (2017). Securing land tenure and access for the youth to modernize African agriculture. Addis Ababa: Land Policy in African Conference.
- xv. Gebremichael, B. (2018). Trust and Distrust Approaches in the Constitutional Lawmaking of Rural Land Rights in Ethiopia: Nature, Drafting and Implications. Mizan Law Review, Vol. 12(2), 348-370.
- xvi. Gebreselassie, S. (2006). Land, Land Policy and Smallholder Agriculture in Ethiopia. Addis Ababa, Options and Scenarios, Paper prepared for the Future Agriculture Consortium meeting at the Institute of Development Studies.
- xvii. Ghebru, H. & Holden, S. (2016). Land Access, Land Rental Markets and Rural Poverty Dynamics in Ethiopia: Panel Data evidence using Survival Models', Paper prepared for presentation at the "Annual World Bank Conference on Land and Poverty" World Bank.
- xviii. Haddis, Z. (2013). Towards improved transactions of land use rights in Ethiopia. Paper prepared for presentation at the "Annual World Bank Conference on Land and Poverty: WB, Washington, DC.
- xix. Jabu, J. (2017). Effect of Agricultural Land Rental Market Participation on Agricultural Income of Small-Scale Farmers in Kwale County. Egerton University, Kenya: Master's Thesis.
- xx. Klaus, D. & Binswanger, H. (1999). The evolution of the World Bank's land policy: principles, experience, and future challenges. Washington, DC, World Bank, 14(2), 247-276.
- xxi. Klaus, D. (2003). Land Policies for Growth and Poverty Reduction. World Bank & OUP.
- xxii. Klaus, D. et al (2008). Assessing the Functioning of Land Rental Markets in Ethiopia. World Bank.
- xxiii. Lipton, M. (2009). Land Reform in Developing Countries: Property Rights and Property Wrongs. Routledge.
- xxiv. Mahoney, R. et al, (2007). Land Markets- Why they are required and how will they develop? UK: International Federation of Surveyors.
- xxv. Rahmato, D. (2004). Searching for Tenure Security? The Land System and New Policy Initiatives in Ethiopia. Addis Ababa: Forum for Social Studies.
- xxvi. Stein, T. H., & Keijiro, O. (2014). The roles of land tenure reforms and land markets in the context of population growth and land use intensification in Africa. Netherlands: ELSEVIER.
- xxvii. Teklu, T. (2001). Emerging Informal Land Markets: A Quest for Equitable and Efficient Land Tenure Systems. Western Michigan University: International Conference on African Development Archives.
- xxviii. Teklu, T. (2004). Rural Land, Emerging Rental Land Markets and Public Policy in Ethiopia. African Development Bank: Blackwell Publishing Ltd.
- xxix. Weldegebriel, D. (2013). Land rights and expropriations in Ethiopia. Stockholm: School of Architecture and the Built Environment, Royal Institute of Technology (KTH).
- xxx. Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995; Negarit Gazeta Year 1, No.1

- xxxi. EU Land Policy Guidelines, Guidelines for support to land policy design and land policy reform processes in developing countries, 2004, Para 5.5 (5.5.1).
- xxxii. Food and Agricultural Organization Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security, (2012): Food and Agriculture Organization of the United Nations, adopted by the CFS in Rome.
- xxxiii. Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihood (ECA Publications, Addis Ababa, 2010).
- xxxiv. Rural Youth, Education and Agriculture; An Exploration of Youth Aspirations and Government Policy in Ethiopia, 2013
- xxxv. The 1960 Civil Code of Ethiopia, Article 2957-2964
- xxxvi. The FDRE Central Statistical Agency, Agriculture sample survey 2005/2006: report on land utilization (private peasant holdings, Meher season), Volume VII, (Statistical Bulletin Addis Ababa, 2006).
- xxxvii. The Proclamation to Provide for the Public Ownership of Rural Lands No. 31/1975
- xxxviii. The Federal Democratic Republic of Ethiopia Constitution, Proclamation Number 1/1995; Negarit Gazeta Year 1, No.1
- xxxix. The Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No, 456/2005
  - xl. The Oromia Regional State rural land administration and use Proclamation No. 130/2007, 15th Year, No.12
  - xli. The South, Nations, Nationalities and Peoples Regional State, Rural Land Administration and Utilization Proclamation No.110/2007; Negarit Gazeta Year 13, No.10
  - xl.ii. The Revised Amhara National Regional State Rural Land Administration and Land Use Determination Proclamation No. 252/2017
  - xl.iii. The Revised Tigray National Regional State Rural Land Administration and Use Proclamation No. 136/2007